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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Eugene C. Griffith, Jr., Circuit Court Judge

RODRICK DEON IRBY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000824

APPENDIX

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INDICTMENT66

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
 PLAINTIFF,)
)
 -VS-)
)
 RODRICK DEON IRBY,)
)
 DEFENDANT.)
 _____)

2013-GS-23-01245

TRANSCRIPT OF RECORD

MAY 14, 2013
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE LETITIA H. VERDIN

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JOYCE MONTS, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JOSEPH MAXWELL, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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COURT REPORTER NOTE: (The guilty pleas of the following defendants were taken along with this plea; Giovanni Dailey, Lemore Young, William Hunt, Ryan Andrew Dean and Donnie Phillips)

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were presented during this hearing)

1 **MADAME CLERK:** Your Honor, this is indictment 2012-GS-
2 23-8117 and 2012-GS-23-9278 for Giovanni Dailey indicted for
3 possession of marijuana with the intent to distribute,
4 pleading to the same on both. And both are waivers.

5 2013-GS-23-235, Lemore Floyd Young, indicted for
6 distribution of a controlled substance, pleading to
7 manufacturing, first offense. And it is a waiver.

8 2013-GS-23-236, indicted for distribution of a
9 controlled substance, pleading to the same. And it is a
10 waiver.

11 2012-GS-23-8681, William Settler Hunt, indicted for
12 safe-cracking, pleading to the same. It is a waiver. And
13 there's an order of restitution.

14 2013-GS-23-1245, Rodrick Irby, indicted for trafficking
15 cocaine, pleading to trafficking cocaine, ten grams or more,
16 but less than twenty-eight, second offense. And it is a
17 waiver.

18 2013-GS-23-4067, Andrew Dean, indicted for malicious
19 damage to personal property, pleading to the same. And it
20 is a waiver.

21 2013-GS-23-4066, indicted for petty larceny, pleading
22 to the same. It is a waiver. And there's an order of
23 restitution.

24 2013-GS-23-1134, Donnie Ray Phillips, indicted for
25 domestic violence of a high and aggravated nature, pleading

1 to assault and battery in the second degree. And it's a
2 waiver.

3 (Whereupon all of the Defendants were duly sworn)

4 **THE COURT:** All right. Mr. Dailey, you're here today
5 to plead to possession with intent to distribute marijuana,
6 first offense. That carries up to five years. And you're
7 pleading to two counts to that. Is that your understanding?

8 **MR. DAILEY:** Yes, ma'am.

9 **THE COURT:** All right. Mr. Young, you're here today to
10 plead to possession with intent to distribute a controlled
11 substance that carries up to five years and possession with
12 intent to distribute a schedule I, II or III drug, and it
13 carries up to fifteen years. Is that your understanding?

14 **MR. YOUNG:** No, ma'am.

15 **THE COURT:** All right. You want to sit back down and
16 we'll clear it up?

17 (Whereupon Mr. Young was speaking with his attorney)

18 **THE COURT:** Mr. Hunt, you're here today to plead to
19 safe-cracking. That carries up to thirty years. Is that
20 your understanding?

21 **MR. HUNT:** Yes, ma'am.

22 **THE COURT:** Mr. Irby, you're here today to plead to
23 trafficking in cocaine, ten to twenty-eight grams, second
24 offense.

25 **MR. MAXWELL:** Your Honor, it's my understanding it

1 carries five to thirty.

2 **THE COURT:** All right. I can't find my sheet for some
3 reason. All right. That carries five years, up to thirty
4 years. Is that your understanding?

5 **MR. IRBY:** Yes, ma'am.

6 **THE COURT:** Okay. Mr. Dean, you're here today to plead
7 to malicious injury to personal property, less than two
8 thousand. That carries up to thirty days. And petty
9 larceny that carries up to thirty days. Is that your
10 understanding?

11 **MR. DEAN:** Yes, ma'am.

12 **THE COURT:** Okay. What are y'all recommending on Mr.
13 Dean? Is it probation or ---

14 **MR. MAXWELL:** Probation, yes, ma'am, with restitution
15 and PTUP.

16 **THE COURT:** Gotcha. Okay. And, Mr. Phillips, you're
17 here today to plead to assault and battery in the second
18 degree. That carries up to three years. Is that your
19 understanding?

20 **MR. PHILLIPS:** Yes, ma'am.

21 **THE COURT:** Okay. All right.

22 **MR. WATSON:** Your Honor, ---

23 **THE COURT:** Have y'all figured out what's going on with
24 Mr. Young yet?

25 **MR. WATSON:** Yes. Your Honor, if you'd like to proceed

1 on Mr. Dailey in the interim, we can.

2 **THE COURT:** Okay. It's fine. I'll go through the list
3 of question. I just wanted to know whether or not I needed
4 to question Mr. Young.

5 (Pause)

6 **THE COURT:** All right. Mr. Young, you go have a seat
7 and we'll deal with you in just a minute, all right?

8 **MR. YOUNG:** All right. Thank you.

9 (Whereupon Mr. Young was dismissed from the lineup)

10 **THE COURT:** Have you discussed these charges with your
11 attorney, Mr. Dailey?

12 **MR. DAILEY:** Yes, ma'am.

13 **MR. HAMILTON:** And, Your Honor, this is another case
14 where I'm standing in for Mr. Allen.

15 **THE COURT:** Gotcha. And you're satisfied with the
16 service of Mr. Allen and Mr. Hamilton?

17 **MR. DAILEY:** Yes, ma'am.

18 **THE COURT:** Are you okay with Mr. Hamilton standing in
19 today?

20 **MR. DAILEY:** That's all right.

21 **THE COURT:** All right. Are you satisfied with the
22 services of your attorney, Mr. Hunt?

23 **MR. HUNT:** Yes, ma'am.

24 **THE COURT:** Mr. Irby?

25 **MR. IRBY:** Yes, ma'am.

1 **THE COURT:** Mr. Dean?

2 **MR. DEAN:** Yes, ma'am.

3 **THE COURT:** Mr. Phillips?

4 **MR. PHILLIPS:** Yes, ma'am.

5 **THE COURT:** Are you under the influence of drugs or
6 alcohol here today, Mr. Dailey?

7 **MR. DAILEY:** No, ma'am.

8 **THE COURT:** Mr. Hunt?

9 **MR. HUNT:** No, ma'am.

10 **THE COURT:** Mr. Irby?

11 **MR. IRBY:** No, ma'am.

12 **THE COURT:** Mr. Dean?

13 **MR. DEAN:** No, ma'am.

14 **THE COURT:** Mr. Phillips?

15 **MR. PHILLIPS:** No, ma'am.

16 **THE COURT:** Has anybody forced you to plead guilty or
17 promised you anything to get you to plead guilty, Mr.
18 Dailey?

19 **MR. DAILEY:** No, ma'am.

20 **THE COURT:** Mr. Hunt?

21 **MR. HUNT:** No, ma'am.

22 **THE COURT:** Mr. Irby?

23 **MR. IRBY:** No, ma'am.

24 **THE COURT:** Mr. Dean?

25 **MR. DEAN:** No, ma'am.

1 **THE COURT:** Mr. Phillips?

2 **MR. PHILLIPS:** No, ma'am.

3 **THE COURT:** When you plead guilty you give up certain
4 constitutional rights. One is your right to remain silent
5 about these charges. Do you know that, Mr. Dailey?

6 **MR. DAILEY:** Yes, ma'am.

7 **THE COURT:** Mr. Hunt?

8 **MR. HUNT:** Yes, ma'am.

9 **THE COURT:** Mr. Irby?

10 **MR. IRBY:** Yes, ma'am.

11 **THE COURT:** Mr. Dean?

12 **MR. DEAN:** Yes, ma'am.

13 **THE COURT:** And, Mr. Phillips?

14 **MR. PHILLIPS:** Yes, ma'am.

15 **THE COURT:** You also give up your right to a jury
16 trial. At that trial your attorney could call witnesses for
17 you and cross examine witnesses against you, but when you
18 plead guilty you give up your right to a jury trial. Do you
19 know that, Mr. Dailey?

20 **MR. DAILEY:** Yes, ma'am.

21 **THE COURT:** Mr. Hunt?

22 **MR. HUNT:** Yes, ma'am.

23 **THE COURT:** Mr. Irby?

24 **MR. IRBY:** Yes, ma'am.

25 **THE COURT:** Mr. Dean?

1 **MR. DEAN:** Yes, ma'am.

2 **THE COURT:** And, Mr. Phillips?

3 **MR. PHILLIPS:** Yes, ma'am.

4 **THE COURT:** Each of you has charges that have not yet
5 been indicted by the Greenville County Grand Jury. Do you
6 want to give up that right and plead guilty today anyway,
7 Mr. Dailey?

8 **MR. DAILEY:** Yes, ma'am.

9 **THE COURT:** Mr. Hunt?

10 **MR. HUNT:** Yes, ma'am.

11 **THE COURT:** Mr. Irby?

12 **MR. IRBY:** Yes, ma'am.

13 **THE COURT:** Mr. Dean?

14 **MR. DEAN:** Yes, ma'am.

15 **THE COURT:** And, Mr. Phillips?

16 **MR. PHILLIPS:** Yes, ma'am.

17 **THE COURT:** How do you plead, guilty or not guilty, Mr.
18 Dailey?

19 **MR. DAILEY:** Guilty.

20 **THE COURT:** Mr. Hunt?

21 **MR. HUNT:** Guilty.

22 **THE COURT:** Mr. Irby?

23 **MR. IRBY:** Guilty.

24 **THE COURT:** Mr. Dean?

25 **MR. DEAN:** Guilty.

1 **THE COURT:** And, Mr. Phillips?

2 **MR. PHILLIPS:** Guilty.

3 **THE COURT:** You have ten days from today's date to
4 appeal this plea if you so choose, but you must do so in
5 writing to this Court. Yes, sir.

6 **MR. WATSON:** Your Honor, may it please the Court.

7 **THE COURT:** Yes.

8 **MR. WATSON:** Concerning Giovanni Dailey, on February
9 3rd, 2012, officers with Greenville County responded to a
10 reported noise complaint at a residence on Parley Avenue in
11 Greenville County. When they arrived they observed a large
12 crowd that appeared to be filming a music video.

13 As officers approached the residence they detected an
14 odor of marijuana emanating from the area. Officers located
15 the homeowner who indicated that the residence was his and
16 that he and others had been smoking marijuana.

17 Based on those observations officers conducted a
18 protective sweep of the residence and observed what appeared
19 to be marijuana in plain view. Officers obtained and
20 executed a search warrant at the residence.

21 Inside the Defendant's vehicle parked at the residence
22 officers located a Mason jar filled with twenty-three
23 baggies of individually wrapped quantities of marijuana, the
24 total weight of which was thirteen point four eight (13.48)
25 grams.

1 As to the second count, on August 15th, 2012 officers
2 with Greenville County were patrolling the area of Hicks
3 Court in an effort to locate a wanted fugitive. Officers
4 located a vehicle matching the description of the one for
5 which they were searching and pursued it to a nearby
6 residence.

7 At the residence all the occupants exited the car and
8 officers approached the residence. As officers approached
9 they detected the odor of marijuana emanating from the car.
10 All the occupants were detained and officers observed in the
11 center console a baggy of marijuana.

12 During a more thorough search they located an
13 additional bag of marijuana, combined weight of which was
14 thirty-two point four eight (32.48) grams as well as digital
15 scales. In this Defendant's pocket officers also located
16 six fifty in cash, the source of which the Defendant
17 indicated he was unsure.

18 Officers also discovered that the Defendant's car was
19 equipped with blue lights that could be activated with a
20 floor switch. Defendant ultimately told police that the
21 marijuana in the vehicle was his.

22 This Defendant does have a record and there is a
23 recommendation.

24 **THE COURT:** What's the recommendation?

25 **MR. WATSON:** For a sentence suspended to nine months

1 HIP and probation.

2 **THE COURT:** I'll go along with that.

3 **MR. HAMILTON:** Thank you, Your Honor.

4 **THE COURT:** Five years provided upon the service of
5 nine months home incarceration, the balance is suspended
6 with probation for thirty months, substance abuse counseling
7 and random drug and alcohol testing. And then nine months
8 HIP, concurrent. Good luck to you.

9 **MR. WATSON:** Thank you, Your Honor.

10 **THE COURT:** Thank you.

11 **MR. WATSON:** Your Honor, may it please the Court. The
12 State presenting William Settler Hunt. On or about June
13 10th, 2012 the Defendant used a key, tools or other
14 implements to enter a safe belonging to Katherine Alewine
15 without her knowledge or permission and with the intent to
16 steal items of value therefrom.

17 Defendant took approximately five hundred dollars cash
18 from the safe and gave a written statement admitting that he
19 had gotten in the safe on previous occasions, but denying he
20 accessed the safe on this date. The Defendant's
21 fingerprints were identified on an envelope inside the safe
22 that had contained, according to the victim, contained the
23 money she was missing.

24 This incident occurred at the victim's residence,
25 apartment 217, Andover Apartments on Cleveland Street in

1 Greenville County where the victim had allowed the Defendant
2 to stay for a period of time. This is a no recommendation
3 and this Defendant does have a record.

4 **THE COURT:** What's his prior record?

5 **MR. WATSON:** In 2005 we have obtaining prescription
6 drugs by fraud, 2009, grand larceny, 2011, assault and
7 battery, high and aggravated nature. In Georgia, 2002, DUI
8 and driving without a license.

9 **THE COURT:** Okay. And, Mr. Hunt, you understand this
10 is a most serious offense, meaning if you were to get one
11 other most serious offense or two other serious offenses the
12 State could seek life without the possibility of parole
13 against you. Do you know that?

14 **MR. HUNT:** Yes, ma'am.

15 **THE COURT:** All right. And this is also, of course, a
16 violent offense, meaning any active jail time you receive,
17 you'll serve a greater percentage than if it were a non-
18 violent offense. Do you know that?

19 **MR. HUNT:** Yes, ma'am.

20 **THE COURT:** All right. Yes, ma'am.

21 **MS. HENRY:** Thank you, Your Honor. Just briefly about
22 the facts, my client lived there with the victim in this
23 case. They were boyfriend and girlfriend. She had a small
24 -- I don't have any photographs with me for you to look at.
25 It's a really small, like portable, kind of like a Teflon

1 looking suitcase.

2 He hadn't denied he did this. And he told me from the
3 very beginning that he took her five hundred dollars while
4 he was living there. I think he even left her a note saying
5 that he'd be back, he'd be back later that afternoon, et
6 cetera. Obviously since then they've broken up and, you
7 know, that's over.

8 My client had a -- like a drug problem ever since he
9 was thirteen. From what he's told me it started with his
10 step-father and that it's kind of escalated since then.
11 That's the reason for the breakup of the relationship and
12 this problem with the suitcase.

13 He's talked to David Gay on his own. David Gay wrote
14 me about him and said that he was positive he could get him
15 into Haven of Rest, which is an eighteen month program in
16 Anderson. And I've got the letter here from him.

17 He also signed up in Greenville County and completed
18 their drug program there. And I've got the certificate. He
19 was also a teacher in jail. He's been doing really, really
20 well.

21 He's been in jail for a significant amount of time. I
22 believe he's been in there since July of last year. So for
23 almost a full year at this point.

24 **THE COURT:** How many days?

25 **MR. WATSON:** That is correct. Two hundred and ninety-

1 four days ---

2 **THE COURT:** Okay.

3 **MR. WATSON:** --- as of today.

4 **MS. HENRY:** And ---

5 **THE COURT:** Yes, ma'am.

6 **MS. HENRY:** Sorry. He's also offered repeatedly to pay
7 back this money as soon as he gets out. He's got no problem
8 with that. And that, you know, I've discussed that with the
9 solicitor.

10 We'd ask you to consider doing some kind of time served
11 and probation. When I talked to him about just asking for
12 time served, he said that he wanted to pay back the
13 restitution.

14 And he also wanted you, if you would consider it, to
15 court order some kind of rehab. I think that he would need
16 that kind of help in order to get David Gay involved and to
17 make sure he got into this Haven of Rest, and that he really
18 wanted to do that before -- some kind of inpatient rehab
19 before he was released at all. And we'd ask you to consider
20 that.

21 **MR. WATSON:** Your Honor, miscalculation. He's been in
22 jail for three hundred and one days ---

23 **THE COURT:** Okay.

24 **MR. WATSON:** --- as of today. I apologize.

25 **THE COURT:** Tell me his prior record one more time, I'm

1 sorry.

2 **MR. WATSON:** 2005, obtaining prescription drugs by
3 fraud, 2009, grand larceny, 2011, ABHAN. In Georgia, 2002 a
4 DUI and driving without a license.

5 **THE COURT:** Ten years provided upon the service of two,
6 the balance is suspended with probation for three years to
7 follow, credit for three hundred and one days time served,
8 restitution per the restitution order, substance abuse
9 counseling, inpatient, and random drug and alcohol testing.
10 I'll put ATU on it, but he's probably not serving long
11 enough to get that.

12 **MS. HENRY:** Your Honor, would you consider PTUP after
13 the restitution and rehab for the probation?

14 **THE COURT:** All right. I'll do it. Good luck to you.

15 **MS. HENRY:** Thank you, Your Honor.

16 **MS. MONTS:** Regarding Mr. Irby, this incident occurred
17 on April 28th of 2010. Deputies with the Sheriff's Office
18 responded to the Marathon Gas Station on Wade Hampton
19 Boulevard in Greenville County regarding a shooting victim.

20 Officers arrived and saw the Defendant lying in the
21 parking lot in a pool of blood next to a car. The co-
22 defendant, John Copeland, was coming out of the store. He
23 had blood on his shoes and his hands. EMS did respond to
24 care for the Defendant who had a gunshot wound to his
25 abdomen. They did take him to the Greenville Memorial

1 Hospital.

2 The co-defendant had gone inside the store and while on
3 his cell phone told the clerk to call 911 because his friend
4 had been shot. The clerk stated the co-defendant had gone
5 into the bathroom and he'd been the only one to go inside
6 there. Officers did go inside the bathroom and found a bag
7 of cocaine on the floor behind the toilet covered in blood.

8 The cocaine analyzed as twenty point -- twenty-seven
9 point six one (27.61) grams, which is only point three nine
10 (.39) grams from the next higher level of trafficking. The
11 blood on the bag of the cocaine was tested and did belong to
12 Rodrick Irby, the Defendant.

13 Officers also responded to the original location of the
14 shooting at 501 Lincoln Lane, but no one there was
15 cooperative. The co-defendant, Mr. Copeland, had driven Mr.
16 Irby from that location where he was shot in Mr. Irby's
17 girlfriend's car.

18 Mr. Copeland ran a red light and hit another vehicle.
19 After that hit and run he did turn into the Marathon Gas
20 Station where this -- where the police came and met up with
21 the two of them.

22 Mr. Copeland, the co-defendant, also gave a statement
23 that the shooting was over a drug deal that had gone bad and
24 that once arriving at the gas station he had taken the
25 twenty-seven point six one (27.61) grams of cocaine from Mr.

1 Irby's person, which was covered in blood, and did hide it
2 in the bathroom at the Marathon Gas Station.

3 Your Honor, the inside of the car also had lots of the
4 Defendant's blood inside, Your Honor. This is Defendant's
5 sixth drug offense. We are reducing it to a second offense
6 to take it off of the mandatory twenty-five years.

7 There is a recommendation. Defendant does have an
8 extensive prior record. He's currently serving a thirty-
9 nine month federal sentence.

10 **THE COURT:** What is the recommendation?

11 **MS. MONTS:** Your Honor, that's for an eight year active
12 sentence.

13 **THE COURT:** All right.

14 **MR. MAXWELL:** Your Honor, if I may.

15 **THE COURT:** Yes, sir.

16 **MR. MAXWELL:** We are going to ask for slightly less
17 time. Mr. Irby was trying to help out with the solicitor on
18 her case with the other co-defendant. He's offered to
19 testify and she refused his help.

20 Additionally, you know, the co-defendant did write a
21 statement, but he wrote it two and a half years after the
22 incident, after, you know, it had all been through. And I'm
23 sure that they were pressuring him with these charges.

24 Mr. Irby is thirty years old. He's got his GED. He
25 has three -- three biological children and three step-

1 children.

2 His mother was here earlier. She works at Gateway --
3 Gateway Rehabilitation Center. There she's a substance
4 abuse counselor. She was here to express her opinion of
5 Rodrick and that he is a wonderful father and that he's a
6 great father to these children, not only to the biological
7 children, but to the step-children as well.

8 His -- I guess one of the children's mothers has just
9 recently passed away last year, I guess, May of last year.
10 And so he -- she -- he no longer has a mother figure.
11 Rodrick is the only biological son -- father with him. And
12 he would like to be with them.

13 As you heard, he is doing thirty-nine years [sic] in
14 federal prison for an unrelated charge. That also includes
15 three years probation on the back end. As part of that
16 probation, he's having to go to Gateway and get substance
17 and alcohol abuse counseling. In prison he's also doing
18 other substance abuse counseling.

19 Your Honor, because of all this we feel that, you know,
20 he's definitely on the federal government's radar. They're
21 watching -- he's going to be on probation with them. So we
22 would ask that you do any kind of straight time, please
23 don't put any probation back in. They already got that
24 covered.

25 Additionally, you know, we would ask that you run this

1 concurrent and backdate it to when his sentence started with
2 the federal time so that he can run it all together.

3 **THE COURT:** What's the State's position about running
4 it concurrent with the federal time?

5 **MS. MONTS:** Your Honor, as far -- we don't believe that
6 it should be backdated, but we have no -- we would recommend
7 that it run concurrent. And I would like to read his record
8 at the appropriate time. But we do agree that it should run
9 concurrent.

10 **MR. MAXWELL:** And as far as his record, two or three of
11 those property offenses was about ten years ago. But he
12 does have an extensive record. We're not here to dispute
13 that. But he is here today taking responsibility for this.

14 **THE COURT:** Okay.

15 **MR. MAXWELL:** And, you know, he wants to get back to
16 these children. He's a good father figure. And but for
17 these drug offenses, you know, he's there for them.

18 **THE COURT:** Okay. All right. His prior record.

19 **MS. MONTS:** Your Honor, 2000, a burglary, second
20 degree, kidnapping, lynching, second degree, strong arm
21 robbery, 2002, possession of crack cocaine, a second
22 possession of crack cocaine, second offense, assault and
23 battery high and aggravated nature, 2004, breach of peace,
24 2006, driving under suspension, second, a possession of
25 marijuana, 2007, trafficking crack cocaine out of Laurens

1 County, 2011, open container, September of 2011,
2 distribution of crack cocaine, third offense out of Laurens
3 County.

4 Your Honor, and August of 2012 is when he pled on his
5 federal charges. He pled to PWID and distribution of
6 cocaine base. I don't know what his -- turned himself in
7 date was for that, but the guilty plea was accepted August
8 13th of 2012.

9 **MR. MAXWELL:** Your Honor, he was arrested for this
10 charge and for the federal charge on April the 5th.

11 **THE COURT:** All right.

12 **MR. MAXWELL:** 2012.

13 **MS. MONTS:** Your Honor, we would say he had a hundred
14 and ten days.

15 **THE COURT:** For somebody his age, that record is
16 something to behold. I'm going to give him eight years. I
17 will run it concurrent with the federal sentence, but I'm
18 not going to backdate it. Good luck to you.

19 **MR. MAXWELL:** Thank you, Your Honor.

20 **THE COURT:** Thank you.

21 (Requested hearing ended at 3:49 PM)

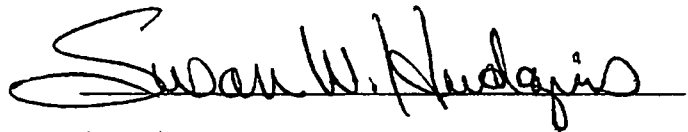
22 (End of requested transcript of record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 14th day of May 2013.

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

April 7, 2014

A handwritten signature in black ink, reading "Susan W. Hudgins". The signature is written in a cursive style with a large, sweeping initial "S".

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
County of Greenville)

IN THE COURT OF COMMON PLEAS

Rodrick Deon Irby)
Full name and prison number (if any) of Applicant)

vs.)

The State Of South Carolina)
Name of Respondent)

2014-CP-23- 01127

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WIDKENSIMMER
2014 FEB 28 PM 2 19
APPLICATION FOR
POST-CONVICTION RELIEF

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 Butner II Federal correctional Institution P.O. Box 1500 Butner NC. 27509
2. Name and location of Court which imposed sentence Greenville county court house
3. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) N/A
 - (b) _____
 - (c) _____

4. The date upon which sentence was imposed and the terms of sentence:
 (a) 5/14/13 8 YEARS CONCURRENT WITH FEDERAL
 (b) SENTENCE.
 (c) _____

5. Check whether a finding of guilty was made:
 (a) after a plea of guilty
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgement of conviction or the imposition of sentence?
NO

7. If you answered "yes" to (6), list:
 (a) the name of each Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____

(c) the date of each such result:
 i. N/A
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. N/A
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:
 (a) BECAUSE INEFFECTIVE ~~AND~~ COUNSEL CAN'T BE DIRECT
 (b) APPEALED.

(c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Denial of effective assistance of ~~the~~ counsel
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See Attachment
- (b) _____
- (c) _____

11. Prior to this application have you filed with respect to this conviction:

- (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 (7)? no
- (d) any other petitions, motions or applications in this or any other Court? no

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) N/A
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgement 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? _____

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you:
 - i. Joel Maxwell
 - ii. 305 North St. Rm 123
Greenville S.C. 29601
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty plea And sentencing
 - ii. _____
 - iii. _____

18. State clearly the relief you seek in filing this application:

fair trial
I would like for my guilty Plea to be vacated

19. Are you now under sentence from any other court that you have not challenged?

yes Federal sentence

STATE OF SOUTH CAROLINA)
County of Granville)

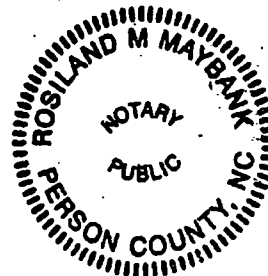
VERIFICATION

I, Rodrick Dean Jobl, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Rodrick Jobl 2/19/14

SWORN to and subscribed before me this 19 day of February

Rosiland M. Maybank (L.S.)
Notary Public



My Commission Expires: 10/27/2014

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

I, Rodrick Dean IRBY, 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:

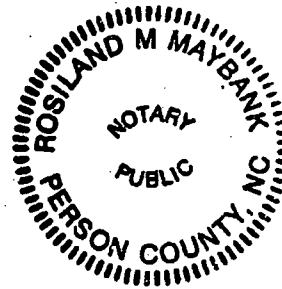
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Rodrick Irby 2/19/14
Applicant

SWORN or affirmed to and subscribed before me this
19 day of February, 2014.

Rosiland M. Maybank
Notary Public

My Commission Expires: 10-27-2014



question 10.

I told my attorney that I wasn't guilty of the charge but he inform me that the jury would be prejudice therefore evidence wouldn't be necessary.

He (my attorney) also told me that I wouldn't get 8 years. He said maybe 5 or 6 but he was sure I wouldn't get 8. he didn't even ask for 5 or 6. And I got 8. He told me that charges more than 10 years old (record) wouldn't be used against me, which they ~~was~~ was. We agreed that we would tell the judge things about my past such as drug use hoping that she would take some of the things into consideration he never brought any of it up. He told me that my time would be back dated to April '12" and my time started Jan '13"; these are the reasons I enter a guilty plea and I feel my attorney was ineffective.

32
Rodrick D. Irby-240-30-171

Federal Correctional Institution 2

P.O. Box 1500

Butner ~~NC~~ 27509

N.C.

FEDERAL CORRECTIONAL INST. #2
P.O. BOX 1500
BUTNER, NORTH CAROLINA 27509

DATE: 12-25-14

"SPECIAL LEGAL MAIL"

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened or inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer enclosed correspondence for forwarding to another address, please return the enclosed to the above address.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Rodrick Deon Irby,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2014-CP-23-1127

RETURN

In response to the post-conviction relief application filed February 28, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated in FCI Butner Medium II in Butner, North Carolina. The Applicant waived presentment to the Greenville County Grand Jury for trafficking cocaine (2013-GS-23-1245). Joseph B. Maxwell, Esquire represented the Applicant.

On May 14, 2013, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to eight years imprisonment, to be concurrent with his federal sentence. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction and the guilty plea transcript.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel:
 - a. Stated he would not receive an eight year sentence.

- b. Stated "that charges more than 10 years old (Record) would'nt be used against me, which they was."
- c. Stated he would tell the plea judge "things about my past such as drug use" but he did not do so.
- d. Stated "my time would be back dated to April 12 and my time started Jan 13."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at

2065). Second, counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Karen Centig
Attorneys for Respondent

MAY 7, 2014

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) RODRICK DEON IRBY:

Direct Examination by Ms. Horlbeck.....4

(RW) JOSEPH BRANTLEY MAXWELL:

Direct Examination by Ms. Ratigan.....16

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 (WHEREUPON, Mr. Rodrick Deon Irby's appearance was
3 via telephone.)

4 MS. RATIGAN: May it please the Court, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. RATIGAN: The State would call the case of
7 Rodrick Irby v. the State of South Carolina. The docket
8 number is 2014-CP-23-1127.

9 Mr. Irby waived presentment on the charge of
10 trafficking cocaine. He was represented on that charge by
11 Mr. Maxwell.

12 On May 14th of 2013, he pled guilty before Judge
13 Verdin. Judge Verdin sentenced him to eight years
14 imprisonment for trafficking cocaine 10 to 28 grams second
15 offense. That was to be concurrent with his federal
16 sentence.

17 Mr. Irby did not file an appeal.

18 And the State is ready to proceed.

19 THE COURT: Are you ready, Ms. Horlbeck?

20 MS. HORLBECK: Yes, sir, I'm ready.

21 THE COURT: All right.

22 MS. HORLBECK: We would call Mr. Rodrick Irby as our
23 first -- as our only witness.

24 THE CLERK: Mr. Irby, I've got to swear you -- I'm
25 going to swear you in.

1 WHEREUPON,

2 RODRICK DEON IRBY,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Please state your full name for the
5 record.

6 THE WITNESS: Rodrick Deon Irby.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MS. HORLBECK:

10 Q Mr. Irby, where are you currently incarcerated?

11 A At Butner Federal Correctional Institution.

12 Q All right. And did you plead guilty to trafficking
13 cocaine in Greenville County?

14 A Yes.

15 Q Who represented you on that charge?

16 A Joey Maxwell.

17 Q All right. And do you recall filing a petition for
18 post-conviction relief?

19 A Yes.

20 Q All right. And, in your petition, one of the
21 allegations that you raised was an allegation regarding
22 the -- an eight-year sentence. Do you recall that issue?

23 A Yes.

24 Q Okay. Tell the Court a little bit about that issue
25 and why you raised it.

1 A Well, we was going through the plea, the plea
2 agreement, or whatever. I was -- I really didn't want to
3 plead, because I was talking about going to trial.

4 So he told me that he might could get it down to five
5 years, the plea to five years. So he went back and he
6 talked with the Prosecutor. He came back and he said that
7 she -- like we can argue for five years, and she was going
8 to recommend eight.

9 But he said being that we was going in front of Judge
10 Verdin, she's a lenient judge and she won't give you the
11 eight years. He was like, She'll probably give you the
12 five years. She'll go on the low end. That's what she
13 usually do. And he was like, To satisfy both parties, she
14 might try to meet it in the halfway. But she don't -- I
15 mean, he pretty much gave me his word that I wouldn't get
16 the eight years since I was going in front of that judge.
17 She was supposed to be a lenient judge.

18 And then we had some issues with my record. He told
19 me that like the charges that was more than 10 years old,
20 they wouldn't be used against me, or whatever. So when we
21 got in front of the judge, that was brought up. Every
22 charge I had for the past 10 years was brought up.

23 And then once the Judge gave me eight years, he told
24 me that I got the eight years because of my record, which
25 he told me that the charges wouldn't be used against me if

1 they was more than 10 years.

2 And then, on top of that, he didn't even ask for five
3 years. He didn't even try to offer to get five years.

4 Q So let me back you up a little bit. You said that --
5 you just testified a second ago that Mr. Maxwell gave you
6 his word that you would not receive an eight-year
7 sentence?

8 A Yes.

9 Q All right. Did he, also, explain to you that the
10 recommendation from the State was eight years?

11 A Yes. He explained that.

12 Q All right. Now, when he gave you his word that you
13 wouldn't get the eight years, tell me exactly what he said
14 to you.

15 A He said that Judge Verdin was a lenient judge, that
16 she always usually go with the low end. She never -- she
17 don't go with the high end. She probably would try to
18 satisfy both parties and maybe give me somewhere in
19 between. But we probably would be looking at the five
20 years. And he was telling me that's probably what it'll
21 be, instead of going to trial.

22 Because I told him the eight years was too much, and
23 I didn't want to plead to the eight years. So he
24 explained to me that I was going in front of a good judge,
25 and she's lenient, and she wouldn't give me the eight

1 years.

2 Q Okay. He explained to you that you were going in
3 front of a good judge; right?

4 A Yes.

5 Q And that she was lenient; right?

6 A Yes.

7 Q Did he say she would probably not give you the eight
8 years, or did he say she definitely will not give you the
9 eight years?

10 A He said I definitely wouldn't get eight years.

11 Q All right. Well, what was -- did he provide you any
12 reason for saying she -- the Judge would definitely not
13 give you eight years?

14 A Just based on his previous experience with her.

15 Q Okay. And you said -- you, also, testified that
16 during the plea that Mr. Maxwell did not ask for five or
17 six years?

18 A Yeah. He didn't ask for it, no.

19 Q All right. Do you recall what sentence he did ask
20 for?

21 A He didn't ask for no sentence. He didn't ask for a
22 number.

23 Q Did you, specifically, discuss with him -- with
24 Mr. Maxwell and tell Mr. Maxwell to ask for a five- or
25 six-year sentence?

1 A Yes. That's what the -- I mean, he came back with
2 the plea. He said that he would ask for five years, but
3 the Prosecutor -- see would the Prosecutor agree to it.

4 So once he talked to the Prosecutor and came back to
5 me, he said that she wouldn't agree to it. But what we
6 could do is she is going to recommend eight and he can
7 fight for the five. He can go in front of the Judge and
8 ask the Judge to give me the five years. He said I can't
9 get no less than five years. And I can just -- and they
10 can just like go back and forth. He can ask for the five,
11 and she can ask for the eight. That's why he was saying
12 maybe she might try to satisfy both parties and do it in
13 the middle. But he was like I don't have to worry about
14 getting the eight. He was like she wouldn't give me the
15 eight years, though.

16 And then once I got it, that's when he said something
17 about my record.

18 Q Do you remember the Judge asking you if anyone had
19 promised you anything to get you to plead guilty?

20 A Yes, I remember.

21 Q Do you remember telling Judge Verdin, no, no one has
22 promised me anything to get me to plead guilty?

23 A Yes. I remember that, too.

24 Q Why did you tell -- why didn't you tell Judge Verdin,
25 at that time, that Mr. Maxwell had guaranteed or given you

1 his word that you would not get an eight-year sentence?

2 A I mean, like from previous -- because I done been in
3 front of a judge before. Like the agreement is like I
4 might sign and go in front of a judge and get three years
5 or four years. And that's what I usually get. Like
6 whatever the lawyer usually tells me that I was going to
7 get, that's what I usually would get. And she was like
8 have I been promised or threatened, stuff like that. I
9 ain't -- I didn't really realize the significance of the
10 question when she asked me.

11 Q Okay. And is that -- because you didn't realize the
12 significance of the question, you didn't tell her that you
13 felt like --

14 A Yeah. That's why.

15 Q -- Mr. Maxwell had promised you a sentence?

16 A Yeah. When she was asking me questions, I really was
17 just like, no, ma'am, yes, ma'am, really just go through
18 it and get it over with. Because I thought everything was
19 going to turn out fine.

20 Q Okay. And based on Mr. Maxwell's advice that you'd
21 get -- that -- in giving you his word that you would get
22 an eight-year sentence, did you decide to plead?

23 A Based on -- say that again.

24 Q Based on Mr. Maxwell's advice about the eight-year
25 sentence, did you decide to plead?

1 A Based on his advice, yes. That's why I decided to
2 plead.

3 Q Okay. And would you have done anything differently
4 today if you'd known about his error?

5 A Yes.

6 Q What would you have done differently?

7 A I mean, I would have -- I wanted to go to trial. If
8 I had -- if he -- I would have went to trial. Because I
9 told him I didn't want to take the eight years. He was --
10 that's when he told me that I wouldn't get the eight
11 years.

12 Then he informed me that he never did a jury trial
13 before either. He was like he never did a jury trial. He
14 was like I'll have to find somebody to help him with the
15 trial, or whatever. So it was like it probably would be
16 best just to go ahead and take the plea, because I
17 wouldn't get the eight years anyway. Because I had,
18 specifically, told him that eight years was too much time.

19 Q Okay. You, also, said that -- you testified just a
20 second ago that you discussed with Mr. Maxwell your prior
21 record?

22 A Yes. I discussed that, too.

23 Q And Mr. Maxwell's advice to you about your prior
24 record was what?

25 A He was ~~he~~ he said because I got -- what I'm doing the

1 time for now is a federal charge. But a federal charge,
2 and a trafficking charge, and I had a state charge with
3 Laurens County, I got arrested on all three of those
4 charges at one time.

5 So he was breaking it down to me like it ain't that
6 bad since I got all of them at one time. And, plus, my
7 charges that were more than 10 years old, they wouldn't be
8 able to bring it up against me because they was over 10
9 years old.

10 Q Okay.

11 A And then once I went in front of the Judge like the
12 way that I got my charges all at the same time, they still
13 broke them down separately on each offense. And then,
14 plus, they used the two that was more than 10 years old.

15 Q Okay.

16 A And then the Judge took that into consideration. And
17 she gave me the eight years. And then after it was all
18 said and done, he told me -- he was like your record,
19 that's why she gave it to you.

20 Q All right. Let me ask you a couple of questions.

21 A Okay.

22 Q Did Mr. Maxwell advise you that your entire record
23 would be revealed to the Judge during the guilty plea?

24 A Not my entire record, just the charges I got that
25 was -- you know what I'm saying -- within the 10-year

1 timeframe.

2 Q Okay.

3 A The ones that was past 10 years, he said, wouldn't be
4 a factor.

5 Q All right. And did you decide to plead based off
6 Mr. Maxwell's advice that your entire record would not be
7 revealed to Judge Verdin?

8 A Yes.

9 Q Okay. And would you still have pled today knowing of
10 Mr. Maxwell's mistaken advice?

11 A No, ma'am.

12 Q What would you have done differently?

13 A I probably would have tried to get another lawyer.
14 Because he said he wasn't too good with a jury trial. He
15 had never had one since he'd been a lawyer.

16 Q Would you still have gone to a jury trial? That's
17 what I'm asking you.

18 A Yes, but not with Mr. Maxwell.

19 Q All right. You -- how about your sentence? Was
20 there an issue you raised in your petition about
21 backdating your sentence?

22 A Yeah. He told me -- I mean --

23 Q Who told you --

24 A -- he told me that I --

25 Q -- who --

1 A -- would -- that it'd get backdated. He said they
2 would backdate your sentence to the date of your arrest.

3 Q Who told you that?

4 A Mr. Maxwell.

5 Q All right. When you say the date of your arrest,
6 date of your federal arrest? Is that what you're talking
7 about?

8 A Yes. On my -- yes. Like I said, I got arrested on
9 all my charges at the same time. I just had a hold from
10 the U.S. Marshall's, a hold for Greenville. And I was
11 placed in Laurens County. But I just had the holds on me.

12 So he was like I'll get it backdated to that date.

13 Q To the date of your arrest, or the date that your
14 federal sentence began on April the --

15 A No. The date of my arrest.

16 Q Okay. What date was that? Do you remember?

17 A April the 5th, 2012.

18 Q Okay. Do you recall in the transcript Mr. Maxwell
19 requesting that the -- that Judge Verdin backdate your
20 sentence?

21 A Yeah. He did request it.

22 Q Okay. And --

23 A But he just didn't explain to me that I'm going to
24 request it, and it's possible that they deny it. You know
25 what I'm saying? He didn't explain it to me like that,

1 though.

2 Q What did he explain to you about backdating the
3 sentence?

4 A It was just like he said that we're going to -- I'll
5 fight for the five years and I'll get it backdated to
6 April the 5th. Just that he didn't say -- I mean, I
7 thought it was going to be guaranteed.

8 Q Okay. Did Mr. Maxwell explain to you that it was
9 possible the Court would not backdate your sentence to
10 April the 5th, 2012?

11 A No. He didn't tell me that, that there was a
12 possibility that they would not do it.

13 Q All right. And, based on the fact that he didn't
14 tell you that, did you decide to plead?

15 A Yes.

16 Q All right. Would you have still pled knowing that he
17 made -- knowing that Mr. Maxwell's advice was incorrect?

18 A No. I still wouldn't have pled. Because it was like
19 a whole -- almost a -- well, it was like eight months that
20 I got robbed for.

21 Q All right. You said you would not have pled?

22 A I would not have pled.

23 Q All right. Are there any other issues that you want
24 to raise in court today?

25 A No, ma'am.

1 Q Okay. Do you know if your state sentence is running
2 concurrent with your federal sentence?

3 A Yes. It's running concurrent.

4 MS. HORLBECK: Okay. Please answer any questions
5 that Ms. Ratigan may have. Ms. Ratigan is the attorney
6 with the Attorney General's Office.

7 MS. RATIGAN: I don't have any cross-examination,
8 Your Honor.

9 THE COURT: What sentence does he have in federal
10 court?

11 BY MS. HORLBECK:

12 Q Tell me what sentence you're serving from the feds.

13 A 39 months.

14 MS. HORLBECK: All right. That's all I have, Judge.

15 THE COURT: All right. Ms. Ratigan.

16 MS. RATIGAN: The State would call Mr. Maxwell.

17 THE CLERK: Karen, do you want him over here near the
18 phone? Do you think that might be a good idea?

19 MS. RATIGAN: Yes, probably.

20 MR. JOSEPH MAXWELL: That's fine..

21 THE COURT: Yes. You can keep him over there.

22 MS. RATIGAN: You want him over here?

23 THE COURT: Yes..

24 THE CLERK: Mr. Maxwell, please, raise your right
25 hand.

1 WHEREUPON,

2 JOSEPH BRANTLEY MAXWELL,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please state your full name for the record.

6 THE WITNESS: Joseph Brantley Maxwell.

7 THE CLERK: Thank you.

8 MS. RATIGAN: Come over -- maybe if you can stand
9 right in front of that speaker phone.

10 DIRECT EXAMINATION

11 BY MS. RATIGAN:

12 Q Mr. Maxwell, do you remember representing Mr. Irby on
13 these charges?

14 A I do.

15 Q And were you appointed through the Public Defender's
16 Office?

17 A I was.

18 Q Did you file the usual discovery motions?

19 A I did, Brady and Rule 5.

20 Q To the best of your knowledge, did you receive full
21 discovery from the State?

22 A I did.

23 Q When you represented Mr. Irby, was he here in
24 Greenville County, or was he incarcerated elsewhere?

25 A He was here in Greenville County.

1 Q Okay. Did you have an opportunity to review the
2 discovery materials with him?

3 A I did. I reviewed it with him -- let's see -- as
4 early as March the 19th.

5 Q Okay. And did he -- was he able to discuss with you
6 the facts and events of that day?

7 A Yes. He remembered the events of that day quite
8 clearly. And we had numerous conversations about it.

9 Q Okay. Now, when he was arrested -- Mr. Irby has
10 testified today he was arrested on Greenville charges,
11 Laurens charges, and federal charges. Does that sound
12 about right?

13 A It sounds about right. I don't remember the exact
14 circumstances surrounding -- I believe that these
15 Greenville warrants were out there outstanding. And that
16 when he was picked up on the other charges, they served
17 him with that, I believe.

18 Q Okay. And had either the Laurens charges or the
19 federal charges been disposed of when he pled guilty?

20 A That's correct. When I was appointed to represent
21 him, he had already handled the federal charge. And he
22 had already started his 39-month federal sentence.

23 Q So, basically, once he pled guilty, they picked him
24 up and took him right to the FBP [phonetic]?

25 A Yes.

1 Q Okay. Now, did you ever -- let me back up. Did you
2 ever negotiate an eight-year recommendation with
3 Ms. Monts?

4 A Yes. Initially, Mr. Irby was charged with
5 trafficking third offense, which would have required the
6 mandatory minimum of 25 years. And we -- I, initially,
7 tried to get her just to dismiss it because he was doing
8 the federal stuff. She said, No, I can't dismiss it. But
9 what I will do is reduce it to a second offense and
10 recommend eight years. I tried to get her down from the
11 eight and she would not do that. Her only counter offer
12 was to do a straight-up plea.

13 I told Mr. Irby that what we should do is -- what I
14 would advise him to do was to take the eight-year
15 recommendation, and that I can argue and try to get it
16 below that. But at no time did I promise him that it
17 would be below the eight years. I think I was pretty
18 straightforward that eight was what he would be getting.

19 Q Did you ever tell him that you would ask for five?

20 A I told him -- he -- that's the number that he wanted
21 was five. And I told him that we would try to get there.
22 I don't remember saying I'll ask for five. But that was
23 the number that he wanted. That's the number that I tried
24 to negotiate down to and could not get there.

25 Q Did you ever tell Mr. Irby that ~~he~~ he would not receive

1 eight years, that you were certain that this particular
2 judge would not hand out an eight-year sentence?

3 A No. I think it was quite the opposite. I think I
4 told him that I was pretty certain that she would stick
5 with the eight-year recommendation. But that we could try
6 to use it as a cap and try to get it below that. But I
7 don't -- I wouldn't have told him that she wouldn't have
8 done anything otherwise.

9 Q Now, in terms of backdating the sentence, do you
10 recall what the issue was in terms of why the sentence
11 wasn't backdated?

12 A I do not. I don't remember why the Solicitor would
13 not do that. I think she just -- I don't know. I do
14 remember that she objected to that on the record during
15 the plea. But I don't know why she did so.

16 Q Is it possible that the time that he was incarcerated
17 for was on several charges? Would that maybe have
18 something to do with that?

19 A It surely is possible. Like we said before, he was
20 already sentenced on these federal charges. And then he
21 came into the custody of Greenville County.

22 MS. RATIGAN: That's all I have, Your Honor.

23 THE COURT: All right.

24 MS. HORLBECK: I don't have any questions.

25 Thank you.

1 THE COURT: All right. Very good.

2 Anything else?

3 MS. RATIGAN: No, Your Honor.

4 The State would rest at this time.

5 THE COURT: Ms. Horlbeck, anything else?

6 MS. HORLBECK: No, nothing else, Judge.

7 THE COURT: All right. I will review everything and
8 let you know my decision as promptly as possible.

9 MS. HORLBECK: Thank you, Judge.

10 Thank you, Mr. Irby.

11 THE CLERK: Thank you, Mr. Irby.

12 MR. RODRICK IRBY: Okay. We're finished?

13 THE COURT: Yes.

14 Thank you.

15 *****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

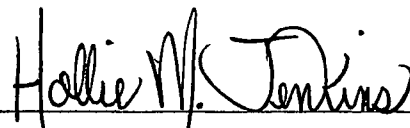
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 16th day of December, 2014.

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

June 29, 2015



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Rodrick Deon Irby,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-1127

ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 MAR 16 PM 2 54

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 28, 2014. The Respondent made its return on May 7, 2014. An evidentiary hearing was held on December 16, 2014 at the Greenville County Courthouse. As the Applicant is incarcerated in the Federal Bureau of Prisons, he was not physically present for the hearing but participated over speakerphone. The Applicant was represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant and the Applicant's plea counsel, Joseph B. Maxwell, Esquire, both testified at the PCR hearing. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant waived presentment to the Greenville County Grand Jury for trafficking cocaine (2013-GS-23-1245). He was represented by Joseph B. Maxwell, Esquire.

On May 14, 2013, the Applicant pled guilty to trafficking cocaine (10-28 grams), second offense. The Honorable Letitia H. Verdin sentenced the Applicant to eight years imprisonment,

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[Handwritten signature]

to be concurrent with his federal sentence. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Stated he would not receive an eight year sentence.
 - b. Stated "that charges more than 10 years old (Record) would'nt be used against me, which they was."
 - c. Stated he would tell the plea judge "things about my past such as drug use" but he did not do so.
 - d. Stated "my time would be back dated to April 12 and my time started Jan 13."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety, as well as the testimony and arguments from the PCR hearing. This Court has further had the opportunity to listen to and/or observe each witness who testified at the hearing, and closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v.

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State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he wanted to go to trial on the charge but plea counsel said he had spoken to the assistant solicitor, who said she would recommend eight years and he could argue for five years. The Applicant stated plea counsel explained the recommendation was for eight years but that the plea judge would not give that sentence. The Applicant admitted he told the plea judge he had not been made any promises in exchange for his plea but said he did not realize the significance of this question at the time. The Applicant stated that, while he discussed his prior record with plea counsel, he did not know it would be given to the plea judge. The Applicant stated plea counsel said his sentence would be backdated to the date of his arrest (April 5, 2012). The Applicant admitted plea counsel did request this but never told him this request could be denied. The Applicant stated he would not have pled guilty if he had known this because he lost eight months of credit.

Plea counsel testified he was appointed in this case and filed discovery motions. Plea counsel testified he received the discovery materials and reviewed them with the Applicant (who was housed at the detention center). Plea counsel testified the Applicant also relayed his version of events. Plea counsel testified the Applicant had federal charges, as well as state charges in Greenville and Laurens. Plea counsel testified the Applicant's charge was a third offense with a mandatory minimum sentence of twenty-five years. Plea counsel testified the Applicant wanted a five-year sentence and that he said he would "try to get there." Plea counsel testified he argued

for dismissal of the charge because of the federal sentence but instead the charge was reduced to a second offense with an eight year recommendation. Plea counsel testified he advised the Applicant that he could take the eight year offer and that he would argue for a lesser sentence, but he did not tell the Applicant he would receive a sentence other than eight years. Plea counsel testified the sentence might not have been backdated because the Applicant was incarcerated for several charges at the same time.

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive. Plea counsel testified he was able to negotiate the reduction of the charge to a second offense and that, while the Applicant wanted a five year sentence, he worked to obtain an eight year recommendation. Plea counsel testified he told the Applicant he would ask for a lesser sentence but did not guarantee a particular sentence to the Applicant. This Court finds plea counsel's testimony is credible. This Court finds plea counsel did a commendable job in plea negotiations with the State, which resulted in a very favorable plea recommendation. This Court finds the Applicant was properly advised of the recommendation and voluntarily and knowingly decided to enter a guilty plea. Of note, the Applicant did not dispute the assistant solicitor's factual recitation at the guilty plea hearing. (Plea transcript, pp.17-19). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.7-9). Specifically, the Applicant said he had not been made any promises in exchange for his guilty plea. (Plea transcript, p.8). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was either promised a certain sentence or misadvised about entering a guilty plea. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-

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49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly argue for his sentence to be backdated. While the Applicant was in the detention center, he had both state and federal charges. By the time the Applicant pled guilty in this case, he was serving a thirty-nine month federal sentence. (Plea transcript, p.19). During the guilty plea hearing, plea counsel asked for this sentence to be run concurrent with his federal sentence and "backdate it to when his sentence started with the federal time so that he can run it all together." (Plea transcript, pp.20-21). The assistant solicitor agreed with a concurrent sentence but did not believe the sentence should be backdated. (Plea transcript, p.21). Plea counsel noted the Applicant was arrested for both this charge and the federal charge on April 5, 2012 and the assistant solicitor argued the Applicant should receive 110 days of credit. (Plea transcript, p.22). The plea judge stated she would not backdate this sentence. (Plea transcript, p.22). This Court finds plea counsel did not err in his argument on this issue. This Court takes judicial notice of the public document indicating the Applicant pled guilty in federal court on August 15, 2012. The Applicant would, therefore, not be entitled to have the sentence backdated in order to receive credit for time he served between August 15, 2012 and the plea date of May 14, 2013. S.C. Code Ann. § 24-13-40.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test - that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant.

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This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

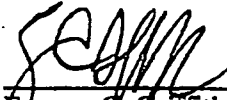
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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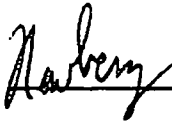
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 16th day of February, 2015.



 Eugene C. Griffith, Jr.
 Presiding Judge
 Thirteenth Judicial Circuit

 _____, South Carolina.



WITNESSES

Eric Whaley

Greenville County Sheriffs Office

1/24/2013

ARREST WARRANT NUMBER
M992741

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-^{JLK} 001245

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2013

THE STATE

vs.

RODRICK DEON IRBY

(Handwritten signature/initials)

Maxwell

Indictment for

*0278
387*

TRAFFICKING COCAINE

VIOLATION § 44-53-0370

FILED

FEB 25 2013

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 TRAFFICKING COCAINE

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
 County present upon their oath:

That RODRICK DEON IRBY did in Greenville County, on or about the 28th day of April 2010, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 10 grams of Cocaine. This is in violation of §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 case made and provided.



 SOLICITOR