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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Honorable G. Thomas Cooper, Circuit Court Judge

KARLIN RAMON FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001900

APPENDIX

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INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED MAY 15, 2014	1
APPLICATION FOR POST-CONVICTION RELIEF FILED MARCH 23, 2015	38
RETURN.....	57
AMENDED PRO SE POST- CONVICTION RELIEF APPLICATION FILED JUNE 7, 2016	63
AMENDED POST-CONVICTION RELIEF APPLICATION DATED MARCH 27, 2017.....	69
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 7, 2017	73
DEFENDANT’S EXHIBIT NO. 1 (NEWSPAPER ARTICLE).....	104
DEFENDANT’S EXHIBIT NO. 2 (NEWSPAPER ARTICLE).....	105
DEFENDANT’S EXHIBIT NO. 3 (NEWSPAPER ARTICLE).....	106
DEFENDANT’S EXHIBIT NO. 4 (NEWSPAPER ARTICLE).....	107
DEFENDANT’S EXHIBIT NO. 5 (NEWSPAPER ARTICLE).....	109
ORDER OF DISMISSAL FILED SEPTEMBER 6, 2017	111
INDICTMENTS AND SENTENCING SHEETS	132

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
 PLAINTIFF,)
)
 -VS-)
)
 KARLIN FOSTER)
)
 DEFENDANT.)
 _____)

2014-GS-24-452, -453
TRANSCRIPT OF RECORD

MAY 15, 2014
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE ROBIN STILLWELL

APPEARANCES:

ATTORNEY FOR PLAINTIFF:
SHANNON ODOM, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

TOM AUSTIN, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

GUILTY PLEA

3

CERTIFICATE OF REPORTER

37

EXHIBITSNODESCRIPTIONIDEVIDENCE

(No exhibits were presented during this hearing)

1 THE COURT: Let's make real clear on the record, I know
2 we got a lot of people lined up. Let's make sure that I
3 know who is representing whom. So, counselor, if you would
4 just go down the line and just for the purposes of the
5 record, announce your name and then tell me who you're
6 representing, okay, so that the record is very clear.

7 MR. COMPTON: I'm John Compton, I represent Tyrel
8 Wideman on charges that involve threatening the life of a
9 public official, nonviolent three counts, and one count of
10 disturbing a school.

11 MR. BETTIS: Chad Bettis. I also represent Tyrel
12 Wideman on some additional charges.

13 MR. HODGES: Your Honor, Andrew Hodges of the Greenwood
14 Bar. I represent Damien Ligon on a drug charge.

15 MR. AUSTIN: Your Honor, my name is Tom Austin. I
16 represent Karlin Foster on a -- on two trafficking charges.
17 And, Your Honor, he's -- I don't want the court to think
18 he's being disrespectful, but because of physical
19 conditions, sometimes he's going to have to lean back on
20 this table.

21 THE COURT: Okay, no worries.

22 MR. TAYLOR: And, Judge, Mr. Morton appears standing
23 before you pro se.

24 THE COURT: Okay. All right. Mr. Morton, how are you
25 this morning?

1 WITNESS: I'm okay, sir. How are you?

2 THE COURT: I'm fine. You recognize that you do have
3 the right to have an attorney represent you in this case?

4 WITNESS: Yes, sir.

5 THE COURT: If you couldn't afford an attorney, an
6 attorney could be appointed to represent you. Now, you
7 could benefit from the services of an attorney who could
8 tell you things that potentially you just don't know, such
9 as Constitutional rights that you may enjoy, procedural
10 rights that you have, potential legal defenses to the
11 charges that are before the court, and, moreover, that
12 attorney could just help you navigate the criminal justice
13 system. Now, understand that you can proceed on your own,
14 if you want to. But if you proceed on your own, you just
15 understand that you assume certain risks because you may not
16 know and have as much experience as an attorney may have in
17 general sessions court. Do you understand that, sir?

18 WITNESS: Yes, sir.

19 THE COURT: Knowing that, sir, do you want to waive
20 your right to counsel and proceed on your own today?

21 WITNESS: Yes, sir.

22 THE COURT: Okay. All right. Thank you, Mr. Morton.
23 All right. Question to all of the attorneys and answer in
24 order, if you would, please. Have each of you had the
25 opportunity to discuss with your respective clients their

1 Constitutional rights and the ramifications of their pleas?

2 MR. COMPTON: Yes.

3 MR. BETTIS: I have, Your Honor.

4 MR. HODGES: I have, Your Honor.

5 MR. AUSTIN: Yes, sir.

6 THE COURT: He's not licensed to practice law, as far as
7 I know. And are each of you comfortable that your client
8 understands his Constitutional rights and wants to waive the
9 same and plea today?

10 MR. COMPTON: Yes.

11 MR. BETTIS: Yes, Your Honor.

12 MR. HODGES: I am, Your Honor.

13 MR. AUSTIN: Yes, sir.

14 THE COURT: And do each of you agree with your client's
15 decisions in that regard?

16 MR. COMPTON: Yes, Your Honor.

17 MR. BETTIS: Yes, Your Honor.

18 MR. HODGES: I do, Your Honor.

19 MR. AUSTIN: Yes, sir.

20 THE COURT: Okay. All right. Gentlemen, I'm going to
21 explain to you generally your Constitutionally rights as
22 they relate to the charges that are before the court. After
23 I've explained to you your Constitutional rights, I'm going
24 to ask you questions to make sure that you are waiving them
25 freely and voluntarily and that you are making a voluntary

1 plea on this case intelligently. Now, after I explain
2 those rights to you and I begin to ask you questions,
3 I'd like for each of you to answer those questions in the
4 order that you're lined up. And it's my understanding that
5 we have Mr. Wideman first. Is that correct? Okay. And
6 then we have Mr. Ligon?

7 WITNESS: Yes, sir.

8 THE COURT: Did I pronounce that correctly?

9 WITNESS: Yes, sir.

10 THE COURT: Then Mr. Morton?

11 WITNESS: Yes, sir.

12 THE COURT: And then Mr. Foster. Is that correct?

13 WITNESS: Yes.

14 THE COURT: Please wait -- when I ask you the question,
15 you answer in that order. Please wait until the person in
16 front of you has completed their response until you begin to
17 answer the question, okay. Gentlemen, each of you has a
18 right to a jury trial in the charges that are before the
19 court. If you were to have a jury trial, the state would
20 have the burden of proving you guilty beyond a reasonable
21 doubt to a jury of twelve of your peers. In that
22 proceeding, you would not have the burden of proving
23 yourself innocent because under the Constitution you have
24 the right to remain silent, which means you would not be
25 compelled to do or say or prove anything to that jury.

1 The state has the burden of proving each and
2 every element of the offense beyond a reasonable doubt.
3 However, do know that if you elected to have a jury trial,
4 you can take the stand and you can testify to the jury and
5 you can waive your right to remain silent. You could
6 present evidence and witnesses in your defense. You could
7 present legal defenses. You could make motions before the
8 court to protect your constitutional and procedural rights.
9 You could also cross examine any of the state's witnesses,
10 including those people who are testifying against you in
11 this case.

12 You also have the right to have these indictments
13 presented to a grand jury for a True Bill, if that has not
14 already been done. So, gentlemen, I ask you in order, do
15 you understand these rights and do you want to waive them
16 today and plead guilty? Mr. Wideman?

17 MR. WIDEMAN: Yes, sir.

18 THE COURT: Mr. Ligon?

19 MR. LIGON: Yes, sir.

20 THE COURT: Mr. Morton?

21 MR. MORTON: Yes, sir.

22 THE COURT: And Mr. Foster?

23 MR. FOSTER: Yes, sir.

24 THE COURT: Understanding that each of you wants to
25 waive your rights and plead guilty. Has anyone forced or

1 threatened or made you plead guilty?

2 MR. WIDEMAN: No, sir.

3 MR. LIGON: No, sir.

4 MR. MORTON: No, sir.

5 MR. FOSTER: No, sir.

6 THE COURT: Are each of you pleading guilty of your own
7 free will because you are in fact guilty of the offense?

8 MR. WIDEMAN: Yes, sir.

9 MR. LIGON: Yes, sir.

10 MR. MORTON: Yes, sir.

11 MR. FOSTER: Yes, sir.

12 THE COURT: Has anyone promised you anything in exchange
13 for your plea, other than a potential recommendation from
14 the State?

15 MR. WIDEMAN: No, sir.

16 MR. LIGON: No, sir.

17 MR. MORTON: No, sir.

18 MR. FOSTER: No, sir.

19 THE COURT: Are any of you under the influence of any
20 drugs or alcohol today?

21 MR. WIDEMAN: No, sir.

22 MR. LIGON: No, sir.

23 MR. MORTON: No, sir.

24 MR. FOSTER: No, sir.

25 THE COURT: Do any of you suffer from any mental

1 sickness that would affect your ability to understand and
2 appreciate what we are doing here today?

3 MR. WIDEMAN: No, sir.

4 MR. LIGON: No, sir.

5 MR. MORTON: No, sir.

6 MR. FOSTER: No, sir.

7 THE COURT: Have each of you had the opportunity to
8 discuss this matter with your attorney as much as you needed
9 to, and are you satisfied with his services? Mr. Wideman?

10 MR. WIDEMAN: Yes, sir.

11 THE COURT: And Mr. Ligon?

12 MR. LIGON: Yes, sir.

13 THE COURT: And Mr. Foster?

14 MR. FOSTER: Yes, sir.

15 THE COURT: Have each of you understood all of my
16 questions and explanations to you today?

17 MR. WIDEMAN: Yes, sir.

18 MR. LIGON: Yes, sir.

19 MR. MORTON: Yes, sir.

20 MR. FOSTER: Yes, sir.

21 THE COURT: Do any of you have any questions at this
22 point that you would like to ask me or your attorney
23 regarding your rights or this proceeding before I hear the
24 facts on each of your individual cases?

25 MR. WIDEMAN: No, sir.

26 MR. LIGON: No, sir.

1 MR. MORTON: No, sir.

2 MR. FOSTER: No, sir.

3 THE COURT: Okay. You each have ten days to appeal
4 the sentence that I hand down today. So let's take Mr.
5 Wideman's case first.

6 MS. ODOM: Your Honor, the facts on Mr. Wideman's case -
7 -

8 THE COURT: Wait. Is there something that you need to
9 tell me before I ask him about the charges?

10 MS. ODOM: No, sir. I'm sorry. I was jumping the gun.

11 THE COURT: It's okay. I just wanted -- a lot of times
12 there is something that I need to know before I get started.
13 What's the maximum for disturbing schools?

14 MS. ODOM: It's under the 30 day.

15 THE COURT: It's 30 days, okay. Mr. Wideman, you're
16 pleading guilty to disturbing schools. You recognize you
17 could receive 30 days on that offense, sir?

18 MR. WIDEMAN: Yes, sir.

19 THE COURT: And how do you plead to that, sir?

20 MR. WIDEMAN: Guilty.

21 THE COURT: Mr. Wideman, I'm going to go through all of
22 these charges. Do you understand that when I tell you
23 the maximum possible penalty for a charge that the sentence
24 could be all run consecutively and in addition to one
25 another. So, for instance, if you have two 30-day offenses,
26 then even though each of them are only 30 days, they could

1 be consecutive for a total of 60 days. Do you understand?

2 MR. WIDEMAN: Yes, sir.

3 THE COURT: You are pleading guilty to receive stolen
4 goods less than \$2,000. You recognize you could receive an
5 additional 30 days for that, sir?

6 MR. WIDEMAN: Yes, sir.

7 THE COURT: How do you plead to that?

8 MR. WIDEMAN: Guilty.

9 THE COURT: You are pleading guilty to two counts
10 of auto break-in. You recognize that you could receive five
11 counts on each consecutively. How do you plead to that,
12 sir?

13 MR. WIDEMAN: Guilty.

14 THE COURT: You're pleading to three counts of petty
15 larceny. You understand that you could receive 30
16 additional and consecutive days on each of those offenses,
17 sir?

18 MR. WIDEMAN: Yes, sir.

19 THE COURT: How do you plead to that?

20 MR. WIDEMAN: Guilty.

21 THE COURT: You are pleading to three counts of
22 threatening of a public official. What's the maximum
23 possible penalty for that?

24 MS. ODOM: Ten.

25 THE COURT: You understand that you could receive ten
26 years on each of those charges? And that could be in

1 addition and consecutive to the sentences on the other
2 indictments. Do you understand that, sir?

3 MR. WIDEMAN: Yes, sir.

4 THE COURT: How do you plead to those charges?

5 MR. WIDEMAN: Guilty.

6 THE COURT: Okay. All right. I do have the facts.

7 MS. ODOM: Thank you, Your Honor. On the set of charges
8 with the threatening public official and disturbing schools,
9 on August 14th of last year Mr. Wideman, who was a student
10 at Emerald here in Greenwood County, was informed that he
11 would no longer be allowed to play football. And at this
12 time he just became irate. He became very angry. He bowed
13 up at the coach, as well as the principal and the assistant
14 principal and made several threats to them. This case was
15 initially placed into PTI after speaking with all three
16 individuals who just voiced concerns to me about Mr. Wideman
17 getting some anger management and that they didn't want to
18 see this, you know, stay on his criminal history. They
19 wanted him to get through this and to just kind of get back
20 to being normal. Mr. Wideman was kicked out of PTI on those
21 charges when he picked up this other set of charges, the
22 auto break-ins and these petty larceny. These occurred in
23 December of 2013. There was a rash of auto break-ins.
24 People with their doors unlocked. Someone was going into
25 the cars taking various items. The Greenwood County
26 Sheriff's Office began their investigation and were able to

1 develop various suspects, most of which gave full
2 confessions as to what they were doing. Mr. Wideman, I'll
3 give a brief fact on each warrant that he pleaded on. With
4 Candice Smith as a victim from December 24th he, along with
5 other co-defendants, went to her vehicle and stole a GPS.
6 She did not want to be present, but is owed \$100, which is
7 reflected on the restitution order. On Nedra Singleton,
8 they went into her vehicle and actually took a shotgun,
9 which was returned. Ms. Singleton is a deputy with
10 Abbeville Sheriff's Office. And I spoke with her
11 last night. She just wants me to call her after the plea.
12 She is not owed any restitution since she got the rifle
13 back. On the receiving stolen goods, Nathan Gillespie's
14 vehicle was broken to. And his wallet was found in Mr.
15 Wideman's possession. He is owed \$150, which is reflected
16 on the restitution order. Daniel Rush, on December 20th,
17 his vehicle was broken into and a weapon, along with some
18 ammunition, was stolen. He is owed restitution,
19 as reflected on the sentencing sheet on the restitution
20 order. He didn't want to be here, Your Honor, but just
21 wanted to be notified afterwards. And then the last victim,
22 Carissa Brown, \$40 was taken from her vehicle. She didn't
23 want to be either. The restitution is \$40 on her. So, Your
24 Honor, the restitution order is the total amount of
25 restitution due on the cases that Mr. Wideman was charged
26 with.

1 THE COURT: Yes, ma'am.

2 MS. ODOM: Some co-defendants will owe that same amount
3 of restitution. But the State is asking for all of it to be
4 ordered for Mr. Wideman, then when the other ones come
5 before the Court it can be joint and several at that time.

6 THE COURT: Okay.

7 MS. ODOM: Besides these charges, he does not have a
8 criminal history.

9 THE COURT: Okay. Mr. Wideman, you've heard those
10 allegations, sir. Is that what happened?

11 MR. WIDEMAN: Yes, sir.

12 THE COURT: Okay. I'll accept the plea as freely and
13 voluntarily entered and this is with the assistance of
14 counsel notice of substantial facts were the same. Is there
15 a recommendation in this case?

16 MS. ODOM: Yes, Your Honor. The State's recommending
17 YOA Shock with restitution of probation restitution to
18 follow. Mr. Wideman has right at four-and-a-half, five
19 months of credit and then the Shock will be at least three
20 more months. I believe he an benefit tremendously from this
21 program.

22 THE COURT: How long has he been in?

23 MS. ODOM: I think he was arrested December 30th. And a
24 difference between he and the co-defendants, this -- a lot
25 of the co-defendants did have criminal histories and wee
26 actually on probation for this same sort of thing.

15

1 THE COURT: Okay. All right. Gentlemen, having heard
2 the facts and having had the opportunity to discuss this
3 with you in chambers, I'm comfortable with the
4 recommendation, and I'm inclined to sentence Mr. Wideman to
5 the same. Having said that, I'd be happy to hear from you
6 if think there's anything that needs to be put on the
7 record.

8 MR. COMPTON: Your Honor, I've known Tyrel and his
9 family for some time. And I believe he is capable of, with
10 the right help, of conforming into being a fine young man.
11 He just has some anger issues and has made some poor
12 decisions. But I know he has a father and a mother that
13 care deeply about him, want to see him do the best he can
14 with the rest of his life. I think he can do that if he can
15 take this opportunity to learn from it. That's all I have
16 to say.

17 THE COURT: Thank you. I appreciate it. Yes, sir.

18 MR. BETTIS: Judge, I would like to ask, even though
19 this has not been recommended by the State, with regard to
20 any probation that follows the Shock sentence if we can set
21 a maximum for the probation, if the restitution is paid. I
22 understand you may not want to -- if you're doing it all,
23 you may not want to do it immediately, but if we had some
24 kind of maximum amount if it's paid by a certain --

25 THE COURT: With a YOA unless I just suspend it, I don't

1 order them the probation. There's just really no mechanism
2 for doing that because the period of the incarceration under
3 YOA is indeterminate. So he'll get out on YOA parole, but
4 that will be administered by the executive branch and not
5 the judicial branch. So I'm not -- I won't sentence him to
6 a probation. I think we'll have a parole, but that won't be
7 part of the sentence from the court.

8 MR. BETTIS: And I understand that this is parole, as
9 far as compared to probation, I said probation. I was just
10 wondering if there's a way to set a max on that if he pays
11 restitution by a certain date, like a minimum of a year --

12 THE COURT: Because it's administered by the Department
13 of Probation, Pardon & Parole, which is executive branch, so
14 I can't -- I don't have any way of telling them this how you
15 will administer your parole. Probation is a different
16 matter, but parole is entirely a function of the executive
17 branch.

18 MR. BETTIS: Thank you, judge.

19 THE COURT: Perhaps I could, if I would. But I don't
20 think I can.

21 MR. BETTIS: I appreciate your consideration.

22 THE COURT: Yes, sir. Mr. Wideman, is there anything
23 that you would like to tell me, sir?

24 MR. WIDEMAN: Yes, sir. I know what I did was wrong,
25 and I accept my punishment for it. And I just hope the

1 victim will forgive me for what I did.

2 THE COURT: Mr. Wideman, I am going to accept the
3 recommendation. And the sentence of the Court generally
4 is YOA with the recommendation for Shock. And while I'm
5 filling out this out, I will tell you Shock isn't easy. If
6 you have a problem with anger management and you don't have
7 the ability to exercise discipline and restraint, then
8 you're not going to get through Shock because what they're
9 going to do is they're going to get to you. They're going
10 to try to get you upset. That's part of the process because
11 what they want to see if you're man enough to handle it,
12 okay; if you're man enough to exercise restraint; if you're
13 man enough to recognize that you can take it. And, really,
14 the greatest reflection on you and your judgment, your
15 discretion is whether you can take it all and not let it get
16 to you, whether you can conform your conduct to what's
17 required in normal society, okay. So it's not easy. But if
18 you get through it you will have demonstrated yourself to be
19 a better man than you are standing right before me now,
20 okay. You got it in you, I know you do. You just got to
21 learn to exercise restraint. So I'll go all of these: on
22 the disturbing school is 30 days time served. Receiving
23 stolen goods, 30 days time served. Five year YOA on the
24 auto breaking. Restitution is ordered. Recommend Shock.
25 Second auto breaking, five year YOA. That is committed to

1 the Department of Corrections under the YOA statute for a
2 period not to exceed five years. Thirty days time served on
3 the petty larceny. Thirty days time served on petty
4 larceny. Thirty days time served on petty larceny. And for
5 your threatening the life of a public official, again, on
6 three of those committed to the Department of Corrections
7 under the Youthful Offender Act that you're not exceed five
8 years. Recommend Shock on each of those. And I'm ordering
9 restitution in accordance with the Consent Order that was
10 passed up to me. So, Mr. Wideman, good luck to you, sir.

11 MR. COMPTON: Your Honor, may I ask one question. The
12 five-year sentence is on all of those. They are concurrent?

13 THE COURT: Yes, sir. Each one is concurrent, and I've
14 given him credit for time served, at least with respect to
15 the county matters.

16 MS. COMPTON: Thank you, Your Honor.

17 MR. BETTIS: Thank you, judge.

18 MS. ODOM: Thank you.

19 THE COURT: Mr. Ligon, you are pleading to possession of
20 I believe it's crack cocaine third or subsequent offense.
21 What's the maximum for that?

22 MR. TAYLOR: That carries a year to ten, Judge.

23 THE COURT: You understand that you can receive up to
24 ten years incarceration for that, sir?

25 MR. LIGON: Yes, sir.

1 THE COURT: And how do you wish to plead to that?

2 MR. LIGON: Guilty.

3 THE COURT: Okay. I'll be happy to hear the facts.

4 MR. TAYLOR: Thank you, Your Honor. This happened March
5 10, 2014. He was actually charged with PWID. It has not
6 been tested by SLED, but the field test was positive and it
7 weighed approximately .8 grams, so it was less than a gram.
8 So the State has reduced it to possession. Judge, this
9 happened at his house at [REDACTED] Owens Street. The Greenwood
10 Drug Enforcement Unit executed a search warrant there. They
11 also found the drug inside his home. Judge, this is the one
12 we mentioned to you about deferring the sentence.

13 THE COURT: Yes, sir.

14 MR. TAYLOR: We have picked a date for that. It will be
15 deferred until May 27th at 2:00 p.m. Judge Griffith will
16 sentence him. I know you can't admonish him because you're
17 not going to be sentencing. I will say that if he is
18 arrested in the meantime I'm going to ask for the maximum
19 sentence at that sentencing. So I do want to put that on
20 the record as well. And I'll give Judge Griffith his record
21 and all that stuff at the appropriate time.

22 THE COURT: Okay. Mr. Ligon, you've heard those
23 allegations, sir. Is there anything you need to add to
24 that?

25 MR. LIGON: No, sir.

1 THE COURT: Mr. Hodges, is there anything you need to
2 put on the record?

3 MR. HODGES: No, Your Honor. I'll withhold mitigation
4 until sentencing.

5 THE COURT: Good enough. And I'll not rehash, I'm
6 sure, what you've already told him, Mr. Hodges. I'll, just
7 to suffice it to say, Mr. Ligon, you need to come back, all
8 right?

9 MR. LIGON: Yes, sir.

10 THE COURT: All right.

11 MR. HODGES: I have stressed, too, Your Honor the
12 importance of staying out of trouble and showing up on time
13 --

14 THE COURT: That's right. It will be a lot worse on you
15 if you don't show up. It will be even worse if the police
16 have to come find you.

17 MR. LIGON: I know.

18 THE COURT: I know you know that. Good luck to you,
19 sir.

20 MR. HODGES: Thank you, Your Honor.

21 MR. TAYLOR: Thank you, Your Honor.

22 THE COURT: Mr. Morton?

23 MR. MORTON: Yes, sir.

24 THE COURT: You are pleading to a habitual traffic
25 offender. Do you recognize you could receive up to five

1 years in prison for that, sir?

2 MR. MORTON: Yes, sir.

3 THE COURT: And how do you wish to plead to that, sir?

4 MR. MORTON: Guilty.

5 THE COURT: All right, sir. I've already asked you if
6 you understand and wish to waive your right to counsel. Are
7 you comfortable proceeding, sir, after having witnessed two
8 prior pleas?

9 MR. MORTON: Yes, sir.

10 THE COURT: Okay. Good enough. I'll be happy to
11 hear the facts.

12 MS. WHITE: Your Honor, on October 29, 2013,
13 officers with the Highway Patrol were conducting a
14 checkpoint on New Market Road. Mr. Morton drove up to the
15 checkpoint. Immediately informed the officers that his
16 license was suspended. He had been placed -- had been
17 notified of his status as a habitual traffic offender in
18 July 2013, and so officers arrested at the time for habitual
19 traffic offender. He has been extremely cooperative. The
20 State has negotiated a 30-day sentence. And I've discussed
21 with him the ramifications if he keeps driving and some
22 steps he might could take to get his license back.

23 THE COURT: Okay. Mr. Morton, you heard those
24 allegations, sir. Is there anything that you'd like to add?

25 MR. MORTON: No, sir.

1 THE COURT: Okay. Any prior record other than traffic
2 offenses?

3 MS. WHITE: Yes, sir. He does have a prior record.
4 It's actually suspended because of a drug charge in 2011.
5 It was a PWID crack/cocaine. He received a probationary
6 sentence on that charge.

7 THE COURT: Are you still on probation, Mr. Morton?

8 MR. MORTON: No, sir.

9 THE COURT: Have you already served 30 days?

10 MR. MORTON: No, sir.

11 THE COURT: So the recommendation is 30 days straight?

12 MS. WHITE: Yes, sir.

13 THE COURT: No probation following that?

14 MS. WHITE: No, sir.

15 THE COURT: You must be a very charming and engaging
16 individual, Mr. Morton because --

17 MR. MORTON: I hope so, sir.

18 THE COURT: It looks like it because you convinced the
19 State to give you a -- to request a fairly lenient sentence.
20 So why should I go along with that sentence?

21 MR. MORTON: Because, at the time, Your Honor, I just,
22 you know, rational decisions trying to help someone out. A
23 car got hit that night. I could make a couple hundred
24 dollars by dropping the car at the local detail shop that
25 would straighten the dents back out of it. And I decided to

1 make that wrong decision of taking that car to the auto
2 place to get it fixed. And from the gate, you know, I knew
3 I had messed up when I seen the police up there. I thought
4 they was helping somebody, but I let the police know --
5 talked to him, an officer, and he understood exactly where I
6 was coming from. He recommended I get a PR bond. And from
7 there I've been staying out of cars, like not unless
8 somebody else driving, you know. And I was going to ask,
9 you know, I'm trying to change. And one of the things I'm
10 trying to do is own my own lawn service. So I, at some
11 point, I'm going to need a license back. So, therefore, I
12 was asking the court if there's anything, you know, I'm
13 going to accept my time on this one. If there's anything
14 that I could, you know, I basically get myself in position
15 to regain my license.

16 THE COURT: You'll have to talk to the Department of
17 Motor Vehicles about that. From where I sit in this
18 courtroom, there's nothing additional I can do other than
19 adjudicate this offense and let you get it behind you.

20 MR. MORTON: Yes, sir.

21 THE COURT: Which is what I intend to do, okay.

22 MR. MORTON: Yes, sir.

23 THE COURT: But you'd have to talk to the Department of
24 Motor Vehicles about what exactly you have to do
25 administratively. Because, just like with the other

1 gentleman up here, the executive branch of government issues
2 driver's licenses. The judicial branch doesn't, okay. All
3 right, Mr. Morton, the sentence of the court is that you be
4 committed to the Department of Corrections for a period of
5 30 months, provided upon the service of 30 days. The
6 balance is suspended. Credit for any time that you may have
7 served. Good luck to you, sir.

8 MS. WHITE: Thank you.

9 MR. MORTON: Thank you, sir.

10 THE COURT: Okay. All right. Mr. Foster, you are
11 pleading guilty to trafficking in cocaine 28 to 100 grams,
12 second offense. And it looks as though you are -- is the
13 second charge the same offense or is it a different
14 substance?

15 MS. ODOM: It's a different substance. One's crack and
16 one's powder cocaine.

17 THE COURT: All right. What is the maximum possible
18 offense for trafficking cocaine up to 100 grams second
19 offense?

20 MS. ODOM: It's seven to 25 years on both of them.

21 THE COURT: For each of them?

22 MS. ODOM: Yes, sir.

23 THE COURT: All right. You understand, Mr. Foster, that
24 you can receive up to 25 years for trafficking cocaine the
25 second offense?

1 MR. FOSTER: Yes, sir.

2 THE COURT: And how do you wish to plead to that, sir?

3 MR. FOSTER: Guilty.

4 THE COURT: You also -- I understand that you are
5 pleading guilty to trafficking in crack, 28 grams, but less
6 than 100 grams. You understand that you could receive,
7 again, an additional seven to 25 years for that offense,
8 sir?

9 MR. FOSTER: Yes, sir.

10 THE COURT: And how do you wish to plead to that?

11 MR. FOSTER: Guilty.

12 THE COURT: I'd be happy to hear the facts.

13 MS. ODOM: Thank you, Your Honor. September 18, 2013,
14 agents with the Greenwood County Drug Enforcement Unit
15 responded to [REDACTED] Morton Road here in Greenwood to serve an
16 active arrest warrant on Mr. Foster. Several of the agents
17 who were there today are actually here in the courtroom
18 today. When they got to the home Mr. Foster wasn't there,
19 but his girlfriend, Astor Brooks, was home. They asked her,
20 you know, if he was there. She told them he does live there
21 but he wasn't at home at the time. They could smell
22 marijuana coming from the home. They had asked for consent
23 to search the residence, and she declined. At that time
24 they secured the home and one of them went and obtained a
25 search warrant. When they came back and served the search

1 warrant they found several items in a closet of Mr. Foster's
2 bedroom, including a gun, ammunition and then the drugs,
3 which were approximately -- the cocaine was around 83 grams.
4 And then the crack was 51 grams. They ended up arresting
5 Astor Brooks. And later that day Mr. Foster actually came
6 to the Sheriff's Office and gave a statement to law
7 enforcement indicating that all of the drugs found in the
8 home were actually his.

9 THE COURT: Okay. Mr. Foster, you heard those
10 allegations, sir. Is that what happened?

11 MR. FOSTER: Yes, sir.

12 THE COURT: All right. I will accept the plea as being
13 entered freely, voluntarily, with a knowing and intelligent
14 waiver of rights. Any prior record and/or recommendation?

15 MS. ODOM: Your Honor, he has a resisting arrest from
16 2004. And then the only other conviction on his record is a
17 2009 possession of cocaine that he got probation on.

18 THE COURT: Currently on probation, Mr. Foster?

19 MR. FOSTER: No, sir.

20 THE COURT: Does that sound like a fair account of your
21 prior record, sir?

22 MR. FOSTER: Yes, sir.

23 THE COURT: All right. Mr. Austin, I'd be happy to hear
24 from you, sir.

25 MR. AUSTIN: Your Honor, out of respect for law

1 enforcement, I always defer to law enforcement. I believe
2 the Sheriff wanted to address the court.

3 THE COURT: Okay.

4 MR. AUSTIN: I'll let him address the Court, first,
5 Your Honor.

6 THE COURT: Certainly.

7 SHERIFF DAVIS: Your Honor, as you know, many
8 young people come before you with those charges and many
9 crimes on the street are committed because of illegal drugs.
10 Mr. Foster has been in drugs -- been involved in the drug
11 trade for a long time, before I was ever Sheriff. Back in
12 the early 2000s he was involved in drugs. Now that he's
13 caught, as recently as last week, the latter part of last
14 week we received information he was still dealing drugs.
15 It's time to put a stop to Mr. Foster.

16 THE COURT: Thank you, Sheriff. I appreciate you being
17 here, sir. I apologize in that I forgot to ask you an
18 important question, Mr. Foster. You realize that these
19 offenses each are classified as both violent and serious
20 offenses?

21 MR. FOSTER: Yes, sir.

22 THE COURT: And you realize because they're classified
23 as violent that any period of incarceration that you're
24 sentenced to, it could affect the calculation of your max
25 out date in the way the that you may do your sentence in the

1 Department of Corrections. You understand that?

2 MR. FOSTER: Yes, sir.

3 THE COURT: You also recognize that because it is
4 classified as a serious offense that under our state's Two
5 Strikes Three Strikes law that you could be -- that if at a
6 later date in time you are convicted of a most serious
7 offense or a serious offense that you could potentially be
8 sentenced to a period of incarceration of life without the
9 possibility of parole? You understand that?

10 MR. FOSTER: Yes, sir.

11 THE COURT: So these are two strikes, you understand?

12 MR. FOSTER: Yes, sir.

13 THE COURT: Knowing that, sir, do you wish to
14 continue with your guilty plea?

15 MR. FOSTER: Yes, sir.

16 THE COURT: All right. Mr. Austin, I'll be happy to
17 hear the facts.

18 MR. AUSTIN: May it please the Court, Your Honor. First
19 off, I appreciate the Court's time the other morning in
20 chambers when we discussed the case with the solicitor's
21 office and the Court giving us an idea and the court
22 indicating that, you know, that if you were going to
23 sentence him to the minimum that you would have to hear
24 something that would be probably be pretty persuasive. And
25 I told you that the way that I deal with things is

1 straightforward, that I don't make excuses. My client isn't
2 making excuses. But in this case, Your Honor, fortunately
3 the legislature allows this Court the leeway to sentence
4 somebody from seven years incarceration to 25 years
5 incarceration. And there's a reason that they do that. And
6 it's much like our federal system whereas people accept
7 responsibility for the things they do and so forth. The
8 points start coming off, as the Court's probably familiar
9 with. And it reduces your sentence, especially when there
10 are pre-sentencing investigations. Unfortunately, we don't
11 have that in this situation. But, Your Honor, who stands
12 before you is a young man with two convictions - Well, now
13 two convictions, and someone who accepted immediate
14 responsibility, despite the fact of having a defense for
15 this charge. He, as the solicitor indicated, voluntarily
16 came himself to the police department and actually said to
17 them, "These were my drugs." And he took complete
18 responsibility for them without them having to charge him,
19 to look for him, or do any further investigation. On top of
20 that, Your Honor, he actually gave them a written statement,
21 waived his Miranda warnings and rights, gave a written
22 statement implicating himself. Further, Your Honor, one
23 thing he did was he offered to assist law enforcement, but,
24 unfortunately, in our county, being a small county, they
25 don't have the means that some of the bigger counties

1 have or some of the other federal agencies have to be able
2 to deal with the persons that he was going to deal with and
3 assist them in bringing those people to justice. So,
4 unfortunately, he was not able to assist law enforcement
5 with that. And, again, that was by his own doing. He
6 offered to assist them. And I wish that they could have had
7 the means to do that. But they just don't. As part of the
8 negotiations, and I want to make sure that this clear on the
9 record, all of the cases against Ms. Brooks are
10 being dismissed.

11 MS. ODOM: That's correct.

12 MR. AUSTIN: All right. Because, again, he is taking
13 full responsibility. He could have actually said I'm going
14 to wash my hands of this, step back and let her handle this.
15 Or if they choose to charge him, having been a former
16 narcotics prosecutor myself, the State would have had a hard
17 time proving the case against him because he was not in
18 actual or constructive possession of the drugs at any time.
19 And, so this person, I think, given the fact that he has a
20 very limited record that he immediately turned himself in,
21 or I shouldn't say turned himself, went in and
22 produced himself and said I'm really the guy. It made it
23 easy for law enforcement. It didn't put them through a
24 trial. Isn't going to put them through a trial on any other
25 cases. He's taking care of Ms. Brooks. He's taking care of

1 the children that they have together. I think that this is
2 the kind of person that the legislature had in mind and the
3 court can issue a sentence that is a minimum sentence of
4 seven years. And we talk about years like they're nothing.
5 But to him it's going to be a long time. The other part,
6 and the reason why I mentioned that he needed to lean back,
7 back in 2008 he was in a -- he lives in Promised Land. A
8 man who apparently had some mental issues came in and
9 started shooting in the middle of a body shop. And as
10 everybody ran out Mr. Foster was shot in the foot. And so
11 he has had tremendous medical issues with that. Long story
12 short, he is disabled and he does require treatment by
13 doctors every -- twice a month.

14 MR. AUSTIN: (To witness) Is it twice a month?

15 MR. FOSTER: Yes, sir.

16 MR. AUSTIN: Twice a month. So one of the things that
17 we will be doing as citizens of this state is to continue to
18 provide medical care for him. If this was a situation
19 where, you know, as a former narcotics prosecutor one of the
20 things I used to ask these guys, and I used to work hand-in-
21 hand with Sheriff Davis when he was in the narcotics
22 division, was -- first question said is, "Did he give you a
23 hard time? And if it was no, then, "Did he cooperate?"
24 Yes. "Was he willing to work?" Yes. And all of those
25 things went into consideration. And generally what we did

1 at the end of the day was we gave that person the minimum
2 sentence. Unfortunately for him, a minimum sentence is
3 seven years of which he's going to do at least 85 percent.
4 And I ask the court to consider that. His family is here.
5 They don't agree with what Karlin has done. He has an
6 outstanding family. An outstanding family. And I think
7 that his mother would like to address the Court, as well,
8 and I'm going to defer to her at this time.

9 THE COURT: Yes, ma'am. Thank you for being here. I'll
10 be happy to hear from you.

11 MS. FOSTER: Good afternoon to all.

12 THE COURT: Will you state your name for the record so
13 the court reporter will know?

14 MS. FOSTER: My name is Brenda N. Foster.

15 THE COURT: Yes, ma'am.

16 MS. FOSTER: And I am Karlin Foster's mother. And he is
17 my child and I love him. I do not deny that he has done
18 wrong. But I do ask that this Court has mercy, as God has
19 mercy on all of us each and every day. For I have fallen
20 short, and I feel we all have fallen short in some way. But
21 if you find it in your heart, please give him mercy for he
22 has children that needs to be brought up to be good
23 citizens, as we stand to be good citizens in this area. And
24 we try every day to do our best and to live our best. We do
25 not cause harm or trouble to anyone. And Karlin has been a

1 good child until he became a young adult and you get mixed
2 up in the wrong -- with the wrong people somewhere in life.
3 And you get off bound or off track. In some kind of way you
4 get back on track. And the devil come back and get back in
5 your life some kind of way and just tend to lead you off.
6 But it is my prayers that you do have mercy on my son this
7 day and that the Lord will continue to bless and shine upon
8 us all. And I'm not just speaking this just to say so, but
9 it's for what's in my heart, for I am a mother and I love my
10 child. And I'm sure if you're a father or mothers or
11 whatever you might be, you love your child and you want
12 what's best for them in life. You want them to be good and
13 productive citizens in life. And most of all live for God.
14 Thank you, Judge.

15 THE COURT: Thank you, Ms. Foster. I appreciate you
16 being here, and I appreciate you addressing the Court.

17 MR. AUSTIN: Your Honor, I think it's rare that people
18 come before you and just own up to everything and don't
19 try to give you a lot of excuses. And we're not here to do
20 that. He's here to own up to and accept responsibility,
21 which is what he's done from the very start.

22 MS. ODOM: Your Honor, if I can briefly be heard.

23 THE COURT: Mr. Foster, anything you'd like to tell us,
24 sir?

25 MR. FOSTER: No, sir.

1 THE COURT: All right. Yes, ma'am.

2 MS. ODOM: Thank you, Your Honor. I just kind of wanted
3 to echo what the Sheriff said. But also to make it clear
4 that the State does want a substantial prison time. I know
5 there's a minimum on this case, but I don't want you to take
6 me not saying anything as me being okay with the minimum.
7 We do want a substantial prison time. Drugs are a major
8 problem in Greenwood County, and it branches out. It's not
9 just drugs. But it branches out. It makes people steal.
10 It makes people, you know, do things that they wouldn't
11 normally do. It's a huge concern. And we certainly
12 understand Mr. Foster and his family and Mr. Austin
13 wanting mercy, but you have to temper that with justice.
14 And this case, this was a large amount of drugs. There are
15 eight officers from the Sheriff's Office that came over just
16 for this plea. You can't get any higher than the Sheriff.
17 And he -- this is the only time I've ever asked him to come
18 over. He has had a personal interest in this case from the
19 get-go. So it is important to the Solicitor's Office and
20 it's important to the Sheriff's Office. And we just ask for
21 an appropriate sentence, whatever you deem that to be.

22 THE COURT: Yes, ma'am. Thank you. And just let me say
23 it's important to the Court too. I go all around the state
24 and I recognize the plague that drugs are on our society.
25 There's absolutely no question about it. Mr. Foster, you

1 have a very strong and loving family, and I appreciate that
2 they are here for you today. I will tell you that what the
3 Solicitor says is correct in that drugs are a plague on our
4 society. And at some point in time, and I don't know how
5 it's going to happen, we have to address it. And part of
6 the way we address it is by and through criminal sentencing.
7 Not only as a punishment, but as a deterrent to other
8 people. I will tell you that I don't experience any
9 gratification, any joy, any satisfaction from putting people
10 in jail. I truly don't. I would prefer never to have to do
11 it. But it's my job. I will tell you this, that I've never
12 put anybody in jail. People put themselves in jail.

13 MS. FOSTER: That's true.

14 THE COURT: In this instance, when I see this amount of
15 drugs it looks as though it was essentially a
16 calculated business decision that you made. And that is, I
17 will sell drugs in order to make money knowing full well
18 what the consequences of selling drugs were. So you assumed
19 a calculated risk. And sometimes when you assume a
20 calculated risk you win. And sometimes when you assume a
21 calculated risk you lose. It's just like in the business
22 world. If someone invests a significant of money in a
23 business and it goes bankrupt then they have lost. Sadly,
24 when it comes to drugs when you lose you don't just lose
25 money, you lose your liberty interest.

1 All right. Sentence of the Court on each of these is
2 you be committed to the State Department of Corrections for
3 a period of ten years concurrent credit for time served.

4 MR. AUSTIN: Thank you, Your Honor.

5 THE COURT: Good luck to you, sir.

6 MS. FOSTER: Thank you, sir.

7 (End of requested transcript of record)

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10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

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Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of GreenwoodBarbara R. Foster #22182

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-24 00276

APPLICATION FOR

POST-CONVICTION RELIEF

2015 MAR 23 AM 11:29

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Attendale Correctional Institution, Post Office Box 1151 E4-B12, Fairfax, S.C. 29827
2. Name and location of Court which imposed sentence Greenwood, 528 Main Street, Rt. 2 in 14 Greenwood, S.C. 29646-2623
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 1465-24-0453 - Trafficking in cocaine
 - (b) 1465-24-0452 - Trafficking rock cocaine

ATTEST A TRUE COPY

Angela Woodhurst

ANGELA WOODHURST

CCCP AND GS

GREENWOOD COUNTY

S. C.

In his application for post-conviction relief, the petitioner claim that he is being held in custody unlawfully for the following reason: [] Petitioner plea was involuntary and semintelligent as a result of ineffective assistance of counsel.

"The facts supporting ineffective assistance of counsel."

[] Petitioner plea was involuntary and semintelligent as a result of ineffective assistance of counsel because his attorney failed to inform petitioner before this plea agreement that Officer Strickland, Officer Byrd, Officer Hood of the Greenwood County police department were without legal authority to set up an controlled drug buy with C.I. in Abbeville county. The officers were outside their territorial jurisdiction to make this buy and counsel failed to inform petitioner about filing a Pre-trial Motion to dismiss this case against petitioner and suppress the alleged drug buy and quash the arrest Warrant.

There is a reasonable probability that but for counsel error in not raising and territorial jurisdiction issue and filed a pre-trial Motion to suppress alleged drug and guests the arrest warrant, Had petitioner would have known he would not have entered in this plea agreement, but would have insisted on going to trial.

[2] Petitioner plea was involuntary and unintelligent as a result of ineffective assistance of counsel because his attorney failed to inform petitioner before this guilty plea agreement that he is entitled to file a pre-trial Motion to suppress alleged evidence that was seized in the controlled drug buy and litigate on fourth Amendment claim that have Merits. such officer Bond of the Abbeville - county police department affidavit lacked probable cause that a distribution of cocaine. The warrant affidavit was defective because it contained no sworn statement as to the reliability of the confidential informant.

[3] Petitioner plea was involuntary and unintelligent as a result of ineffective assistance of counsel — because his attorney failed to inform petitioner before this guilty plea agreement that he can file a pre-trial motion to quash the arrest warrant and suppress alleged evidence of this controlled drug buy. The fact that Greenwood County drug law-enforcement don't even reside within their territorial jurisdiction in Abbeville county when they make this drug buy with C.T. Had counsel moved to quash the arrest warrant and suppress the evidence, the arrest warrant had the Agent to the petitioner residence and claim the small Marijuana.

"The supporting Law."

In *State v. Bassell*, 391 S.E. 592, 707 S.E.2d 265 (2011) Prior to trial and throughout the trial, Bassell — counsel sought to suppress Bassell confession to Captain Perry on the ground that they were the produce of unlawfully arrest made without legal authority by Lexington county law-enforcement officers acting outside their territorial jurisdiction.

The above transaction [controlled drug buy] was also monitored and recorded using surveillance equipment. The white powder substance was turned into evidence at the Greenwood County Sheriff's Office.

Upon meeting back with the C.T. at the pre-designated location, it was determined that the purchase occurred approximately 1,700 ft across the Greenwood county line in Abbeville county. Lt. Strickland made contact with Abbeville County and reviewed that evidence with Greenwood County S&U and person charged. Abbeville County will also take possession of the cocaine from Greenwood evidence custodian at a later date to be processed.

After carefully reviewing the controlled drug buy in Abbeville county, there was no question that the Greenwood drug unit was acting outside of their territorial jurisdiction to set up a drug buy from the petitioner. Counsel was in error when he failed to file a pre-trial Motion to quash the arrest - warrant and suppress the drug buy, there would be no reason for Greenwood police department coming to the petitioner's residence to serve this arrest warrant on the petitioner, and the fact that the Greenwood drug unit would have ^{not} claim that they smell marijuana.

[4] Petitioner plea was involuntary and unintelligent as a result of ineffective assistance of counsel because his attorney failed to inform petitioner before this plea agreement that he is entitled to Fourth Amendment right - search warrant. There was false statement in the search warrant affidavit to establish probable cause to conduct a search of the petitioner's residence. The officer omitted information from the affidavit that was material facts which prove this false statement in search warrant with intent to misled the Magistrate to find of probable cause.

[5] Petitioner plea was involuntary and unintelligent as a result of ineffective assistance of counsel because his attorney failed to inform petitioner before this plea agreement that he is entitled to file a pre-trial motion to suppress alleged evidence that was seized in the house of the petitioner. The Fourth Amendment claim that have merits when officer Chad of the Greenwood police department affidavit lacked probable cause that the petitioner trafficked crack cocaine. The warrant affidavit were defective because it contained no sworn statement as to the petitioner was in possession of the illegal drug for the Magistrate can determination of probable cause.

regarding ineffective assistance of counsel, if, there is any probative evidence to support those findings. *McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995); *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

A defendant who pleads guilty on the advice of counsel may only attack the voluntariness and intelligent character of the plea by showing [1] that counsel representation fell below an objective standard of reasonableness and [2] that there is a reasonable probability that but for counsel error, the defendant would not have pleaded guilty, but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 56-57, 106 S.Ct. 344, 369, 88 L.Ed.2d 203, 208-09 (1985). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. see *Harmon v. Lock*, 282 S.C. 131, 318 S.E.2d 560 (1984).

"Alleged Facts of the case."

On 8-12-13, Lt. Strickland, Sgt Byrd and Sgt Hood met with the C.I. at a pre-designated location, where the C.I. advised the officer that he/she could make a controlled purchase of cocaine from Merlin Foster. The C.I. was searched prior to the controlled buy by Sgt Byrd with no contraband being found. The C.I. was then given \$60.00 in recorded US currency by Sgt Hood to make the above controlled narcotic buy. This was the only US currency in the C.I. possession. The C.I. then proceeded to promised land area and made contact with Foster, while being kept under surveillance by Lt. Strickland, Sgt Byrd and Hood. Upon arrival the C.I. was asked to go to a residence on Smith St of New Zion Rd.

The C.I. arrived at Smith St and met with Foster and after a short conversation between Foster and the C.I., the C.I. purchased from Foster a quantity of white powder substance believed to be cocaine for \$50.00. The C.I. left the residence, after which the C.I. met with Lt. Strickland, Sgt Byrd and Hood at a pre-designated location. The C.I. then handed Sgt Hood clear plastic bag containing a white powder substance. The C.I. returned \$10.00 in US currency. The C.I. was then searched by Sgt Byrd with no contraband being found.

"The affidavit stated as the following."

On 8-12-13 in the county of Abbeville, one Martin Foster alleged did knowingly and without authority alleged — distribution or dispense a quantity of alleged cocaine base, a controlled substance. Defendant has at least two prior conviction for this offense. This incident occurred at Smith Street Brady in Abbeville county during a controlled drug purchase with CI and mass slides tape.

"The facts"

After reviewing the affidavit, the affidavit failed to contain no sworn statement as to the reliability of the confidential informant. The relevant sworn defective and motion to suppress was sufficient in this case.

"The supporting Law."

State v. State, 448 S.E. 2d 560 (1994), counsel was held ineffective for failure to make a motion to suppress under the Fourth Amendment.

counsel performance was ineffective assistance when he should have moved the relevant affidavit that was lacking of probable before this guilty plea agreement. The petitioner entered into a guilty plea that this distribution of cocaine would be dismissed as part of guilty plea agreement. Had petitioner known about the affidavit failed to set forth of probable

Agent Byrd executed search warrant abases on they small strong odor of marijuana coming from the residence. Agent Hood allowed K-9 "Arko" to conduct an head search of the residence. K-9 "Arko" showed strong interest in a closet that is located inside the front-middle bedroom. A hand search of said closet revealed no contraband and men clothing that advise were Foster.

The petitioner argument is that the agents violated Frankland by omitted facts from the affidavit that would defeated Officer Byrd statement in affidavit that they alleged detected strong odor of marijuana emanating from the residence of the petitioner. The omitted material facts will also showed that this statement is false to established and for finding of probable cause.

"Omitted material facts?"

- (1) The petitioner argument is that Officer Byrd violated Frankland by omitted key information from the search warrant that K-9 drug dog never detected any odor of marijuana in the petitioner residence.
- (2) The petitioner argument is that Officer Byrd violated Frankland by omitted key information from the search warrant that the K-9 drug dog never found any marijuana in the petitioner residence.

- [1] The agents knew that when they conducting their search that K-9 drug dog did not detect a strong odor of marijuana coming from the petitioner residence.
- [2] The agents knew that when they conducting their search that K-9 drug dog never found any — marijuana in the petitioner residence.
- [3] The agents knew that when they conducting house search of the petitioner residence, they did not find any marijuana in rolling paper, and marijuana seed in the petitioner residence.

The agent knowingly with reckless disregard for the truth used false statement in his search warrant affidavit that they smell strong odor of marijuana coming from the petitioner residence. The admitted material facts showed that they had evidence that showed this statement is false and would defeated Officer Byrd probable cause. Without the false statement the magistrate would have not found probable cause. The agents intent to misled the magistrate judge by hid material information from him after conducting this search, and hid from his reports.

[X] Petitioner plea involuntary and unintelligent as a result of ineffective assistance of counsel because his attorney failed to inform petitioner of Pre-trial Motion to suppress alleged in the search, and he is entitled to Frank hearing before this guilty plea agreement. The petitioner was denied of his Fourth Amendment right were violated based on false statement in Officer Byrd search relevant affidavit to finding of probable cause. Officer Byrd omitted from the affidavit material facts with the intent to mislead the Magistrate judge and defeated his probable cause.

"The supporting Laws."

The Fourth Amendment prohibit unreasonable seizure without probable cause. A police officer violated the Fourth Amendment, if, in order to obtain a warrant, he deliberately or with reckless disregard for the truth make material false statement or omit material facts. *Id.*, 475 F.3d at 631, citing *Frank v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 54 L.Ed.2d 667 (1978). A reasonable officer cannot believe a warrant is supported by probable cause, if, the Magistrate is misled by statement that the officer knew or should have known were false. *Smith v. Reddy*, 101 F.3d 351 (4th Cir. 1996).

Had counsel informed the petitioner about this Pre-trial Motion to suppress these evidence that was seized from the petitioner residence. The petitioner would have not entered into this guilty plea agreement but insisted on going to trial. The petitioner was depriving of his right to trial, when the state needed these alleged evidence to convicted the petitioner at trial. Had these evidence was excluded from trial, the state could not convicted the petitioner.

The search warrant was obtained under perjury. He argue "there was no probable cause to issue the search warrant and good faith exception to the exclusionary rule, as articulated in *United States v. Leon*, 468 U.S. 897 (1984), is inapplicable [Id., at 21-22]. The good faith exception does not apply if the magistrate or judge issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known as false - except for his reckless disregard of the truth. The court further stated that an officer would not manifest objective good faith in relying on a warrant based on an affidavit on lacking of probable cause as to render official belief in its existence entirely unreasonable.

"The affidavit stated as the following."

Kevin Foster alleged did, on September 18, 2013, —
traffick cocaine without authority of law to do so.
Agent of the Greenwald County Drug Unit executed
a search warrant at 324 Morton Rd, Foster residence
and located 83.82 grams of a white powder —
substance that field-tested positive for cocaine.
Foster gave a written statement implicating
himself in this unlawful act.

"The Facts."

After reviewing the affidavit, the affidavit failed to —
contained no sworn statement as to the petitioner
was in possession of 83.82 grams of cocaine.
Possession is a very important information that the —
magistrate needed the finding of probable cause.
Without possession, you just have the weight of the
alleged drugs. The affidavit lacking of probable —
cause that the petitioner traffick cocaine.
The warrant was defective and motion to suppress
was sufficient in this case.

In *Sikes v. State*, 448 S.E.2d 560 (1994), counsel was —
held ineffective for failure to make a motion
to suppress under the Fourth Amendment.

[5] Petitioner plea was involuntary and unintelligent as a result of ineffective assistance of counsel because counsel failed to inform petitioner before this guilty plea that he is entitled to file a Pre-trial Motion to suppress and litigate this Fourth Amendment claim that bore merit: Officer corp of the Birmingham police department affidavit lacked probable cause that the petitioner trafficked in crack cocaine. The relevant affidavit was defective because it contained no sworn statement as to the petitioner was in possession of the illegal drug.

"The supporting facts."

Fourth Amendment States, the right of the people to be secure in their person, house, paper, and effect, against unreasonable search and seizure, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly described the place to be searched, and the person or thing to be seized. U.S. Const. amend. IV.

The good faith exception to the exclusionary rule, as articulated in *United States v. Leon*, 468 U.S. 897 (1984) is inapplicable [I d., at 21-22]. The good faith exception does not apply where Officer was not manifestly objective good faith in relying on a warrant based on affidavit so lacking of probable cause as to render official belief in its existence entirely unreasonable.

Counsel erred when he should have reviewed the warrant affidavit that was lacking of probable cause before this guilty plea, and litigate Fourth Amendment claim that have arisen.

Counsel performance was ineffective that prejudiced the petitioner defense when he failed to move to suppress the crack cocaine. Had counsel had informed the petitioner about the affidavit was defective and he can suppress the crack cocaine. The petitioner would not have entered into this plea agreement with the state, he would have insisted going to trial, knowing that the state needed these evidence to convicted petitioner. Had counsel moved to suppress:

1. Test result
 2. The drug
 3. The petitioner statement
 4. The person who tested the drug
 5. any and all evidence dealing with this arrest.
- Remove these evidence from trial, the state case against the petitioner because unable to convicted the petitioner.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel when
- (b) they were involuntary and unintelligent
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See the white sheet of paper with the
- (b) Facts supporting ineffective of counsel
- (c) claim
12. Prior to this application have you filed with respect to this conviction: no
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Theophile was advised to plead guilty
- (b) that some charges would be
- (c) dismissed.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ✓
- (b) your trial, if any? _____
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Robert Louis Fenn, P.A.
333 Main Street
- ii. P.O. Drawer 799
Greenwood, S.C. 29648-0799
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Sentencing
- ii. _____
- iii. _____

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, * Karlin Foster, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

* Karlin Foster
Applicant

SWORN or affirmed to and subscribed before me this
18th day of March, 2015.

Debbie R. McCarty
Notary Public

My Commission Expires: July 10, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	
	)	2015-CP-24-276
Karlin R. Foster,	)	
S.C.D.C. No. 27182,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 23, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. Applicant was indicted at the April 2014 term of the Greenwood County Grand Jury for Trafficking in Cocaine (2014-GS-24-0453) and Trafficking in Cocaine Base (Crack Cocaine) (2014-GS-24-0452). Applicant was represented by Thomas Philip Austin, Esquire. On May 15, 2014, Applicant appeared before the Honorable Robin B. Stilwell and Applicant pled guilty as indicted. Applicant was sentenced to concurrent ten-year terms of imprisonment on each charge.

II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the Greenwood County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits plea counsel rendered effective assistance of counsel. In a Post-Conviction Relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant further alleges his guilty plea was not voluntarily made. Respondent submits that Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges

against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[signature block on next page]

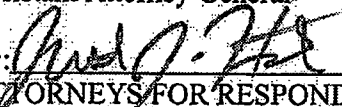
Respectfully submitted,

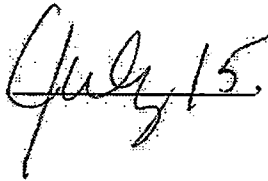
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

 15. 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS

2015-CP-24-0276

KARLIN R. FOSTER, #271782)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

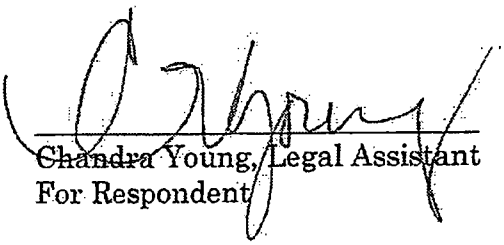
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Laura McCall Saunders
 PO Box 731
 Laurens, South Carolina 29360

DATED this 15th day of July 2015.


 Chandra Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
KARLIN RAMON FOSTER
Applicant.

In The Court of Common Pleas
CASE NO. 2015-CP-24-000276

2015 CP 24 00 276

V.

AMENDED Application For
Post Conviction Relief.

STATE OF SOUTH CAROLINA
DEFENDANT.

Claim

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2016 JUN -7 PM 3:12

- A. Ineffective Assistance of Counsel
- B. Ineffective Assistance of Counsel fail to file for FRANK V. Delaware
Hearing
- C. Lack of Subject Matter Jurisdiction
- D. Lack of Multi Jurisdiction
- E. Counsel fail to investigation of Robbie Byrd

A. Counsel was ineffective for not giving the defendant A copy
of the impanelment document. A defendant is entitle to challenge
the sufficiency of grand Jury indictment. A grand Jury impanelment
document may be released to A defendant prior to trial upon
timely request or to AN Applicant in A (PCR) proceeding. A
defendant has A right under the State Constitution to demand

that a grand Jury which properly establish and constituted under the Law consider the criminal Allegations Against him Const. Art 1, 11. One who demands and is refused the right to be tried for a crime charge Against him only upon an indictment presented by a legal grand Jury instance where such indictment is required may there after take the position that has been deprived of Life Liberty or property without due process of Law in violation of the State Constitution Const. Art 1, 3. The primary purpose of an indictment are to put the defendant on notice of what he is called upon the answer, i.e. to apprise him of the elements of the offense and to allow him to decide whether to plea guilty or stand trial, and enable the trial court to know what judgment to pronounce if the defendant is convicted Code 1976 § 17-19-20. Defendant was entitled to release of indictment document from grand Jury that had indicted him, in post-conviction relief (PCR) proceeding Evans v. State 611 S.E.2d 510

B. Counsel was ineffective for failing to file for Frank v. Delaware Hearing 438 U.S. 154 98 S.Ct. 2674 U.S.C.A. Const. Amends 4, 14

To mandate evidentiary hearing a defendant's assertion that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by affiant in search warrant affidavit. The warrant/affidavit dated on August 12, 2013 in the County of Abbeville, one Karlin Ramon Foster did knowingly distribute or dispense a quantity of cocaine or cocaine base a Schedule II controlled substance. The incident occurred at Smith Street

Bradley in Abberille County during a controlled drug purchase with CI. The warrant/Affidavit must set forth particular facts and circumstances underlying the existence of probable cause, so as to allow the magistrate to make an independent evaluation of the matter. If an informant tip is the source of information, the affidavit must recite some of the underlying circumstances from which the informant concluded that relevant evidence might be discovered and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed was credible or his informant reliable Aguilar v. Texas, 378 U.S. 108, 144 115, 84 S.Ct. 1509

C. Lack of Subject Matter Jurisdiction - Section 43-232 of the Code reads as follow:

When and How defendant may demand preliminary examination

Any magistrate who issues a warrant charging crime beyond his jurisdiction shall grant and hold a preliminary investigation of it upon the demand in writing of the defendant made at least ten days before the convening of the next court of general session. When such a hearing has been so demanded the case shall not be transmitted to the court of general sessions or submitted to the grand jury until the preliminary hearing shall have been had, the magistrate to retain jurisdiction and the court of general sessions not to acquire jurisdiction until after such preliminary hearing.

STATE v. Funderbuck 259 S.C. 256 191 S.E. 2d 520. Contention that conviction before the court of General Session was void in that court did not have jurisdiction because magistrate issuing warrant had not conduct preliminary hearing on defendant

request.

D. Officers lacked authority to effectuate arrest pursuant to multi-jurisdictional.

Officer of sheriff's department were not authorized by multi jurisdictional Agreement to arrest defendant in another county and therefore arrest was unlawful and subsequent confessions were inadmissible as fruit of the poisonous tree, where purported Agreement between counties had not been approved by the county as required by statute in order to be valid. U.S.C.A Const. Amend 4 Code 1976 § ~~23-1-215~~ ^{23-1-215 (a-e) (2006)} STATE V. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620 (The fruit of the poison tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by exploitation of that illegality. Any evidence seized in connection with the arrest, to include any statements made by the defendant as a result of the arrest, would be unlawful and the fruit of the poisonous tree.

E. Counsel was ineffective for failing to expand investigation of Robbie Byrd history of misconduct for mitigating evidence fell short of prevailing professional standards. Wiggins v. Smith 539 U.S. 510, 535-38, 123 S.Ct. 2527

Counsel was ineffective for advising the defendant to plea inducing by false information. Hill v. Lockhart 474 U.S. 52, 57 106 S.Ct. 366

Had counsel did his job the whole outcome would have been different, Had counsel fail for a suppression hearing, And had counsel prepare for the case properly the whole outcome would have been different. The defendant would have proceed to trial.

Respectfully Submitted,

Karlus Ramon Foster

DATE:



MAC | VANCE ATTORNEYS, LLC

March 28, 2017

Greenwood County Clerk of Court
Attn: Karen Heery
528 Monument Street Rm #114
Greenwood, SC 29646

Re: Karlin R. Foster, #271782 v. State of SC
2015-CP-24-00276

Dear Ms. Heery:

Please find enclosed an Amended Post-Conviction Relief Application and Certificate of Service for the above-referenced matter. Kindly file this document.

Should you have any questions, I can be reached at the number listed below or at ashley@macvance.com

Best regards,

Ashley A. McMahan
Attorney at Law

AAM

cc: Karlin R. Foster
AAG Justin J. Hunter (via email)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	Case No.: 2015-CP-24-00276
Karlin R. Foster, #271782,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on March 23, 2015, and amended on or about June 9, 2016, to add the following allegations:

1. Ineffective Assistance of Counsel

- a. Did not move to suppress the confessions and arrests based on State v. Boswell, 391 SC 592 (2011) as the officers were without jurisdiction. Applicant is combining this allegation with that of Allegations 1, 2, and 3, of the PCR Application and Allegation D in the Amended Application.
- b. Counsel did not challenge the sufficiency of the indictment. *See e.g. Padgett v. State*, 324 SC 22 (1997).

2. After-Discovered Evidence

- a. Officer Byrd was subsequently indicted for Misconduct in Office. *See Exhibit I*, attached and incorporated herein. Applicant asserts that that Officer Byrd's now lack of credibility affects his case as Byrd was the one who signed the search warrant on the Applicant's home. *See Hayden v. State*, 278 SC 610 (1983).

Applicant is abandoning allegations A and C in the Amended Application for Post-Conviction Relief.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application and this Amended Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110
ashley@macvance.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

March 27, 2017

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Justin J. Hunter
Assistant Attorney General
jhunter2@scag.gov

This 28th Day of March, 2017.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

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GREENWOOD, SC, MOSTLY CLOUDY 78°

Byrd gets bond hearing on embezzlement, misconduct charges

Posted: Thursday, August 04, 2016 By: Darrin Dominguez Print Article E-mail to a Friend Recommended (0)

Like Tweet Print Share 13

One of two former Greenwood County deputies who were indicted last week has been officially booked on the charges.

Larry Robert Byrd, 37, of [REDACTED] Sample Road, Greenwood was booked Wednesday on charges of embezzlement and misconduct in office -- he was indicted on those charges July 29. A \$15,000 personal recognizance bond was set Wednesday by Circuit Judge Donald Hocker.

He and Brandon Strickland were indicted on charges of embezzlement of less than \$10,000 and misconduct in office. As of Thursday afternoon, Strickland had not been booked.

The indictment says from April 1, 2015 to Oct. 14, 2015, Byrd "failed to properly account for and mishandled government funds." The sheriff's office and DEU lost less than \$10,000, the indictment said.

"While serving as a Deputy in the Greenwood County Sheriff's Office assigned to the Drug Enforcement Unit, the Defendant withdrew and converted for his own use public funds designated for the use of the Sheriff's Office and Drug Enforcement Unit," the indictment reads.

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- Report: Typo uncovers false prescription



ROBBIE BYRD

Byrd and Strickland resigned Oct. 29 amidst a State Law Enforcement Division investigation and after an internal probe discovered a violation of policy. They were placed on leave mid-October at the start of the investigation, according to a news release sent Oct. 30 by John Long, officer in charge of professional standards with the sheriff's office.

The first deputy was placed on paid administrative leave after Sheriff Tony Davis requested SLED investigate "questionable actions" by an officer, according to an October release. Two days later, another release said two deputies were on leave after Davis

discovered "financial transactions" that led to an internal investigation into possible policy violations.

According to Criminal Justice Academy documents, Strickland has not worked with a law enforcement agency since his resignation, while Byrd was hired by the Ninety Six Police Department on June 6. Ninety Six Town Clerk Mary Anne Goodman said Byrd resigned from the police department Friday of last week.

In mid-October, the Index-Journal requested a number of documents, including ledgers detailing how evidence was logged by the two former-DEU agents. Access to those documents was denied at the time by Greenwood County, as the investigation was ongoing. Thom Berry, SLED spokesman, said Friday the agency's investigations are not closed until any and all court proceedings related to the investigation have finished.

Bank records provided to the Index-Journal on Oct. 26 showed records of the DEU's seized and forfeited funds' accounts -- detailing money taken during controlled drug buys and funds forfeited by the court and available to use for undercover purchases. Cash withdrawals and check deposits made up the bulk of the forfeited funds account records.

Byrd's phone number is unlisted. A reporter who went to his residence in October for comment was told through the door by a man to leave and not come back. When reached last week, Strickland declined to comment.

Byrd and Strickland make for three former sheriff's office employees who have been indicted on embezzlement charges. Sandi Owens, the former administrative assistant for the Greenwood County Sheriff's Office, pleaded not guilty in 2014 to a charge of embezzlement of more than \$10,000 in public funds. Her trial date has been set for Oct. 10, and the case was assigned to Laurens Circuit Judge Hocker.

State of South Carolina)
) Court of Common Pleas
 County of Greenwood)
 2015-CP-24-00276
 Post Conviction Relief

Karlin R. Foster)
) vs.) Transcript of Record
)
)
 State of South Carolina)
) Defendant)

June 7, 2017
 Laurens, South Carolina

B E F O R E:

Honorable G. Thomas Cooper, Jr., Judge

A P P E A R A N C E S:

Judah N. VanSyckel
 Assistant Attorney General for the State

Ashley McMahan, Esq.
 Attorney for the Applicant

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(AW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(AW) Karlin Foster

Direct examination by Ms McMahan: 5

(SW) Tom Austin

Direct examination by Mr. VanSyckel: 16

Cross-examination by Ms. McMahan: 24

Certificate of Reporter 30

E X H I B I T SApplicant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Newspaper Article		X	14
2	Newspaper Article		X	14
3	Newspaper Article		X	14
4	Newspaper Article		X	14
5	Newspaper Article		X	14

1 THE COURT: All right.

2 MR. VANSYCKEL: Your Honor, this is Karlin Foster
3 versus the State of South Carolina. Case number
4 2015-CP-24-0276. The Applicant is presently confined in
5 the South Carolina Department of Corrections pursuant to
6 orders of commitment of the Greenwood County Clerk of
7 Court. Applicant was indicted April 2014, term of
8 Greenwood County Grand Jury for trafficking cocaine and
9 trafficking cocaine base. Applicant was represented by
10 Thomas Phillip Austin. On May 15th, 2014 Applicant
11 appeared before the Honorable Robin B. Stilwell, Applicant
12 plead guilty as indicted. The Applicant was sentenced to
13 concurrent 10 year terms of imprisonment on each charge.

14 THE COURT: All right. Ms. McMahan.

15 MS. MCMAHAN: Your Honor, at this time the Applicant
16 calls Karlin Foster.

17 KARLIN FOSTER, being
18 first duly sworn, testified as follows:

19 MS. MCMAHAN: Your Honor, while Mr. Foster is getting
20 situated, he is not going forward on the larger of the
21 original PCR application. The main issues are in the
22 amended, the two amended applications.

23 THE COURT: Let me see if I have that. March 28th?

24 MS. MCMAHAN: It was, that was filed on June, it
25 looks like 7th, 2016 and it is handwritten. And then

1 another one that I filed March 27th of this year.

2 THE COURT: Okay. That is the picture of Robbie
3 Byrd.

4 MS. MCMAHAN: Yes, Your Honor, with the newspaper
5 attachment to it, yes.

6 DIRECT EXAMINATION

7 By Ms. McMahan:

8 Q Okay, Mr. Foster, are you ready?

9 A Yes, ma'am.

10 Q Would you state your name for the record?

11 A Karlin Ramon Foster.

12 Q And as we discussed earlier, you understand today
13 that if you win your PCR that you can't get a reduced
14 sentence or anything like that, that you will start over
15 from the beginning?

16 A Yes ma'am, correct.

17 Q And you still want to go forward?

18 A Yes, ma'am.

19 Q So, let's talk about your amended application, the
20 one that you handwrote. So we are skipping over the
21 impanelment document allegation, we are not going to
22 discuss that one. But your next issue was Franks v.
23 Deleware, part B. Well, just tell the Court basically the
24 whole background of all of this and then how the Franks v.
25 Deleware kind of comes into play.

1 A Well, the background of this is, they searched my
2 girlfriend's house on the basis of smelling marijuana but
3 they later found none. So I wanted to explain to where my
4 lawyer didn't explain to me that I could have, he could
5 have called for a suppression hearing on basically not
6 finding marijuana.

7 Q And back up a little bit further because there was
8 another charge that was involved with this at the same
9 time from Abbeville that was ultimately dismissed. But
10 what were the facts of that?

11 A Okay. The whole initial case started in Abbeville
12 which Greenwood County was, was without jurisdiction to
13 make an investigation or either make an arrest warrant in
14 Abbeville.

15 Q So what was going on in Abbeville. Why was Greenwood
16 there?

17 A Because of distribution, I suppose sold to an
18 undercover.

19 Q So they were there because there was an undercover
20 buy with you and a CI?

21 A Yes, ma'am.

22 Q And, but they were Greenwood officers?

23 A Yes, ma'am.

24 Q So they had accidentally traveled into Abbeville
25 County?

1 A Yes, ma'am.

2 Q So that is what sort of started this?

3 A Yes, ma'am.

4 Q And then from then what happened?

5 A From then they got a search, they got a warrant from
6 Abbeville, Jason Bonds, (phonetic), I think. And they
7 came to my house and was looking for me and they didn't
8 find me. So they supposed to smell marijuana and it
9 started it. And went up town and got a search warrant for
10 smelling marijuana.

11 Q So when you say, at your house, this is the house you
12 lived in with your girlfriend, is that correct?

13 A Yes, ma'am.

14 Q And then it is the basis of a search warrant of that
15 home that your girlfriend leased?

16 A Yes, ma'am. Yes, ma'am.

17 Q Now, prior to them executing that search warrant did
18 they find you?

19 A Yes, ma'am.

20 Q And they picked you up on that Abbeville charge?

21 A Yes, ma'am.

22 Q So you were already at the detention center in
23 Greenwood?

24 A No, they had picked me up around the corner and when
25 they picked me up they rode me around to the house where

1 they went and got a search warrant for.

2 Q So they drove you in front of Astra's house?

3 A Yes, ma'am.

4 Q When you, while they were trying to get the search
5 warrant?

6 A Yes, ma'am.

7 Q So then you are at the detention center?

8 A Correct.

9 Q And then what do you do at the detention center?

10 A I am sitting there and they bring Astra in so I
11 automatically knew what had happened. And they came back
12 and talked to me and I gave them a confession.

13 Q And you said that the drugs that were in Astra's
14 house were yours?

15 A Yes, ma'am.

16 Q Okay. So, and I am going to summarize all of this
17 and let me know if it is correct. So your basic
18 contention, before we get into the details of what you are
19 talking about in your application, is that had Greenwood
20 had proper jurisdiction when they did the CI buy this
21 whole issue would be different. But your contention is
22 they were in Abbeville County and they were without
23 jurisdiction and therefore that original Abbeville County
24 warrant was null and void, they shouldn't have been able
25 to pick you up and then try to find you at Astra's house,

1 if they had never had that warrant to begin with and
2 weren't looking for you they never would have claimed that
3 they smelled marijuana and then executed a search warrant
4 and found the cocaine.

5 A Yes, ma'am.

6 Q So, let's get to the Franks v. Deleware issue. So
7 the part B, and I know you sort of have already talked
8 about it a little bit but what was that issue again?

9 A Sergeant Byrd claims to have smelled marijuana which
10 he went and got a search warrant off of the oath that he
11 smelled marijuana. And when he came back he later
12 discovered any marijuana. His dogs didn't alert, the way
13 he claimed this marijuana, none of that.

14 Q So when the dog came to the house the dog didn't
15 immediately alert for a marijuana smell?

16 A No, ma'am. So they took the dog in the house and
17 walked the dog around the house and the dog alerted on a
18 closet area which they found, later found any marijuana.

19 Q So you are claiming that Mr. Austin was ineffective
20 for not having a Franks v. Deleware hearing on that issue?

21 A Yes, ma'am.

22 Q Okay. So then we are skipping over C, Your Honor, as
23 well. So then, D, we already kind of eluded to the fact
24 that this was the, the officers didn't have authority to
25 arrest you?

1 A Yes, ma'am. Well, not authority to arrest, but
2 authority to investigate in another county.

3 Q And why is that?

4 A Because they didn't, they didn't consult with City
5 Council.

6 Q So, just to help you out a--

7 THE COURT: I don't mean to interrupt you. I can't
8 locate that document.

9 MS. MCMAHAN: This handwritten one? Do you have an
10 extra copy of this?

11 THE COURT: It doesn't appear to be in the file.

12 MS. MCMAHAN: There is some notes on this one, Your
13 Honor. I can white them out real fast. Okay. Your
14 Honor, on this handwritten one we have abandoned, A, the
15 impanelment document issue. And then, C, subject matter
16 jurisdiction issue. Now we are back on D.

17 THE COURT: Okay.

18 Q So the issue with, D, Mr. Foster, is that, whether or
19 not there was a multi-jurisdictional agreement between
20 Greenwood County and Abbeville County?

21 A Yes, ma'am.

22 Q And so your claim is that Mr. Austin was ineffective
23 because he didn't look into that issue?

24 A Yes, ma'am.

25 Q Did he ever present you with a copy of an agreement

1 between the two counties?

2 A No, ma'am.

3 Q Did he ever discuss the case law and the statute that
4 requires that both counties agreements be approved by
5 their Councils?

6 A No, ma'am.

7 Q Did you ever bring that up with him?

8 A No, ma'am. I wasn't knowledgeable of it.

9 Q Okay. So because there was no valid
10 multi-jurisdictional agreement everything from when the
11 Greenwood deputies stepped in Abbeville therefore was
12 void, for lack of a better term?

13 A Yes, ma'am.

14 Q Okay. So then part, E, you said Counsel is
15 ineffective for failing to expand or to look into Robbie
16 Byrd's history. You want to discuss that for us?

17 A Well, I have had Mr. Austin, on prior cases. And I,
18 there was a case where I was charged almost with the same
19 thing. And he did an investigation on the cop that
20 brought up charges against me and found that he was, his
21 credibility wasn't any good. So I feel that since Robert
22 Byrd said that he smelled marijuana, was nothing found, I
23 feel that he should have did an extensive investigation on
24 him as well.

25 Q Had you been reading the newspaper about Mr. Byrd

1 after you went to prison?

2 A Yes, ma'am.

3 Q And what were some of those articles talking about
4 with Mr. Byrd?

5 A A couple of articles in here that is saying that he
6 has lied on a couple of occasions in the past.

7 Q These are those articles?

8 A Yes, ma'am.

9 Q These are articles that you collected since--

10 A -- yes, ma'am. Yes, ma'am.

11 MS. MCMAHAN: These articles, Your Honor, discusses
12 the resignation included in documents of background checks
13 on these investigations. DEU agent, Agent Byrd falsified
14 reported to city cop. And then there is another article
15 about, the second deputy leaving from the drug unit which
16 was Strickland was also involved in Mr. Foster's case. At
17 this time I would like to have them moved in as
18 Applicant's, there are several. And I can make a copy of
19 them if that is okay with you. Should I make copies of
20 them individually or would you like them all together?

21 THE COURT: These are all post sentencing?

22 MS. MCMAHAN: Yes, Your Honor. These were all
23 articles in the Greenwood Index Journal.

24 THE COURT: That report matters that took place after
25 the sentencing?

1 MS. MCMAHAN: Yes. Well, they report on Mr., on Byrd
2 and Strickland being investigated for misconduct. Let me
3 show these to the State. One of these issues, actually
4 the articles discuss Byrd when he worked for the City of
5 Greenwood which would have been before, just before Mr.
6 Foster was sentenced on these new charges, on these
7 current charges. And then the rest of them sort of talk
8 about their personnel records at the time and then after
9 as well.

10 THE COURT: They preceded the sentencing?

11 MS. MCMAHAN: Okay.

12 THE COURT: The question is whether Mr. Austin knew
13 about it, anything to put in place after the sentencing.
14 It seems to me it would be irrelevant.

15 MS. MCMAHAN: Your Honor, we would contend that would
16 be after discovered evidence that would then go to the
17 credibility of Officer Strickland and Byrd.

18 THE COURT: What is the State's position?

19 MR. VANSYCKEL: Your Honor, we would object to the
20 admission of this. We believe that it would go to, it
21 would just be impeachment evidence. We don't believe it
22 is relevant to the case-in-chief. And we don't believe
23 that it would rise to granting a new trial.

24 THE COURT: I am going to admit it, I will admit
25 them. Not saying how much weight I put on it.

1 MR. VANSYCKEL: Your Honor, my understanding is that
2 they are marked, Ms. McMahan has marked them A, B and C?

3 MS. MCMAHAN: No, I did not do that. That was
4 actually Mr. Foster, that was just to keep the pieces
5 together of where they go.

6 MR. VANSYCKEL: And how many are there?

7 MS. MCMAHAN: So total there is four.

8 MR. VANSYCKEL: Four news articles.

9 MS. MCMAHAN: Well, five news articles. One is the
10 one about Mr. Byrd falsifying a report as a City Cop, I
11 believe the Judge has indicated that that would not be
12 allowed. So that was an article that came out after
13 sentencing.

14 THE COURT: I am going to admit all of them.

15 MS. MCMAHAN: So then we have got five total.

16 THE COURT: In terms of the weight that I give them,
17 only the one that preceded the sentencing would be
18 significant. But I will listen to your argument.

19 MS. MCMAHAN: Yes, sir.

20 (Whereupon, Applicant's Exhibits 1, 2, 3, 4 and 5
21 were admitted into evidence.)

22 Q So, Mr. Foster, let's sort of finish up your
23 allegations. I think they are all sort of, you know,
24 together. So we talked about Byrd and the investigation
25 with him after the fact. And then on the amended

1 application we, you know, you discussed the move to
2 suppress the confessions based on Boswell. What, explain
3 that, what did you feel that Mr. Austin should have done
4 about your confession?

5 A Due to the fact that the Greenwood County was out of
6 their jurisdiction, that could have been the fruit of the
7 poisonous tree, legality of the search and the legality of
8 them being out of their jurisdiction.

9 Q So we are talking about the confession that you gave,
10 what should Mr. Austin have done about that?

11 A He should have explained to me that, that besides my
12 confession it could have been another route that I could
13 have took in this case.

14 Q So meaning that he could have, he didn't instruct you
15 that you could have possibly had a hearing to determine
16 the voluntariness of your confession?

17 A Yes ma'am, a suppression hearing.

18 MS. MCMAHAN: Okay. And then I believe that is about
19 it other than after discovered evidence, Your Honor, which
20 I can just argue.

21 THE COURT: Was there a Denno hearing?

22 MS. MCMAHAN: I am sorry?

23 THE COURT: Was there a Denno hearing?

24 MS. MCMAHAN: No, there was not.

25 THE COURT: Was a confession used?

1 MS. MCMAHAN: Well, it is eluded to in the
2 transcript, yes.

3 THE COURT: Okay. Go ahead.

4 MS. MCMAHAN: And I have nothing further for Mr.
5 Foster at this time.

6 MR. VANSYCKEL: No questions, Your Honor.

7 THE COURT: Come on down. Next witness.

8 MS. MCMAHAN: Your Honor, the Applicant rests.

9 MR. VANSYCKEL: Your Honor, the State would call
10 Thomas Austin.

11 THOMAS AUSTIN, being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. VanSyckel:

15 Q State your name for the record.

16 A Thomas Phillip Austin.

17 Q Mr. Austin, I want to start by giving you the
18 opportunity, is there anything you want to tell us about
19 the representation of Mr. Foster?

20 A I have known Karlin and represented Karlin for years
21 now. Karlin has been one of the top level drug dealers,
22 considered one of the top level drug dealers in Greenwood
23 County. He lived in an area called Promise Land. Over
24 the years in my representation of Karlin, I think Karlin
25 came to me because I used to be a narcotics prosecutor

1 with the Eighth Circuit in the mid-90's. I have managed
2 to find loopholes in things that were done incorrectly and
3 been able to avoid prison sentences for Karlin over the
4 years. As it pertains to this case Karlin came to me
5 after his release, or excuse me, actually his mother and
6 father came to me, I had become friends with his mother
7 and father over the years, they are fantastic people.
8 They came to me, we got him out on bond and looking at the
9 facts of this case and what was going on, one of the
10 things I did was got GPS monitoring for him because I knew
11 that we are going to be potentially facing some time and
12 we could get credit for time. He informed that he had
13 already confessed to this. He informed me that the most
14 important aspect of this case to him was that his
15 girlfriend or fiancé, I think her name was Astra maybe, or
16 Asheville, who was also the mother of his child, children.
17 That he was not going to allow her to take the heat for
18 the dope that he had in the house. So, to make a long
19 story short, we went over all of the defenses. I went
20 over everything with him. I even traveled with him to the
21 house where he sold the dope. And so the Court is aware
22 of how this went down. DEU is a joint task agency between
23 Greenwood City and Greenwood County. Being a former
24 narcotics prosecutor I actually was the one who made them
25 aware that if they were going to work with other counties

1 there is a statute that requires reciprocity agreement.
2 And I will tell the Court, I am going to skip forward but
3 I will tell the Court that one of the things that I did
4 with the Solicitor's office before a plea was, I verified
5 there was the existence of reciprocity agreement.
6 Solicitor Aaron Taylor verified that for me. But in any
7 event, I am not even sure that that is relevant because
8 what happened is, is that when the DEU made contact with
9 Karlin he was in Greenwood County. The Abbeville County
10 line was very close to Promise Land which is where he
11 lives. Karlin had a drug house set up probably 150 feet
12 into Abbeville County. And what happened was, is when he
13 met the CI in Greenwood County, that he took her to the
14 drug house and the purchase was made there for the
15 distribution. Greenwood County with all of that, to not
16 actually get the warrant, they actually had Abbeville get
17 the warrant and not Greenwood get the warrant. But that
18 was something that we discussed, as far as looking into
19 that. As Karlin just mentioned, the police came looking
20 for him and when they approached a residence that was
21 actually, I believe it was being rented by Astra and the
22 children, they claimed that they smelled marijuana in the
23 house and they obtained a search warrant based on that.
24 Karlin and I discussed at length credibility of the
25 particular officer, not because we knew of anything that

1 was going on as they have indicated. Mr. Byrd did not get
2 indicted for anything until, I think, 2015 or 2016 and his
3 indictment only alleges misconduct in April of 2015. So
4 it doesn't allege misconduct on his part prior to
5 sentencing. But in any event, I told him that, you know,
6 it is going to be hard to believe that, to me it was hard
7 to believe they smelled marijuana when they had found
8 nothing. I told him that we could challenge that if we
9 wanted to. But the issue there we have is twofold.
10 Number one, Townes Jones represented his girlfriend. They
11 were going to call the cases to trial and one or both of
12 them was going to end up with a trafficking charge. And
13 Mr. Jones assured me that she was going to testify against
14 Karlin, that it was his crack cocaine that was in the
15 house and not her's. The second thing is, is that being
16 the case, when Karlin and I discussed that possibility,
17 you know, I told him that there is a possibility that your
18 girlfriend can get the whole thing because he had a great
19 defense and that was, he wasn't even present at the time
20 that the search warrant was executed. Furthermore, his
21 girlfriend denied access to the home which obviously a
22 jury knowing that could conclude or could presume that she
23 knew that the drugs were in the house and that they were
24 her drugs. However, Karlin again said he did not want
25 Astra to take the fall for the drugs that he had had in

1 the house. We talked about the validity of the search
2 warrant, we talked about credibility of the officers. In
3 fact, I think I wrote a letter to Karlin in October and I
4 said, we specifically address defenses including but not
5 limited to the fact that you were not in the home and you
6 were not in possession of contraband or a weapon which, by
7 the way, he faces potential Federal charges on that which
8 is part of the deal I got worked out was that got
9 dismissed; challenging the search, the voluntariness of
10 your written confession, prior untruthful statements made
11 on Officer Hood, who was not Officer Byrd, a different
12 officer. And, again, I reminded him, he chose not to
13 contest these matters because you wanted to make sure part
14 of the deal struck was a complete dismissal of charges
15 against Astra. In addition, the distribution case in
16 Abbeville was dismissed and the gun charge was dismissed.
17 In addition, part of the deal was and I think it is on the
18 record, I had information that there may be other cases
19 that would have been brought against Karlin Foster, drug
20 cases. And quite frankly I think he is looking at an
21 alibi. One of the things that we did was we cleared any
22 potential cases through Abbeville or Greenwood Counties to
23 make sure that they could not bring something up against
24 him once he got done with whatever sentence he got. So,
25 we went through everything. The main thing for Karlin was

1 he did not want his girlfriend to even have the potential
2 of going to prison and I think that is covered in the
3 transcript.

4 Q So, not only were you aware of these issues but you
5 addressed them, you were aware of the issues?

6 A Which issues?

7 Q All of the issues that were discussed today except
8 for Mr., except for the issue regarding Mr. Byrd?

9 A Well, yeah, nobody had information on Mr. Byrd, that
10 didn't come out in the paper until afterwards and then he
11 wasn't indicted until, I think it was 2016 maybe. But
12 even the indictment, Ashley provided me with a copy of the
13 indictment, the indictment indicates that any misconduct
14 was in April of 2015.

15 Q So, the Abbeville agreement issue, the agreement with
16 Abbeville County issue, the search of the home issue, the
17 lack of marijuana being found issue, you spoke about all
18 of those issues with Mr. Foster?

19 A Let me take them one at a time. The agreement, I
20 contacted, he initially started out with Aaron Taylor as
21 the Solicitor on his case. I contacted Aaron, Aaron
22 Taylor, said I need you to verify for me that there is
23 still a reciprocity agreement in effect and he did. But
24 the issue there is I don't necessarily think that you even
25 have to have it when he takes the CI across the county

1 line. Okay. And Abbeville signed the warrant, not
2 Greenwood. So they actually went to Abbeville, having
3 Abbeville County Magistrate execute the, signed the
4 warrant for his arrest. As it pertains to the search, the
5 question there and I told him we can challenge the search.
6 But unfortunately the house was, I think being rented by
7 his girlfriend and his girlfriend was going to not
8 challenge the search. That is what her attorney told me,
9 Townes Jones, because she wanted not only the search was
10 fine with her but also the fact that Karlin had written a
11 confession and she was going to testify against Karlin.
12 And I think the other issue, what was the third issue you
13 got?

14 Q The agreement, the arrest warrant, the Abbeville
15 matter, search warrant and then the search itself, you
16 covered all of those with Mr. Foster?

17 A What you have to understand is the search warrant was
18 not based on an arrest warrant for Karlin. The search
19 warrant was based on officers appearing at Astra's home
20 and smelling marijuana. It was not, it was not a search
21 warrant, wasn't based on the arrest of Mr. Foster, it is a
22 search warrant based on the smell of marijuana. And in
23 fact, Mr. Foster wasn't even there. Mr. Foster was not
24 arrested for this charge that he is asking this PCR for.
25 He was not under arrest for that charge. He only got

1 arrested on that charge after he confessed.

2 Q And you made Mr. Foster aware of all of the potential
3 issues in the case?

4 A Yes. And let me say this. As I said, I have known
5 Karlin for a long time. Karlin is a very bright, smart
6 person. He understands everything. He understood what
7 was going on. He understood what we were talking about
8 during this plea. I think I covered it on the record, you
9 know, as I told you guys, law enforcement was very upset
10 because they believed that he got an incredibly light
11 sentence. But one of the things that we used in his plea
12 with Judge Stilwell and we met with Judge Stilwell
13 in-chambers and in fact the Solicitor himself came to the
14 plea and met with Judge Stilwell, two Deputy Solicitors
15 and the Sheriff of Greenwood County, the Chief of Police
16 for Greenwood City and the entire DEU showed up because
17 they wanted Judge Stilwell to absolutely hammer Karlin
18 because of the issues they had had with him in the past.
19 But we used all of these things that, for example, that we
20 are not wanting to present these defenses, that he did in
21 fact confess and he is not challenging the confession.
22 And Judge Stilwell looked at law enforcement and looked at
23 the Solicitor and said, I am going to give him credit for
24 that because he is not putting you through trials.
25 Q Okay. No further questions.

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 By Ms. McMahan:

4 Q At the beginning of your representation of Mr. Foster
5 what was the posture of him, did he want to plea or a
6 trial or was there any determination on that?

7 A You talking about these charges?

8 Q Yes.

9 A Okay. Of these charges, first and foremost he said,
10 this is not Astra's drugs, these are my drugs. And I do
11 not want her to serve a day in prison for something that I
12 did. And so whatever we have got to do to get her out of
13 trouble that is what I want you to do.

14 Q So the posture was a plea or trial, it didn't matter
15 which way to go as long as Astra didn't get hit with it?

16 A Right. Which I think is very noble of him to be
17 honest with you. I mean, I don't think it was her drugs
18 and he, I think he did the right thing for not allowing
19 her to even potentially face a trial.

20 Q Would there had been a possibility that both of them
21 at least could have gotten a conspiracy out of that and
22 ended up in prison?

23 A A conspiracy charge?

24 Q Yeah.

25 A When they found--

1 Q --found the drugs in Astra's house?

2 A There was over one-hundred something grams?

3 Q Yes.

4 A Based on my experience, I have only been doing this
5 23 years, and I was only the drug prosecutor for two years
6 but I have had a lot of drugs cases since then. Based on
7 my experience a jury would have found at least one of them
8 guilty of trafficking, if not both. And unfortunately it
9 probably would have been Astra before Karlin.

10 Q Is that because the lease and everything was in her
11 name?

12 A Not saying the lease was in her name but I think the
13 fact that she, when law enforcement showed up, said we
14 want to come in and search because we smelled marijuana
15 she denied access to the home. And then, of course, yes,
16 she was living in the home. As I said, you know, he had
17 an alibi, he wasn't there. We were going to argue to a
18 jury that he just confessed and that he could have made up
19 that confession because he was trying to help his
20 girlfriend. At that point I think the jury had no choice
21 but to probably lay everything on her, he did not want to
22 do that.

23 Q Did you, you referenced an LWOP, would it had been an
24 LWOP if they had of tried them separately on these two
25 charges?

1 A I think he would have been looking at the
2 distribution first and then he would have been looking at
3 the trafficking. I mean they could have done it from a
4 timeframe. And then as I said, the information was being
5 provided to me, was that they also potentially had some
6 more charges.

7 Q More charges that he wasn't already, had warrants out
8 for him?

9 A No. But if you will notice that one of the things
10 that we did and there is a case from years ago, on the
11 record I believe I cleared all of that.

12 Q Yes. And the smell of the marijuana, did you discuss
13 with him about the fact that there was no marijuana found?

14 A I didn't believe him, I told him I did not believe
15 Officer Byrd's affidavit. Now, what I explained to him
16 was is that the Solicitor's office or Officer Byrd is
17 going to get up in a suppression hearing and testify that
18 she could have been smoking a blunt or smoked a joint or
19 whatever and threw it in the toilet when she saw the
20 police arrive at her house. And they simply smelled the
21 aftereffects of her smoking so that would be their
22 explanation. One of the other things that I did in this
23 case is I talked to, there is an attorney in Greenwood
24 that I have a lot of respect for from appeals standpoint,
25 his name is Rauch Wise. I sat down with Rauch Wise and I

1 had permission from Karlin to do this, to talk about the
2 possibility of the suppression of the search and what our
3 chances on appeal would be. And he and I both, in talking
4 about it, said that is probably going to be the story, she
5 probably had just smoked something and threw it out when
6 they came up and she opened the door they could smell it.

7 Q If there was a marijuana smell, let me back up,
8 strike that. What is your experience with drug dogs?

9 A I have never had one.

10 Q Did you try any cases that involved drug dogs?

11 A Oh, yes.

12 Q Would a drug dog also, would they indicate on
13 marijuana as well as cocaine?

14 A If the dog was cross-trained, yes.

15 Q So, if you have a search warrant based on marijuana
16 but then a drug dog that comes in, based on that search
17 warrant for marijuana and then the drug dog marks on
18 cocaine, could you then say possibly that that drug dog is
19 trained on both?

20 MR. VANSYCKEL: Objection, Your Honor, speculation.

21 A I have no idea what the drug dog was trained on, I am
22 sorry.

23 MS. MCMAHAN: I will withdraw it, Your Honor.

24 Q Did you ever think to challenge the drug dogs
25 training?

1 A Why. I mean, I don't understand why you would
2 challenge a drug dog's training when they found the dope
3 where the dog hit and Karlin confessed to it.

4 Q Did you ever discuss with Karlin whether or not he
5 could move to try to suppress that statement he made to
6 the police?

7 A Oh, absolutely. That is what I am saying, I mean, I
8 told him, I said, what you have to understand, Greenwood
9 is not a big city, I don't know where everybody is from.
10 Greenwood is not a big town, Greenwood is not a big
11 county. We all know each other, Karlin knows all of the
12 drug agents. These guys talk to him, like you and I talk,
13 we will talk at a social event. I mean, they know what
14 Karlin's background is because they talk to him all the
15 time. I asked him point blank, did you ever feel
16 threatened, no. Were you coerced, no. I made the
17 statement freely and voluntarily. I came out and said,
18 guys, I need to tell you that is not Astra's drugs, these
19 are mine.

20 MS. MCMAHAN: Nothing further, Your Honor.

21 THE COURT: Anything further?

22 MR. VANSYCKEL: Nothing further from the State, Your
23 Honor.

24 THE COURT: You may come down. Anything further?

25 MR. VANSYCKEL: That's it, Your Honor.

1 THE COURT: Post orders.

2 MS. MCMAHAN: Within 30 days?

3 THE COURT: 30 days.

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER

2
3
4 State of South Carolina)
5 County of Newberry)
6
7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 7th day of June, 2017.

15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17

18 November 30, 2017
19

20 *Joy Holston*
21

22 Joy E. Holston, Court Reporter
23 My Commission expires: May 2, 2026
24
25

PCR

COURT OF COMMON PLEAS AND GENERAL SESSIONS

EXHIBIT RECORD AND RECEIPT FORM

PLAINTIFF State DEFENDANT Kevin R. Foster
 ATTORNEY Judah Vansyckel ATTORNEY Ashley McMahon
 CASE NO. 2015 CP 24 0776 JUDGE Cooper
 DATE STARTED 6-7-2017 COURT REPORTER J E Hesta
 DATE ENDED 6-7-2017

PLAINTIFF'S EXHIBITS

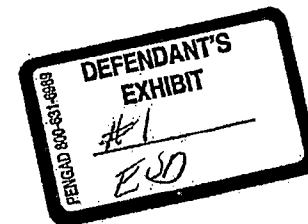
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DEFENDANT'S EXHIBITS

1. Newspaper Article EVD
2. Newspaper Article EVD
3. Newspaper Article EVD
4. Newspaper Article EVD
5. Newspaper Article EVD
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J E Hesta 6/7/17
 Court Reporter

Ryan Lancaster
 Clerk of Court
 Date 6/7/17



LEAVE
Continued from 1A

honorable actions by an officer. The officer in question was placed on administrative leave.

Davis received information the week before that led to the investigation.

The sheriff's office would not release more information until the investigation is complete.

The second release, which was sent at 3:15 p.m. Thursday by Davis, said:

Internal controls in the sheriff's office alerted Davis to financial transactions.

Davis began an internal investigation separate from SLED's.

Two employees are on administrative leave.

"I will decide the employment status of those employees once the investigations are completed," Davis said.

Davis said he might be able to release certain information as events warrant.

On Friday, the Index-Journal requested the personnel files for Byrd and all other employees of the drug enforcement unit since Jan. 1 along with other documents that might be pertinent to the investigations.

John Long, officer in charge of professional standards, acknowledged receiving both requests.

All official comments have come from two state investigations released by the sheriff's office. The Index-Journal has reached out to numerous officials, all of whom declined to comment on the investigation.

The first release, which was sent at 10:31 p.m. Tuesday by Long, said:

Sheriff Tony Davis called for SLED to investigate "ques-

IONS: 20 PAGES

SATURDAY, OCTOBER 24, 2015

DAILY 75¢, SUNDAY \$1.50

Probe: DEU agent falsified report as city cop

By DAMIAN DOMINGUEZ
ddominguez@indexjournal.com

A lined sheet of paper, addressed to "Chief" and signed "Larry R. Byrd," contained just one handwritten sentence: "I resign as of today's date."

The letter, which was dated June 11, 2010, was submitted two days after Robbie Byrd failed a polygraph test administered as part of an internal investigation into allegations Byrd falsified a police report, according to his personnel file from a six-year stint with the Greenwood Police Department and the accompanying documents from an internal affairs inves-

tigation.

Byrd, now a staff sergeant, is one of two drug enforcement unit agents on administrative leave from the Greenwood County Sheriff's Office amid investigations by Sheriff Tony Davis and the State Law Enforcement Division into financial transactions and allegations of misconduct in the office. Lt. Brandon Strickland is also on leave.

The Index-Journal requested the city documents under the Freedom of Information Act on Oct. 16 and



ROBBIE BYRD

More inside

See 3A for more of the ongoing issues in the Greenwood Sheriff's office.

was given those documents on a CD on Tuesday — two business days later. The Index-Journal also requested his personnel file from the sheriff's office on Oct. 16, but it has not yet been made available.

Davis would not have seen Byrd's city police personnel file before hiring him, according to John Long, officer in charge of professional standards for the sheriff's office. Byrd

See PROBE, page 3A

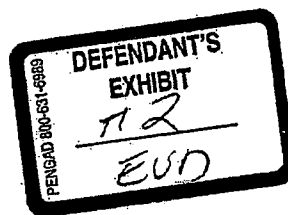
Attorney General's office to consult on SLED probe

By DAMIAN DOMINGUEZ
ddominguez@indexjournal.com

Solicitor David Stumbo has asked the attorney general's office to consult with the State Law Enforcement Division in their investigation of the Greenwood County Sheriff's Office, citing a potential conflict of interest.

There are two specific Greenwood County deputies assigned to the Drug Enforcement Unit who have been placed on administrative leave pending the outcome of this investigation," Stumbo wrote in the letter his office sent Tuesday.

See SLED, page 3A



Sheriff's 2 staffers on leave

Money transactions
at center of probe.

Davis says in release

By DAMIAN DOMINGUEZ
ddominguez@indexjournal.com

Two employees of the Greenwood County Sheriff's Office are on administrative leave in the midst of an internal investigation conducted by Sheriff Tony Davis, according to a news release sent Thursday afternoon.

Davis said in the release he was alerted to "financial transactions" that led to an internal investigation.

"I am disappointed to state that my investigation has found possible violations of the policies, practices and directives of this office," he said in the release.

This investigation is separate from the investigation

into possible criminal activity the State Law Enforcement Division is conducting, the release said.

Davis said in the release he will decide on the employment status of the two employees on leave once the investigations are complete.

The Sheriff's Office would not release the names of the two employees who have been placed on leave.

The separate SLED investigation, which Davis requested, is into a report of "questionable actions" by an officer within the sheriff's office. That investigation formally began Wednesday, according to Thom Berry, SLED's Freedom of Information Act coordinator. Berry said he could not comment further on an ongoing investigation.

According to a news release the Sheriff's Office issued Tuesday, the deputy under investigation was placed on administrative leave, but it did not elaborate on allegations against the deputy.

The Index-Journal confirmed Wednesday that Lt. Brandon Strickland, who supervises the county's drug enforcement unit, is on administrative leave, but it is not clear if his leave is linked



TONY
DAVIS



BRANDON
STRICKLAND



2nd deputy on leave also from drug unit

GREENWOOD COUNTY SHERIFF'S OFFICE

SUNDAY OCTOBER 18 2015 DAILY 75¢ SUNDAY \$1.50

PROBE

Continued from 1A

could not be reached for comment.

While an officer with Greenwood Police, he was reprimanded on two occasions for on-duty wrecks, both attributed to carelessness. He also was reprimanded twice, which included a one-day suspension and six months probation, for filing a number of late and incomplete accident reports. The four written reprimands were included in Byrd's personnel file.

Also in the file was an evaluation dated March 30, 2006 that marked his performance as "satisfactory" and "outstanding" in each of 19 categories, with the evaluator writing Byrd "has made great strides in his work performance and will only continue to improve." Under weaknesses, the evaluation noted a poor attention to detail.

The annual evaluation is the only one in Byrd's file from his time with the department.

The complaint

Garbed in a T-shirt and shorts and carrying his infant daughter, Byrd was off-duty and acting as the courtesy officer for his apartment complex when he walked up to a group of people to ask them to turn down their music just before 10 p.m. on May 22, 2010.

Everyone interviewed in the internal affairs investigation seemed to agree with those initial facts, but Byrd's official account of what happened next is different from the woman who lives there and who Byrd later handcuffed.

Byrd wrote in his report that the woman, whose name was redacted, refused to turn down her music or give her name. The woman said she turned down the music and alleged Byrd was rude, threatened to have her evicted, was unable to present his badge and lied in the report he filed on the incident.

Byrd called another officer, who brought Byrd his ticket book and held Byrd's daughter while he arrested the woman.

view with internal affairs. "I know what I should have done and what I did are two different things. It was just a bad situation."

The supervisor on duty, who arrived on scene a short while later, told internal affairs his heart sank when he heard Byrd tell the woman he jails people for noise complaints.

The supervisor and second officer decided to issue tickets for disorderly conduct and unlawful playing of radio and released the woman.

The woman filed a complaint the next business day — Monday, May 24, 2010 — and received an eviction notice by the end of the week.

Byrd was given a polygraph test June 9, 2010 on the accuracy of several points of contention between his and the woman's versions of what happened. According to a report from Owen Investigative Agency, "Byrd exhibited physiological reactions and responses normally associated with deception" when he answered the three questions and the examiner concluded he "was not truthful regarding this issue."

The examiner said Byrd was unable to explain why he failed the test. Byrd resigned two days later.

The investigation concluded that Byrd made several false

statements in the report and that "Byrd's act of falsifying an official police report constituted a violation of GDP General Order 1-02, Rules & regulations No. 44" and "borders on a violation of South Carolina Code of Laws, Section 16-17-722(A)."

On June 16, 2010, Chief Gerald Brooks wrote a letter to the woman telling her the results of the internal investigation.

"A thorough investigation was conducted and certain aspects of your allegations have been substantiated," Brooks wrote. "As a result, I have taken appropriate administrative action."

Lander, GCSO

Byrd worked for Lander University Police from Feb. 14, 2011 to May 3, 2012, according to the college. The Index Journal was unable to determine if Byrd was employed between resigning from Greenwood police and starting at Lander.

Long said the Greenwood County Sheriff's Office hired Byrd from Lander. The hire date was not available by press time.

Long said "the sheriff was told he was a good officer and had good police instincts" and has not viewed Byrd's personnel file.

"He would have no reason to see it," he said. "It's not common for the city to share their personnel issues with us."

According to releases from the sheriff's office and a letter from Solicitor David Stumbo to Attorney General Alan Wilson, two drug enforcement unit agents are on administrative leave from the sheriff's office, pending the outcome of separate investigations by Davis and SLED into financial transactions and allegations of misconduct in the office.

The sheriff's and solicitor's offices have not officially named Byrd and Strickland as the deputies on leave, but the Index Journal has verified they are on leave.

Attempts to reach Byrd and Strickland, which included going to their homes, were unsuccessful by press time.

Assistant editor Matthew Hensley contributed to this report.

SLED

Continued from 1A

As the solicitor's office works with the sheriff's office, daily Stumbo wrote, he asked Attorney General Alan Wilson to have his office take over consulting on the case, which concerns allegations of misconduct in the office.

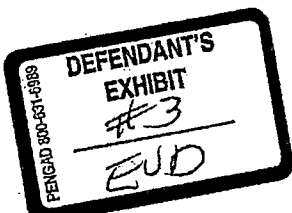
SLED had not given any investigative materials to the solicitor's office, the letter said.

Sheriff Tony Davis is conducting an internal investigation into financial transactions

and asked SLED on Oct. 12 to investigate possible criminal activity by deputies, according to press releases the office issued last week.

SLED, Davis and Stumbo have not named the two officers, but the Index Journal determined the deputies on leave are Lt. Brandon Strickland, who oversees the drug enforcement unit, and Staff Sgt. Robbie Strickland.

Davis said in a press release he would decide the employment status of the two deputies when the investigations were completed.



INDEX-JOURNAL

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Are prosecutions in jeopardy?

Public defender: SLED probe could affect pending DEU cases

DAMIAN DOMINGUEZ
dominguez@indexjournal.com

State Law Enforcement Division investigation into two deputies who resigned last month could affect cases handled by the former officers, according to Janna Nelson, Eighth Circuit public defender. The outcome of those cases will be heavily influenced by what that investigation reveals, Nelson said. In Oct. 13, Sheriff Tony Davis

called for SLED to investigate questionable actions by an officer after being alerted to financial transactions in the Drug Enforcement Units accounts, according to news releases from the Sheriff's office. Two agents, Brandon Strickland and Robbie Byrd, resigned late



BRANDON
STRICKLAND



ROBBIE
BYRD

October after the sheriff's internal investigation found they violated policy.

While SLED continues its investigation, Nelson said, she expects the cases it handled will be put on hold.

"My expectation is that the solicitor's office isn't going to proceed with

prosecuting those until we know more," she said.

Eighth Circuit Solicitor David Stumbo declined to comment. The solicitor's office handed the former DEU agents' case over to the attorney general's office citing a conflict of interest, according to a letter Stumbo wrote to Attorney General Alan Wilson.

The attorney general's office will be in charge of any potential prosecution resulting from the SLED inves-

tigation, said J. Mark Powell, communication director for the attorney general's office. If the investigation finds the agents did anything that would bring their credibility into question, the cases they handled could be affected, Powell said.

Whatever actions the attorney general's office takes could decide the outcome of pending cases where Strickland or Byrd made the

See SLED, page 4A

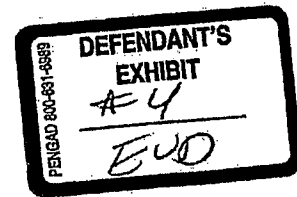
SLED

Continued from 1A

arrest, Nelson said. Those cases could go untouched, be thrown out, or anything in between, she said.

any ruled it did not constitute misconduct by an officer and Byrd maintained his certification, Nelson said she hadn't heard about the allegation against Byrd until after it was

Strickland or Robbie Byrd was requested. An 84-page document titled "Open Warrants" listing about 1,000 pending cases was provided, along with the name of an associated officer for each case. More than



SLED

Continued from 1A

arrest, Nelson said. Those cases could go untouched, be thrown out, or anything in between, she said.

In June 2010, Byrd resigned from Greenwood Police Department during an internal investigation that substantiated allegations he falsified a police report, according to documents obtained from the police department. The state Criminal Justice Acad-

emy ruled it did not constitute misconduct by an officer and Byrd maintained his certification.

Nelson said she hadn't heard about the allegation against Byrd until after it was reported in the Index-Journal.

Her office will likely use the information if it will be admitted at court, she said.

The Index-Journal filed a request under the Freedom of Information Act on Oct. 16, a full list of pending court cases handled by Brandon

Strickland or Robbie Byrd was requested. An 84-page document titled "Open Warrants" listing about 1,000 pending cases was provided, along with the name of an associated officer for each case. More than 100 of the cases listed Strickland or Byrd as the officer on the warrant.

It is common for officers to sign warrants for other officers, said John Long, officer in charge of professional standards with the Greenwood County Sheriff's Office.

Greenwood Christian plays first playoff game Sports, 1B Greenwood High fights for a spot in the playoffs

INDEX-JOURNAL

VOL. 97, NO. 237

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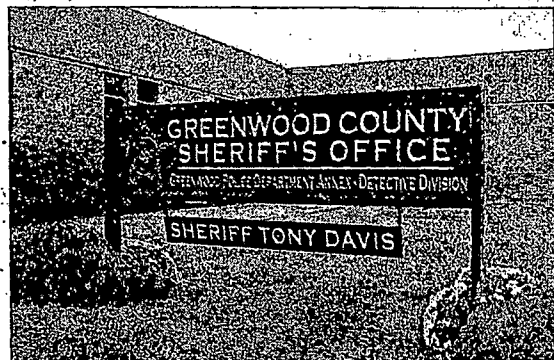
2 SECTIONS, 20 PAGES

SATURDAY, NOVEMBER 7, 2015

DAILY 75¢, SUNDAY \$1.50

Resignation included in documents

Byrd's letter, background checks released in ongoing SLED investigation



JOSHUA S. KELLY / INDEX-JOURNAL

A general view of the Greenwood County Sheriff's Office.

By DAMIAN DOMIN-GUEZ
ddominguez@indexjournal.com

Robbie Byrd's resignation letter came the day after he left the Greenwood County Sheriff's office.

Byrd resigned alongside Brandon Strickland, both former agents of the Greenwood County Drug Enforcement Unit. Their resignations came in the midst of an internal investigation into the DEU that concluded both officers violated the policies of their office. The State Law Enforcement Division is separately investigating the officers.

While Strickland filed a resignation letter on Oct. 29, Byrd resigned



ROBBIE BYRD



TONY DAVIS



BRANDON STRICKLAND

verbally.

His letter was received at 2:50 p.m. the next day.

"Dear Sheriff, the letter reads, 'As we discussed, I appreciate the opportunity I had to serve as a member of the Greenwood County Sheriff's Department, but would like to tender my resignation. Thank you for your

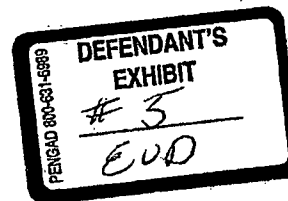
time and attention to this matter."

His resignation letter, along with other personnel files and documents, was among the 1,220 pages of documents provided to the Index-Journal in a response to an Oct. 16 Freedom of Information Act request. Strickland's personnel file was provided Oct. 26 in response to an earlier request.

Background checks

Byrd began his career with the sheriff's office on May 7, 2012, according to the South Carolina Criminal Justice Academy. Before he

See RESIGNATION, page 4A



RESIGNATION

Continued from 1A

was hired, a pre-employment investigation by a lieutenant with the sheriff's office checked his driving record, criminal history and credit history, according to a document in his personnel file.

The pre-employment check included speaking with several of Byrd's references listed on his application, which included two employees at one of his previous employers, the Greenwood Police Department. Both GPD contacts said Byrd had a good attitude toward police work and had no personal issues which would harm his performance, according to documents.

In Byrd's police department personnel file, documents show an internal investigation substantiated allegations he falsified a police report. The police acad-

emy ruled there was no misconduct, according to academy documents.

"The sheriff was told he was a good officer and had good police sense," said John Long, officer in charge of professional standards with the sheriff's office. "It's not common for the city to share their personnel issues with us."

Before Byrd began working with Lander University Police Department in Feb. 2011, Lander conducted a pre-hire screening. Maj. Urban Mitchell and Maj. James Marshall with GPD were contacted, according to Byrd's Lander University personnel file. Mitchell and Marshall were the officers in charge of the internal investigation into Byrd, according to investigative files.

SLED investigation

Davis called for SLED to

investigate "questionable actions," according to an Oct. 13 news release. An officer was placed on paid administrative leave at that point, the release said.

A second release, sent Oct. 15, explained that internal controls detected financial transactions which led to an internal investigation. Two sheriff's office employees were on leave at that time, the statement said, and the internal investigation was separate from SLED's.

The SLED investigation remains active and ongoing, according to an Oct. 30 news release that announced Strickland's and Byrd's resignation.

Meanwhile, the Greenwood County Sheriff's Office will continue to fulfill its duty to preserve, protect and defend Greenwood County, the release said.

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Karlin Foster, SCDC # 271782

Applicant

v.

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2015-CP-24-0276

ORDER OF DISMISSAL

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

SEP - 6 PM 2:02

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 23, 2015. An evidentiary hearing into the matter was convened on June 7, 2017, at the Laurens County Courthouse in Laurens, South Carolina. Applicant was present at the hearing and represented by Ashley McMahan, Esquire. Assistant Attorney General Judah N. VanSyckel, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Thomas Austin, Esquire, also testified. This Court had before it a copy of Applicant's records from the Greenwood County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's PCR Application, and Respondent's Return:

I. Procedural Posture

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. The Greenwood County Grand Jury Applicant indicted Applicant at the April 2014 term of for Trafficking in Cocaine (2014-GS-24-0453) and Trafficking in Cocaine Base (Crack Cocaine) (2014-GS-24-0452). Thomas Philip Austin, Esquire, represented Applicant. On May 15, 2014, Applicant appeared before the Honorable Robin B. Stilwell and Applicant pled guilty as indicted. The State was

represented by Assistant Solicitor Shannon Odom, Esquire. Applicant faced a sentencing range of seven to twenty-five years on each charge. (Plea Tr. 24.) The State asked for a substantial prison sentence. (Plea Tr. 34.) The Greenwood County Sheriff spoke at the proceeding in order to advocate for a longer prison sentence. (Plea Tr. 27.) Applicant's mother spoke on his behalf in mitigation. (Plea Tr. 32-33.) Counsel put on the record that Applicant had been willing to cooperate with the State as a witness and assist them in bringing other criminals to justice. (Plea Tr. 29-30). Counsel also put on the record that as part of the plea, all other pending cases against Applicant were being dismissed. (Plea Tr. 30.). Judge Stilwell sentenced Applicant to concurrent ten-year terms of imprisonment on each charge.

Applicant did not appeal his guilty plea or sentence.

II. Facts of the Case from the factual basis for the Guilty Plea

Applicant trafficked drugs in Greenwood County, South Carolina. (Plea Tr. 25-26.) On September 18, 2013, Applicant had an outstanding arrest warrant for his arrest. Id. at 25. Agents with the Greenwood County Drug Enforcement Unit went to a home located at [REDACTED] Morton Road, Greenwood, S.C. to find Applicant and serve the arrest warrant on him. Id. Applicant's girlfriend, Ms. Brooks, was home at the time and denied that Applicant was at the residence. Id. Law enforcement asked for permission to search the residence. Id. Ms. Brooks denied their request. Id. Law enforcement smelled marijuana coming from the home. Id. The agents secured the home and one of them went and obtained a search warrant. Id. Upon receipt of the warrant, the agents searched the home (the Search). Id. at 25-26. The agents discovered a gun, ammunition, and powder and crack cocaine in a closet in Mr. Foster's bedroom. Id. at 26. The agents arrested Ms. Brooks on the scene. Id. Later that day, Applicant came to the Sheriff's Office and gave a statement that all the drugs from the Search were his. Id.

[Handwritten signature]
2

III. Applicant's Guilty Plea Statements

At the Guilty Plea, Applicant admitted to the above facts. (Plea Tr. at 26.) Applicant did not say anything at the plea to justify his conduct, to ask for mercy, or to provide some sort of mitigation. Id at 33.

IV. Applicant's PCR Filings

Applicant filed his original PCR application on March 23, 2017. Applicant filed his PCR on the following grounds:

1. That Applicant received ineffective assistance of counsel because Counsel failed to inform him that the Greenwood County law enforcement agents who were in charge of a drug sting targeting the sale of drugs (the Drug Sale) by Applicant and subsequently obtained warrants based upon the sale were without jurisdiction to operate in Abbeville County.
2. That Applicant received ineffective assistance of counsel because Counsel failed to inform Applicant that Applicant could have challenged the arrest warrant based on the Drug Sale as the warrant affidavit did not contain testimony as to the reliability of the confidential informant.
3. That Applicant received ineffective assistance of counsel because Counsel failed to tell Applicant that if Applicant challenged the arrest warrant, on the grounds that Greenwood County agents did not have jurisdiction over anything that happened in Abbeville County, and was able to have the arrest warrant dismissed, then applicant would be able to challenge the Search on the grounds that Greenwood County agents would not have been able to be at the home and smelled marijuana.



4. That Applicant received ineffective assistance of Counsel because Counsel failed to tell Applicant that he could challenge the issuance of the warrant for the Search in a Franks v. Delaware hearing. 438 U.S. 154 (1978).
5. That Applicant received ineffective assistance of Counsel because Counsel failed to tell Applicant that he could challenge the arrest warrant for trafficking crack cocaine as the warrant lacked insufficient probable cause because the warrant affidavit failed to allege that Applicant possessed the crack cocaine.
6. That Applicant received ineffective assistance of Counsel because Counsel failed to tell Applicant that he could challenge the arrest warrant for trafficking cocaine as the warrant lacked insufficient probable cause because the warrant affidavit failed to allege that Applicant possessed the cocaine.

Applicant, acting *pro se*, then amended his application of June 9, 2016 to reflect the following claims:

- A. That Applicant received ineffective assistance of Counsel for failing to give Applicant a copy of the grand jury empanelment documents.
- B. That Applicant received ineffective assistance of Counsel due to Applicant's failure to file for a Franks v. Delaware Hearing regarding the issuance of the warrant for the Search. 438 U.S. 154 (1978).
- C. Applicant claimed that the General Sessions Court lacked Subject Matter Jurisdiction to hear the case because the Magistrate did not hold a preliminary hearing.

EC

D. Applicant claimed that Greenwood County law enforcement agents were without authority to arrest a defendant in another county when there was no valid agreement between the counties.

E. That Applicant received ineffective assistance of Counsel because Counsel failed to investigate Robbie Byrd. That Counsel was ineffective for inducing him to plead based on false information. That had Counsel done his job the outcome of the case would have been different, that had Counsel filed for a suppression motion and had counsel prepared for the case properly the case would have been different; the defendant would have gone to trial.

Applicant, through his second PCR Counsel, then filed an Amended Post-Conviction Relief Application on April 3, 2017. Applicant's amended claims are as follows:

1. Ineffective Assistance of Counsel

a. Did not move to suppress the confessions and arrests based on State v. Boswell, 391 SC 592 (2011) as the officers were without jurisdiction.

Applicant is combining this allegation with that of Allegations 1, 2, and 3, of the PCR Application and Allegation D in the Amended Application.

b. Counsel did not challenge the sufficiency of the indictment. See e.g. Padgett v. State, 324 SC 22 (1997).

2. After-Discovered Evidence

a. Officer Byrd was subsequently indicted for Misconduct in Office. See Exhibit 1, attached and incorporated herein. Applicant asserts that that Officer Byrd's now lack of credibility affects his case as Byrd was the one who signed the search warrant on the Applicant's home. See Havden v. State, 278 SC 610

 5

(1983). Applicant is abandoning allegations A and C in the Amended Application for Post-Conviction Relief.

In Applicant's filing he further abandoned allegations A and C in the Amended Application for Post-Conviction Relief.

In sum, Applicant's claims for Post- Conviction Relief are as follows:

1. Ineffective Assistance of Counsel:

- a. Did not move to suppress the confessions and arrest based on State v. Boswell, 391 SC 592 (2011) as the officers were without jurisdiction.
- b. Counsel failed to conduct a Franks v. Delaware hearing regarding the search warrant affidavit. 438 US 154 (1978).
- c. Counsel failed to inform the Applicant that he could move pre-trial to try to have the evidence suppressed that was seized from the home.
- d. Counsel did not inform the Applicant that he could move to suppress the search warrant and move to quash the indictment.
- e. Counsel did not inform the Applicant that he could challenge probable cause for trafficking cocaine.
- f. Counsel failed to investigate and determine if there was a valid multi-jurisdictional agreement in place.
- g. Counsel did not challenge the sufficiency of the indictment. See e.g. Padgett v. State, 324 SC 22 (1997).

2. After-Discovered Evidence: Officer Byrd was subsequently indicted for Misconduct in Office. Applicant alleges that Officer Byrd's now lack of credibility affects

Applicant's case as Byrd was the one who signed the search warrant on the Applicant's home.

V. Hearing Testimony

A. Applicant's Testimony

At the June 7, 2017 hearing, Applicant testified on his own behalf. Applicant's testimony included the following assertions. Applicant testified that there was no marijuana found in the house during the September 18, 2013 search. Applicant testified that because no marijuana was found and because the search of the house was based on the smell of marijuana emanating from the home, that he was entitled to a Franks v. Delaware hearing. 438 U.S. 154 (1976).

Applicant also testified that the underlying warrant for his arrest, which was the basis of law enforcement's presence at [REDACTED] Morton Road, Greenwood, SC, should have been challenged. Applicant testified that because the warrant was based on a sale of drugs (the Drug Sale) by Applicant that occurred in Abbeville County, the Greenwood County Drug Enforcement Unit had no jurisdiction over that sale. Additionally, Applicant alleged that Greenwood County and Abbeville County did not have a valid multi-jurisdictional agreement between them and thus the Greenwood County Drug Enforcement Unit had no jurisdiction over anything that occurred in Abbeville County.

Applicant also testified that the particular officer who smelled the marijuana, Officer Byrd, was later indicted for misconduct in office and that he should get a new trial because of this.

B. Counsel's Testimony

Counsel, Thomas Austin, testified at the hearing. Counsel's testimony included the following assertions. Counsel testified that he had represented Applicant several times over the

 7

years and had managed to find loopholes in other cases. Counsel testified that this case was different, because Ms. Brooks, Applicant's girlfriend, had been arrested and Applicant wanted to take responsibility for the drugs. Counsel testified that Applicant told him to do whatever was necessary to get Ms. Brooks out of trouble.

Counsel testified that Applicant was not arrested until after Applicant's voluntary confession given without threats or coercion before the arrest, which was a factor in the defense of Applicant.

Counsel testified that the Greenwood County Drug Enforcement Unit is a joint task force between Greenwood City and County. Counsel testified that he checked with the Solicitor's office to see if there was a reciprocity agreement between Greenwood County and Abbeville County. Counsel testified that he confirmed that there was a valid reciprocity agreement in place at the time of the Drug Sale.

Counsel further testified that Applicant had met an informant in Greenwood County and then crossed over the county line to Abbeville County to complete the Drug Sale transaction.

Counsel testified that beyond that, the Greenwood County Drug Enforcement Unit had had an Abbeville County Magistrate sign the arrest warrant for the Drug Sale transaction.

Counsel testified that although Ms. Brooks was Applicant's girlfriend, at the time Counsel had been made aware that Ms. Brooks would testify against Applicant at trial.

Counsel testified that based on his experience, he believed that had Applicant and Ms. Brooks proceeded to trial, one or both of them would have been convicted and it probably would have been Ms. Brooks.

Counsel testified that he obtained the assistance of Rauch Wise, Esquire to review the possibility of getting the drug evidence from the Search suppressed.



Counsel testified that he did not challenge the training of the drug dog involved in the Search because although the drug dog did not alert to the smell of marijuana emanating from the home, it did alert on the drugs found in the home and because Applicant had then given a full confession as to the drugs from the Search

Counsel testified that he did talk with Applicant about challenging the basis for the Search and the validity of the warrant. Counsel testified that he had never fully trusted Officer Byrd of the Greenwood County Drug Enforcement Unit, but that he had no proof of bad conduct by Office Byrd at that time. Counsel testified that he discussed Officer Byrd's credibility with Applicant. Counsel testified that he is aware that Officer Byrd was indicted in 2015, but the misconduct in the indictments does not go back to the time period of the Sale, the Search, or Applicant's plea.

Counsel testified that his representation of Applicant began with the understanding that the most important thing was to protect Ms. Brooks. Counsel also testified that he went over all the defenses with Applicant, that they addressed the validity of the Arrest Warrant from the Sale, that they addressed the validity of the Search Warrant at the Search, and they discussed the voluntary confession given by Applicant. Counsel also testified that Applicant weighed the benefit of having other charges against him dismissed, including the charges arising out of Abbeville. Additionally, Counsel testified that Applicant saw the benefit of Federal matters being dismissed. Counsel testified that by pleading, Applicant avoided the possibility of being exposed to a sentence of Life Without Parole based on the severity and nature of all the charges he was facing.

VI. Applicable Law

A. Applicable Law as to Ineffective Assistance of Counsel



In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The United States Supreme Court held that the Strickland v. Washington standard applies in guilty pleas. Hill v. Lockhart, 474 U.S. 52 (1985). The Court further held that for guilty pleas, in order to show the prejudice requirement in the second prong of Strickland, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. The test for the prejudice

 10

inquiry of the Court is dependent upon the particular facts of each claim of ineffective assistance of counsel. Claims of failing to investigate or discover evidence are subject to an analysis by the Court as to the probability that "discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial." *Id.* But the prejudice analysis changes "where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the "prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." *Id.* This is an inquiry that the trial court must make regarding the evidence presented before it as "these predictions of the outcome at a possible trial, where necessary, should be made objectively, without regard for the "idiosyncrasies of the particular decisionmaker.'" *Id.* at 59-60 (quoting Strickland v. Washington, 466 U.S. 668, 695 (1984)).

B. Applicable Law as to Newly Discovered Evidence after a Guilty Plea.

The South Carolina Supreme Court set forth the two-factor test for determining the existence of newly discovered evidence after a guilty plea in Jamison v. State, 410 S.C. 456 (2014). The first factor requires Applicant to show that "the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea." *Id.* at 470. The second factor requires Applicant to demonstrate that "the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated." *Id.* The Court goes on to say that "In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the

11

waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.”

VII. Findings of Facts and Conclusions of Law

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

A. Ineffective Assistance of Counsel

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler v. State, 286 S.C. 441, 334 S.E.2d 813. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the



range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). This Court finds that Applicant has failed to prove that Counsel was ineffective. This Court also finds that Counsel properly relied on Applicant's statement that he wished to ~~TAKE~~ ^{GTC} responsibility for the drugs found during the Search in order to minimize any responsibility Ms. Brooks may have for them. The United States Supreme Court has held that "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674 (1984)

1. *Findings and Conclusions as to Claim that Counsel was ineffective for not moving to suppress the confessions and arrest based on State v. Boswell, 391 SC 592 (2011) as the officers were without jurisdiction.*

This Court finds that Counsel was not ineffective for failing to move to suppress the confessions and arrest based on State v. Boswell, 391 S.C. 592 (2011). Applicant's reliance on Boswell misapprehends his current predicament. Although Applicant contends that any mistakes by law enforcement arising out of the investigation into the Drug Sale and in the issuance and subsequent reliance by law enforcement upon the arrest warrant based upon the Drug Sale should require that the results of the subsequent Search be suppressed, this Court finds that the smell of marijuana emanating from the residence was an independent basis for the Search. See State v. Cox, 287 S.C. 260, 263, 335 S.E.2d 809, 811 (Ct. App. 1985), *aff'd in part, rev'd in part*, 290 S.C. 489, 351 S.E.2d 570 (1986). See also Wong Sun v. United States, 371 U.S. 471 (1963); and

Cox 15

Nix v. Williams, 467 U.S. 431 (1984). As such, this Court finds that Counsel was not ineffective for failing to move to suppress the confessions and arrest.

This Court further finds that the Officers had jurisdiction to work in Abbeville County. Unlike in Boswell, where there was no valid agreement between law enforcement agencies, this Court, based on Counsel's testimony, finds that there was a valid multi-jurisdictional agreement for the Greenwood County Drug Enforcement Unit agents to work in Abbeville County. 391 S.C. 592 (2011). As such, this Court finds that under §23-20-50 of the South Carolina Code of Laws, the agents had jurisdiction over the Drug Sale in Abbeville County. This Court finds that the Arrest Warrant obtained from the Drug Sale was properly obtained. This Court finds that Counsel was not ineffective for failing to challenge the Warrant and subsequent Search and resulting confession on these grounds.

2. *Findings and Conclusions as to Claim that Counsel was ineffective for failing to conduct a Franks v. Delaware, 438 US 154 (1978) hearing regarding the search warrant affidavit.*

This Court finds that Counsel did not provide ineffective assistance of counsel as to this claim. This Court finds that Counsel discussed the possibility of pursuing a Franks hearing with the Applicant and that the Applicant made the choice to take the benefit of the plea bargain. This Court finds that the Applicant faced overwhelming evidence of his guilt due to Applicant's confession, the existence of the drugs in his bedroom, and the fact that Ms. Brooks was prepared to testify against him. This Court finds that Applicant made the decision to plead guilty based on the benefit it provided Ms. Brooks, the dismissal of other charges Applicant was facing, and the fact that a potential sentence of Life Without Parole was no longer on the table.

Further, this Court finds that even if Counsel had not discussed pursuing a Franks v. Delaware hearing with Applicant, Applicant would not have reasonably chosen to pursue such a

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course of action had he been informed as to that possibility, as the Applicant could not have met his burden under the Franks v. Delaware standard. 438 U.S. 154, 155-156 (1978). Franks requires that a defendant must first make a substantial preliminary showing that a statement made in the underlying affidavit for a search warrant is false, and that that statement was necessary for the issuing court to find probable cause for the issuance of the warrant. Id. The second requirement is that after meeting the first test, a defendant must then show at a hearing by a preponderance of the evidence, that the statement is false. Id. This Court finds that the Applicant failed to demonstrate that the statement by the officer was false, as the fact that no marijuana was found during the Search does not prove that the officer could not have smelled marijuana emanating from the home, as the officers may have not found the marijuana, or the officer may have smelled freshly smoked marijuana. This Court finds that Applicant failed to demonstrate that the reasonable probability of success at a Franks v. Delaware hearing. 438 U.S. 154, 155-156 (1978). This Court therefore concludes that even had Counsel not informed Applicant about his right to a Franks v. Delaware hearing, Applicant would not have requested one. Id.

3. *Findings and Conclusions as to Claim that Counsel failed to inform the Applicant that he could move pre-trial to try to have the evidence suppressed that was seized from the home.*

This Court finds that Counsel did not provide ineffective assistance of counsel as to this claim. This Court finds that Counsel discussed the possibility of moving to suppress the evidence seized at the home with the Applicant. This Court finds that the Applicant made the choice to take the benefit of the plea bargain. This Court finds that the Applicant faced overwhelming evidence of his guilt due to Applicant's confession, the existence of the drugs in his bedroom, and the fact that Ms. Brooks was prepared to testify against him. This Court finds that Applicant

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made the decision to plead guilty based on the benefit it provided Ms. Brooks, the dismissal of other charges Applicant was facing, and the fact that a potential sentence of Life Without Parole was no longer on the table.

4. *Findings and Conclusions as to Claim that Counsel did not inform the Applicant that he could move to suppress the search warrant and move to quash the indictment.*

This Court finds that Counsel did not provide ineffective assistance of counsel as to this claim. This Court finds that Counsel discussed the possibility of moving to suppress the evidence seized at the Search and then moving to have the underlying charges dismissed with the Applicant. This Court finds as a fact that the Applicant made the choice to take the benefit of the plea bargain rather than risk losing at a suppression hearing. This Court finds that the Applicant faced overwhelming evidence of his guilt due to Applicant's confession, the existence of the drugs in his bedroom, and the fact that Ms. Brooks was prepared to testify against him. This Court finds that Applicant made the decision to plead guilty based on the benefit it provided Ms. Brooks, the dismissal of other charges Applicant was facing, and the fact that a potential sentence of Life Without Parole was no longer on the table.

5. *Findings and Conclusion as to Claim that Counsel did not inform the Applicant that he could challenge probable cause for trafficking cocaine.*

This Court finds that Applicant's testimony was insufficient to support this claim that Counsel failed to inform Applicant could challenge the probable cause for trafficking cocaine. This Court finds that even had Applicant moved to have his charges dismissed at a preliminary hearing, there was enough evidence to establish probable cause that Applicant trafficked cocaine. Under §44-53-370(e) of the South Carolina Code of Laws, a person in South Carolina who is in actual or constructive possession of ten grams or more of cocaine is guilty of trafficking in



cocaine, and if the amount is between twenty eight grams and one hundred grams, the sentence range they face is from seven to twenty eight years. This Court finds that there was probable cause in this case that Applicant trafficked cocaine, as Applicant admitted through a voluntary confession that the drugs found at the Search were his, and the location of the Search was in South Carolina. This Court further finds that the Applicant has shown no evidence that the weight of the cocaine was other than what the Applicant admitted to at the time of the plea. As such, this Court finds there was probable cause for the Applicant to be tried for trafficking cocaine. This Court finds that although Applicant provided insufficient evidence to show that Counsel failed to inform Applicant that Applicant could challenge the probable cause for the charge against Applicant, this Court finds that probable cause existed for the charge against Applicant and that Applicant could not have reasonably chosen to challenge that evidence instead of taking the benefit of the plea bargain.

This Court finds that Applicant's testimony was insufficient to support a claim that Counsel failed to inform Applicant could challenge the probable cause for trafficking "crack cocaine." This Court finds that even had Applicant moved to have his charges dismissed at a preliminary hearing, there was enough evidence to establish probable cause that Applicant trafficked crack cocaine. Under §44-53-375(C) of the South Carolina Code of Laws, a person in South Carolina who is in actual or constructive possession of ten grams or more of crack cocaine is guilty of "trafficking in methamphetamine or cocaine base", and if the amount is between twenty eight grams and one hundred grams, the sentence range they face is from seven to twenty eight years. This Court finds that there was probable cause in this case that Applicant trafficked crack cocaine, as Applicant admitted through a voluntary confession that the drugs found at the Search were his, and the location of the Search was in South Carolina. This Court further finds



that the Applicant has shown no evidence that the weight of the cocaine base was other than what the Applicant admitted to at the time of the plea. As such, this Court finds there was probable cause for the Applicant to be tried for trafficking crack cocaine. This Court finds that although Applicant provided insufficient evidence to show that Counsel failed to inform Applicant that Applicant could challenge the probable cause for the charge against Applicant, this Court finds that probable cause existed for the charge against Applicant and that Applicant could not have reasonably chosen to challenge that evidence instead of taking the benefit of the plea bargain.

6. *Findings and Conclusions as to Claim that Counsel failed to investigate and determine if there was a valid multi-jurisdictional agreement in place.*

This Court finds that Applicant failed to show that Counsel was ineffective for failing to investigate if there was a valid multi-jurisdictional agreement in place. This Court, based on Counsel's testimony, finds that Counsel did investigate and confirm that there was a valid multi-jurisdictional agreement in place at the time of the Sale. As the alleged failure to investigate did not occur, Applicant could not have suffered any prejudice based upon that allegation.

Further, this Court finds that even had Applicant shown that Counsel failed to investigate the validity of the multi-jurisdictional agreement, any deficiencies arising out the issuance of the arrest warrant for the Drug Sale are ultimately immaterial, as the warrant for the Search was based on the Greenwood County Drug Enforcement Unit's agent's smelling marijuana at the location of the Search. See State v. Cox, 287 S.C. 260, 263, 335 S.E.2d 809, 811 (Ct. App. 1985), aff'd in part, rev'd in part, 290 S.C. 489, 351 S.E.2d 570 (1986). See also Wong Sun v. United States, 371 U.S. 471 (1963); and Nix v. Williams, 467 U.S. 431 (1984).

CL 12

7. *Findings and Conclusions as to Claim that Counsel did not challenge the sufficiency of the indictment. (Padgett v. State, 324 SC 22 (1997) claim).*

This Court finds that Applicant has failed show that Counsel was ineffective for failing to challenge the sufficiency of the indictment. This Court finds that Applicant failed to give sufficient evidence that the indictments against him were in fact insufficient. The test for determining the sufficiency of the indictment in South Carolina is a two part test. State v. Gentry, 363 S.C. 93, 102-103 (2005). The first prong of the test is that "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon." Id. The second prong of the test is "whether it apprises the defendant of the elements of the offense that is intended to be charged." Id. at 103. This Court finds that Applicant failed to show that the indictment did not state the offense with sufficient certainty and particularity that the Court would be unable to know what judgment to pronounce and that Applicant did not know what he was called upon to answer and whether he could plead an acquittal or conviction upon the offense. This Court further finds that Applicant failed to show that the indictment failed to apprise the Applicant of the elements of the offense with which he was charged.

This Court also finds that Padgett v. State is not controlling in this matter, as the issue in Padgett was that the defendant's attorney had failed to challenge an indictment where the facts in the case did not support the indictment. 363 S.C. 93 (2005). In this case, the underlying facts of the offense support both indictments upon which Applicant pled.

B. Newly Discovered Evidence

FDL-19

This Court finds that Applicant is correct that Officer Robbie Byrd and certain other Officers from the Greenwood County Drug Enforcement Unit have been indicted for crimes involving moral turpitude since Applicant committed his crimes and pled to them. The Applicant, however, has failed to show that there is any newly discovered evidence. In order to satisfy the second prong of the test laid out in Jamison v. State, Applicant would have to show that the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant's guilty plea to be vacated.” 410 S.C. 456 (2014). The information presented by Applicant does not go to Applicant’s guilt or innocence. Rather, it is only applicable for the purposes of impeaching certain officers who have been indicted since Applicant’s plea for conduct that occurred after Applicant’s plea. Nothing about the newly discovered evidence contradicts Applicant’s admission to his guilt at the time of his plea. Additionally, nothing about the newly discovered evidence contradicts Applicant’s voluntary statement confessing to the crime, given by Applicant prior to arrest. As such, Applicant’s claim for relief on the basis of newly discovered evidence in his case is hereby denied.

VIII. Conclusion

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Further, Applicant failed to establish the existence of newly discovered evidence that is of sufficient weight and quality that the interests of justice would require that Applicant’s conviction be vacated. Jamison v. State,

 20

410 S.C. 456 (2014). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24 day of August, 2017.


 G. Thomas Cooper, Jr.
 Presiding Judge
 Eighth Judicial Circuit

Cannon, South Carolina

WITNESSES

Chad Cox
Greenwood County Sheriff

WARRANT NUMBER

2013A2410201167

[Signature]
Foreman of the Grand Jury

Date: *4/11/14*

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

April Term, 2014

Indictment # 14GS24- *0452*

THE STATE

Vs.

Karlin Ramon Foster

INDICTMENT FOR
TRAFFICKING IN COCAINE BASE
(CRACK COCAINE)
44-53-0375

CDR: 0389

THE STATE OF SOUTH CAROLINA

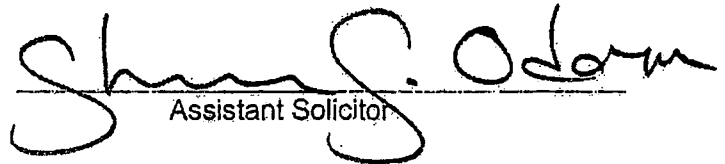
COUNTY OF GREENWOOD

INDICTMENT FOR
TRAFFICKING IN COCAINE BASE
(CRACK COCAINE)
44-53-0375

At a Court of General Sessions, convened on the 11th day of April, 2014, the Grand Jurors of Greenwood County present upon their oath:

That Karlin Ramon Foster, in Greenwood County, on or about September 18, 2013 willfully, unlawfully, and knowingly traffic in cocaine base (crack cocaine), in that the said defendant(s) did sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was in actual or constructive possession or did knowingly attempt to become in actual or constructive possession of 28 grams, but less than 100 grams of cocaine base (crack cocaine), in violation of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

134
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood
STATE VS.
Karlin Ramon Foster

INDICTMENT/CASE#: 14GS24-0452

AKA: _____
Race: B Sex: M Age: 34

A/W#: 2013A2410201167

Date of Offense: 9/18/2013

S.C. Code § : 44-53-0375

CDR Code #: 0389

DOB: 1980 SS#: _____

Address: Morton Road

City, State, Zip: Greenwood, SC

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g -

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 0389

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Odom, Shannon

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. SINCE 2013

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>2500</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>840</u>
TOTAL	\$	\$ <u>28840</u>

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

ATTEST A TRUE COPY

Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

☐ Appointed PD or appointed other counsel, 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2013A2410201167

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

THE STATE

13-29146

against

Karlin Ramon Foster

Address: Morton Road

Greenwood, SC 29646-

Phone: SSNSex: M Race: B Height: 5 6 Weight: 150DL State: SC DL #: 00DOB: 1980 Agency ORI #: SC0240000Prosecuting Agency: Greenwood County SheriffProsecuting Officer: Chad Cox - 0036Offense: Trafficking in Crack (cocaine base) - 28 g or more,
but less than 100 g - 1st offenseOffense Code: 0392Code/Ordinance Sec: 44-53-0375(C)(2)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Karlin Foster
on 09-19-13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
528 Monument Street
Room 114
Greenwood, SC 296462623

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Personally appeared before me the affiant Chad Cox who
being duly sworn deposes and says that defendant Karlin Ramon Foster
did within this county and state on or about 9/18/2013 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenwood)
in the following particulars:DESCRIPTION OF OFFENSE: Trafficking in Crack (cocaine base) - 28 g or more, but less than 100 g - 1st offenseI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:Karlin Foster did, on September 18, 2013, traffic crack cocaine without authority of law to do so. Agents of the Greenwood County
Drug Unit executed a search warrant at Morton Rd, Foster's residence, and located 51.96 grams of an off-white rock-like
substance that field-tested positive for cocaine. Foster gave a written statement implicating himself in this unlawful act. This incident
occurred in Greenwood County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Affiant's Address 528 Edgefield StreetGreenwood, SC 29646-Affiant's Telephone (864)942-8600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/18/2013defendant Karlin Ramon Foster

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenwood) as set forth below:DESCRIPTION OF OFFENSE: Trafficking in Crack (cocaine base) - 28 g or more, but less than 100 g - 1st offenseHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his or her arrest.Sworn to and subscribed before me
on 9/19/2013

Signature of Issuing Judge

C. Ryan Johnson

Judge Code: 7129

(L.S.)

Judge's Address Greenwood County CourthouseGreenwood, SC 29646-2634Judge's Telephone (864)942-8655Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

FILED GENERAL SESSIONS
9TH JUDICIAL CIRCUIT
GREENWOOD, SC
SEP 20 PM 4 23ATTEST A TRUE COPY
ANGELA WOODHURST
CLERK OF COURT
GREENWOOD COUNTY
S.C.

WITNESSES

Chad Cox
Greenwood County Sheriff

WARRANT NUMBER

2013A2410201168

TRUE BILL

Najera Dye

Foreman of the Grand Jury

Date: 4.11.14

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

April Term, 2014

Indictment # 14GS24-0453

THE STATE

vs.

Karlin Ramon Foster

INDICTMENT FOR
TRAFFICKING IN COCAINE
44-53-0370

CDR: 0388

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

TRAFFICKING IN COCAINE

44-53-0370

At a Court of General Sessions, convened on the 11th day of April, 2014, the Grand Jurors of Greenwood County present upon their oath:

That Karlin Ramon Foster, in Greenwood County, on or about September 18, 2013 willfully, unlawfully, and knowingly traffic in cocaine. In that the said defendant(s) did distribute, manufacture, cultivate, deliver, purchase, or bring into this State, and/or did provide financial assistance or otherwise aid, abet, attempt, or conspire to distribute, manufacture, cultivate, deliver, purchase, or bring into this State, and/or was knowingly in actual or constructive possession of more than 28, but less than 100 grams of cocaine. in violation of Section 44-53-370 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

138

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood
 STATE VS.
Karlin Ramon Foster

AKA:

Race: B Sex: M Age: 34DOB: 1980 SS# [REDACTED]Address: Morton RoadCity, State, Zip: Greenwood, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in cocaine, 28 g or more, but less than 100 g - 2nd offenseINDICTMENT/CASE#: 14GS24-0453A/W#: 2013A2410201168Date of Offense: 9/18/2013S.C. Code §: 44-53-0370CDR Code #: 0388

SENTENCE SHEET

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0388
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st of Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Shannon OdomSC Bar# 71891Defendant Karlin FosterAttorney for Defendant [Signature]SC Bar# 71891WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. SINCE 20 SEP 13☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u> </u>
3% to County (if paid in installments)	\$	\$ <u>8.40</u>
TOTAL	\$	\$ <u>288.40</u>

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/E beginning. Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ATTEST A TRUE COPYAngela Woodhurst

ANGELA WOODHURST

CCCP AND GS

GREENWOOD COUNTY

☐ Appointed PD or appointed other counsel, S. C.
 47.12 requires \$500 be paid to Clerk during probation.
Clerk of Court/ Deputy Clerk Lyn R. WellsCourt Reporter: Tonia Scott

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 5138Sentence Date: 10/24/14

ARREST WARRANT

2013A2410201168

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

THE STATE

13-29145

against

Karlin Ramon Foster

Address: Morton Road

Greenwood, SC 29646-

Phone: SSN: [REDACTED]
Sex: M Race: B Height: 5 6 Weight: 150DL State: SC DL #: [REDACTED]
DOB: /1980 Agency ORI #: SC0240000

Prosecuting Agency: Greenwood County Sheriff

Prosecuting Officer: Chad Cox - 0036

Offense: Trafficking in cocaine, 28 g or more, but less than
100 g - 1st offense

Offense Code: 2359

Code/Ordinance Sec: 44-53-0370(e)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant
onKarlin Foster
9-19-13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
528 Monument Street
Room 114
Greenwood, SC 296462623

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant Chad Cox

who

being duly sworn deposes and says that defendant Karlin Ramon Foster

did within this county and state on or about 9/18/2013

State of South Carolina (or ordinance) of

☒ County/☐ Municipality of

Greenwood

violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE: Trafficking in cocaine, 28 g or more, but less than 100 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:Karlin Foster did, on September 18, 2013, traffic cocaine without authority of law to do so. Agents of the Greenwood County Drug
Unit executed a search warrant at Morton Rd, Foster's residence, and located 83.82 grams of a white powdery substance that
field-tested positive for cocaine. Foster gave a written statement implicating himself in this unlawful act. This incident occurred in
Greenwood County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Affiant's Address: 528 Edgefield Street
Greenwood, SC 29646-

Affiant's Telephone (864)942-8600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/18/2013

defendant Karlin Ramon Foster

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenwood

) as set forth below. ATTEST A TRUE COPY:

DESCRIPTION OF OFFENSE: Trafficking in cocaine, 28 g or more, but less than 100 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 9/19/2013

Signature of Issuing Judge

C. Ryan Johnson

Judge's Code: 7129

(L.S.)

Judge's Address: Greenwood County Courthouse

Greenwood, SC 29646-2634

Judge's Telephone (864)942-8655

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

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139