

The Supreme Court of South Carolina

Nicanor Perez Rodriguez, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-04904

ORDER

For good cause shown, the request for an extension until May 11, 2012 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Drenda J. Sheely*
Clerk

Columbia, South Carolina

April 12, 2012

cc: Assistant Attorney General Karen Ratigan
Deputy Chief Appellate Defender Wanda H. Carter

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Certiorari to Greenville County

APR 11 2012

G. Edward Welmaker, Circuit Court Judge **S.C. Supreme Court**

NICANOR PEREZ RODRIGUEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

(3)

The undersigned counsel would respectfully request a **final thirty-day extension, until May 11, 2012**, in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by two prior orders of this Court.
2. Counsel is planning to file the initial brief of appellant and designation of matter in the case of State v. Demetrick McQueen in the Court of Appeals tomorrow, April 12, 2012. Counsel had an oral argument in the case of State v. Kevin J. Williams, Sr. in the Court of Appeals on April 10, 2012. Counsel filed the petition for writ of

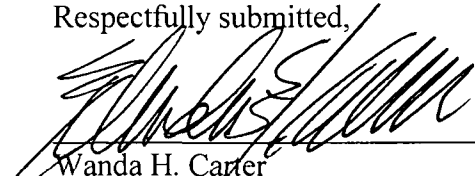
certiorari and accompanying appendix in the case of Albert C. Smith, II v. State in the Supreme Court on April 9, 2012. Counsel filed the petition for rehearing in the case of State v. Lewis D. Williams in the Court of Appeals on March 30, 2012. Counsel had an oral argument in the case of Brian Gebhard v. State in the Court of Appeals on March 29, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Lenson Clyburn, Jr. v. State in the Supreme Court on March 26, 2012. Counsel filed petitions for writ of certiorari and accompanying appendices in the cases of Glenn Pernel v. State, Sylvester Toomer v. State and William Gladney Harden v. State in the Supreme Court on March 23, 2012. Counsel had an oral argument in the case of State v. Lewis Williams in the Court of Appeals on March 12, 2012. In February 2012, Counsel had oral arguments in the cases of State v. Otis Lamar Bland and State v. James Babb in the Court of Appeals, as well as an oral argument in the case of Benjamin Green v. State in the Supreme Court. Additionally in February, 2012, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Sherinette Wannamaker v. State, Henry Belton v. State, Tony Drayton v. State, William Hickman v. State and John E. Prigmore v. State. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals in February, 2012 as well.

3. This request is made in good faith, and not for purposes of delay. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

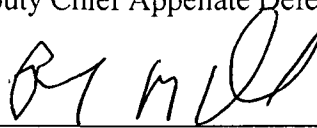
4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension, until May 11, 2012**, in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



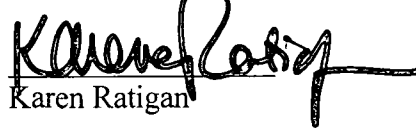
Wanda H. Carter
Deputy Chief Appellate Defender



Robert M. Dudek
Chief Appellate Defender

April 11, 2012

I DO NOT OPPOSE:



Karen Ratigan

The Supreme Court of South Carolina

Nicanor Perez Rodriguez, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-04904

ORDER

For good cause shown, the request for an extension until April 11, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Suzanne J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

March 13, 2012

cc: Assistant Attorney General Karen Ratigan
Deputy Chief Appellate Defender Wanda H. Carter

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Certiorari to Greenville County

MAR 12 2012

G. Edward Welmaker, Circuit Court Judge

S.C. Supreme Court

NICANOR PEREZ RODRIGUEZ,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX

2

The undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.

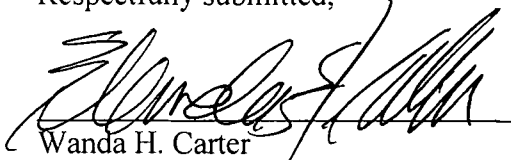
2. Counsel has an oral argument in the case of State v. Lewis Williams in the Court of Appeals today, March 12, 2012. Counsel had an oral argument in the case of State v. Otis Lamar Bland in the Court of Appeals on February 29, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Sherinette Wannamaker v. State in the Supreme Court, and the initial brief of appellant and designation of matter in the case of State v. Lawrence Brown in the Court of Appeals on February 27, 2012. Counsel filed the petition for writ of certiorari and accompanying

appendix in the case of Henry Belton v. State in the Supreme Court on February 24, 2012. Counsel is preparing for an oral argument in the case of Benjamin Green v. State in the Supreme Court on Thursday, February 23, 2012. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Tony Drayton v. State and William Hickman v. State with the Supreme Court on February 16, 2012. Counsel had an oral argument in the case of State v. James Babb in the Court of Appeals on February 14, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John E. Prigmore v. State with the Supreme Court on February 6, 2012. In January, 2012, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of James Blanding v. State, Trenton Bennett v. State, Bobby Gibson v. State and Jorge Rodriguez v. State.

3. This request is made in good faith, and not for purposes of delay.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

March 12, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

NICANOR PEREZ RODRIGUEZ,

PETITIONER,

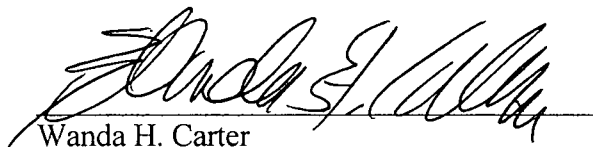
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

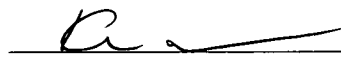
The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Karen Ratigan, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 12th day of March, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 12th day of March, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013 .

The Supreme Court of South Carolina

Nicanor Perez Rodriguez, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Greenville County
Trial Court Case No. 2010-CP-23-04904

ORDER

The request for an extension until March 12, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Arenda J. Shealy*
Clerk

Columbia, South Carolina

February 13, 2012

cc: Assistant Attorney General Karen Ratigan
Deputy Chief Appellate Defender Wanda H. Carter



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 10, 2012

RECEIVED

FEB 10 2012

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

Re: Nicanor Perez Rodriguez v. State of South Carolina

(1)

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter, I am informing Karen Ratigan, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

cc: Karen Ratigan



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 12, 2011

RECEIVED

DEC 13 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Nicanor Perez Rodriguez v. State of South Carolina

12/12/2011

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham
Administrative Coordinator



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 14, 2011

RECEIVED

SEP 14 2011

S.C. Supreme Court

Ms. April P. Herron
Circuit Court Reporter
P O Box 17675
Greenville, SC 29606

Dear Ms. Herron:

Please provide us with the following transcript:

Nicanor Perez Rodriguez v. State of South Carolina Case #: 10-CP-23-04904

County: Greenville Date of Trial: May 11, 2011

Presiding Judge: G. Edward Welmaker

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham
Administrative Coordinator

cc: S.C. Supreme Court
Attorney General's Office

SEP 06 2011

Via Electronic Mail Attachment to abherron@sccourts.org; Original by U.S. Mail

September 2, 2011

Ms. April Herron
Court Reporter
P.O. Box 17675
Greenville, SC 29606

Re: PCR Hearing – Nicanor Rodriguez
Case No.: 2010-CP-23-4904

Dear April:

By this letter we are requesting a copy of the transcript of the PCR hearing held before Judge Welmaker on Wednesday, May 11, 2011 at 2:00 p.m. in the above-referenced case. This transcript is requested in support of an appeal in this matter, which appeal is expected to be handled by the Commission on Indigent Defense.

If you require payment in advance, please let us know the amount required as soon as possible and we will make appropriate arrangements for payment in advance. Otherwise, we will be prepared to tender payment upon receipt of the transcript.

Should you have any questions, please do not hesitate to call.

Sincerely,



Troy A. Tessier
(864) 242-8219
ttessier@wyche.com

c: Office of the Attorney General (Attn: Karen C. Ratigan, Esq.)
Assistant Attorney General Suzanne H. White
Chief Appellate Defender Robert M. Dudek
The Honorable Daniel Shearouse
Ms. Rosalyn W. Frierson

W Y C H E
PROFESSIONAL ASSOCIATION

44 East Camperdown Way, Greenville, SC 29601- 3512
p: 864.242.8200 | f: 864.235.8900
www.wyche.com

The South Carolina Court of Appeals

Nicanor Perez Rodriguez, 337563,

Appellant,

v.

State of South Carolina,

Respondent.

The Honorable G. Edward Welmaker.
Greenville County
Trial Court Case No. 2010-CP-23-04904

RECEIVED

AUG 31 2011

S.C. Supreme Court

ORDER

The appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For The Court

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Troy A. Tessier, Esq.
Martin M. Tomlinson, Esq.
Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Suzanne H. White
The Honorable Daniel Shearouse

FILED

8/30/11

W Y C H E

Attorneys at Law

August 17, 2011

Hon. Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: *Nicanor Rodriguez (S.C D.C. No. 337563) vs. State of South Carolina*
Greenville County Case No. 2010-CP-23-04904

Dear Ms. Gee:

Please find enclosed for filing a Notice of Intent to Appeal and Certificate of Service of the Notice of Intent to Appeal on the respondent in the above case. Attached to the Notice as Exhibits are the following:

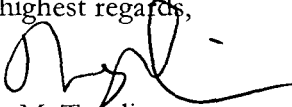
- Exh. A - Copies of the order granting *White v. State* belated appeal; and
- Exh. B - Copies of the Sentence Sheets which are to be challenged on appeal.

Pursuant to Rule 203(d)(1), SCACR, we have filed the Notice of Intent to Appeal with the Greenville County Clerk of Court.

We have also enclosed a copy of the Notice of Intent to Appeal to be file-stamped and returned to us in the self-addressed stamped envelope provided. We appreciate your assistance with this matter.

By copy of this letter we are serving the Notice of Intent to Appeal on all counsel.

With highest regards,



Martin M. Tomlinson
(864) 242-8229
mtomlinson@wyche.com

RECEIVED

AUG 31 2011

S.C. Supreme Court

RECEIVED

AUG 19 2011

SC Court of Appeals

Enclosures

- c: Attorney General Alan Wilson (*by U.S. Mail; w/enclosures*)
Troy A. Tessier, Esq. (*by electronic mail only; w/o enclosure*)
Nicanor Rodriguez (*by U.S. Mail; w/enclosures*)

W Y C H E
PROFESSIONAL ASSOCIATION

44 East Comperdown Way, Greenville, SC 29601-3512
p: 864.242.8200 | f: 864.235.8900
www.wyche.com

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2010-CP-23-4904

RECEIVED

AUG 31 2011

S.C. Supreme Court

Nicanor Perez Rodriguez, SCDC # 337563, Appellant,

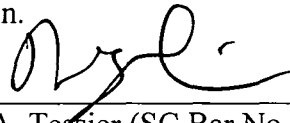
v.

State of South Carolina, Respondent.

NOTICE OF INTENT TO APPEAL

Nicanor Perez Rodriguez ("Rodriguez") hereby files this Notice of his Intent to Appeal the Order of the Court of Common Pleas dated July 20, 2011, dismissing his PCR due process and ineffective assistance of counsel claims but granting him a belated appeal pursuant to *White v. State*. This Order is attached to this Notice as Exhibit A. Appellant also attaches, as Exhibit B, the Sentence Sheets for the underlying conviction.

August 17, 2011



Troy A. Tessier (SC Bar No.: 13354)
Martin M. Tomlinson (SC Bar No. 76014)
WYCHE, P.A.
Post Office Box 728
Greenville, SC 29602
864-242-8200
ATTORNEYS FOR APPELLANT

Other Counsel of Record:

Attorney General Alan Wilson
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970
**Attorney for Respondent,
State of South Carolina**

RECEIVED

AUG 19 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2010-CP-23-4904

Nicanor Perez Rodriguez, SCDC # 337563, Appellant,
v.
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that on August 17, 2011, I caused a copy of **Appellant's Notice of Intent to Appeal** to be served on counsel for Respondent by depositing the copies in the U.S. Mail, postage prepaid, addressed as follows:

Attorney General Alan Wilson
Post Office Box 11549
Columbia, SC 29211-1549



Martin M. Tomlinson (SC Bar No. 76014)
WYCHE, P.A.
Post Office Box 728
Greenville, SC 29602-0728
Telephone: 864-242-2800
Attorneys for Respondent

August 17, 2011

RECEIVED

AUG 31 2011

S.C. Supreme Court

RECEIVED

AUG 19 2011

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO.: 2010 CP 23 04904

Nicanor Perez Rodriguez

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this _____ day of _____, 2011.

Court Reporter: _____

PRESIDING JUDGE -

This judgment was entered on the _____ day of _____, and a copy mailed first class this _____ day of _____ to attorneys of record or to parties (when appearing pro se) as follows:

Troy Tessier

Karen Ratigan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Nicanor Perez Rodriguez)
 S.C.D.C. No. 337563,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-4904

**ORDER OF DISMISSAL
 GRANTING WHITE V. STATE
 BELATED APPEAL**

FILED-CLEIN
 GREENVILLE
 COURT

2011 JUL 27 P 2:45

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 15, 2010. The Respondent made its return on December 20, 2010. An evidentiary hearing into the matter was convened on May 11, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Martin M. Tomlinson, Esquire and Troy A. Tessier, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, James M. Ervin, Esquire. The Court had before it the trial transcript, the records of the State Grand Jury Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections. The State Grand Jury indicted the Applicant for trafficking marijuana (conspiracy) (2006-GS-47-0009,

1


count 1), two (2) counts of trafficking marijuana (10-100 pounds) (2006-GS-47-0009, counts 13 and 14), trafficking cocaine (conspiracy) (2006-GS-47-0009, count 17), trafficking methamphetamine (conspiracy) (2007-GS-47-0002, count 1), and trafficking methamphetamine (100-200 grams) (2007-GS-47-0002, count 22). James M. Ervin, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of all charges except trafficking cocaine (conspiracy). On October 20, 2009, the Honorable John C. Few sentenced the Applicant to concurrent terms of ten (10) years for trafficking marijuana (conspiracy), ten (10) years for trafficking methamphetamine (conspiracy), and twenty-five (25) years for trafficking methamphetamine (100-200 grams). Judge Few levied a sentence of ten (10) years for one count of trafficking marijuana (10-100 pounds)¹ and ordered it consecutive to the sentence for trafficking methamphetamine. Judge Few levied a sentence of ten (10) years for the second count of trafficking marijuana (10-100 pounds)² and ordered it consecutive to the sentence for the first count of trafficking marijuana (10-100 pounds). The Applicant's total sentence was forty-five (45) years imprisonment. 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. Failure to properly preserve issues.
 - b. Failure to advise of right to appeal.
2. Due process.

¹ 2006-GS-47-0009, count 13.

² 2006-GS-47-0009, count 14.

2 

In an Amended Application for Post-Conviction Relief filed April 26, 2011, the Applicant made the following allegations:

1. Ineffective assistance of counsel:
 - a. Failure to advise of right to appeal.
 - b. Failure to object to the trial judge's decision not to accept the plea recommendation.
2. Trial judge's refusal to accept the plea recommendation was a denial of due process.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

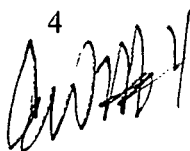
The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant

must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “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).

The Applicant stated he understood that, if he accepted the plea agreement, the State would recommend a twenty (20) year sentence. The Applicant stated he wanted to accept the agreement that day and plead guilty. The Applicant stated trial counsel told him he could plead guilty then later said it was too late to do so.

Trial counsel testified he was retained approximately one (1) year before the trial. Trial counsel testified he filed discovery motions and reviewed those materials with the Applicant. Trial counsel testified the State made a plea offer for a twenty-five (25) year sentence but that the Applicant rejected it. Trial counsel testified the defense strategy for trial would be to argue the co-defendants were arrested with drugs, while the Applicant was not. Trial counsel testified he was prepared for trial when he came to court that day. Trial counsel testified, however, that as the Applicant’s two (2) co-defendants had just accepted plea offers and pled guilty, the State made a new plea offer. Trial counsel testified the State offered a twenty (20) year sentence and the Applicant agreed to accept it. Trial counsel stated, however, that when he and the prosecutor told the judge about the plea agreement in chambers, the judge stated he would not accept the agreement and that the case would proceed to trial. Trial counsel stated he did not recount the chambers conversation on the record or ask for a continuance. Regardless, trial counsel stated he was prepared to litigate the case that day and did not believe the judge would have granted a

4



motion for a continuance. Trial counsel stated he impeached the credibility of the co-defendants/State witnesses. Trial counsel stated he objected to what he perceived as the judge guiding the State's questioning of a certain witness. Trial counsel stated the jury deliberated for two (2) days before reaching a verdict.

This Court finds trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the trial judge's refusal to accept the plea recommendation. This Court finds there was little trial counsel could have done in this situation. Trial counsel testified he had no basis upon which to request a continuance, as the case had been set for trial that day.³ This Court notes this is an unusual situation, as it was the trial judge (and not the State) who did not honor the plea agreement. Thus, this Court can distinguish the instant case from a situation where counsel would be ineffective in failing to enforce a plea agreement after the State reneged. See, e.g., Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009); Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007). Regardless, the Applicant cannot prove prejudice as, by his own admission, he "wanted a trial because [he] was seeking justice and [he] got it."⁴ (Trial transcript, p.770).

³ Therefore, trial counsel's only argument would have been to argue the plea agreement reached with the State should have been honored. While trial counsel stated he could have possibly made this argument under State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994), this Court finds Thrift would not have been applicable in this situation.

⁴ This Court finds that, for this same reason, the Applicant has failed to prove his due process rights were violated. The Applicant had a jury trial on these charges which, by his own admission, is what he wanted. This court finds the trial judge's decision to refuse to accept the plea agreement in this case was not a violation of the Applicant's right to due process.

5


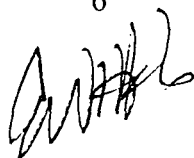
This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately litigate his case at trial. This Court has reviewed the trial transcript and notes trial counsel frequently objected and thoroughly advocated the Applicant's position throughout the trial. This Court finds trial counsel effectively cross-examined the State's key witness – Demario Johnson. This Court notes trial counsel was successful in arguing the Applicant was never linked to the cocaine trafficking because the jury ultimately found him not guilty of that charge. This Court also notes the jury deliberated over the verdicts in this case for almost two (2) days. This Court finds the Applicant failed to articulate what trial counsel should have done to change the result of the trial. See Palacio v. State, 333 S.C. 506, 511 S.E.2d 62 (1999).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial 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.

Belated appeal

The Applicant stated he did not understand the time limit to file an appeal, as it was his first time in the court system. Trial counsel stated he did not believe he properly explained the time limit to file an appeal to the Applicant.

This Court finds the Applicant's allegation that he was denied a direct appeal is

A handwritten signature in black ink, appearing to be "A. W. H. L.", is written over the page number.

meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291, n.1, 342 S.E.2d 60, 60, n.1 (1986) (“Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.”).

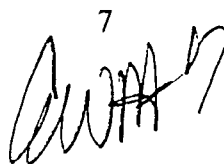
The Court affirmatively finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes the Applicant is entitled to a belated review of his conviction. The Applicant’s lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State.

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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

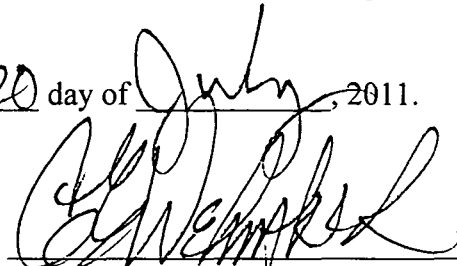
7


established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice. This Court, however, concludes the Applicant is entitled to a belated direct appeal of his criminal conviction pursuant to White v. State.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and Rule 243(i), SCACR for the appropriate procedure for securing belated appellate review; and
3. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of July, 2011.



G. Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Nicanor Peerez Rodriguez, 337563)

CASE NO.

Plaintiff)

2010-CP-23-4904

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina)

Defendant.)

Plaintiff's Attorney: Martin M. Tomlinson & Troy A. Tessier, Esquire, Bar No. Address: 44 E Camperdown Way Greenville SC 29602-0728 phone: (864) 242-8200 fax: (864) 235-8900 e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
--	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

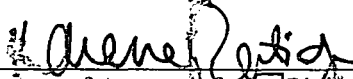
Nature of Motion:

Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

July 20, 2011
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/19/10
OMCOMITA RELEASE DATE SCREEN C023981

SCDC# > 337563 LOC: PERRY
RODRIGUEZ, NICANOR PEREZ SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:

CURRENT SENTENCE: 045-00-000 CONSECUTIVE SENTENCE ...: Y
045-00-000 CURRENT SENT START DATE: 09/20/2007

PROJECTED COMPLETION DATES

MAXOUT DATE: 04/09/2043 CURRENT EWC ..: 3 F 5
YOASIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 09/20/2032 NEXT PAROLE HEARING DATE: 09/20/2032

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000242 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 001019

PFKEYS: 5: HISTORY OF DATE CHANGES

4-@ 1 Sess-1 167.7.50.33 SCDC1494 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 07/19/10

CO

RODRIGUEZ, NICANOR PEREZ FBI # 794381FB2 SID# SC01408373 SCDC # 337563
 OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
 INSTITUTION ...: PERRY CORR INST DORM.....: Q480124T
 SECURITY/CUST.: 3 MINIMUM IN RACE.....: D SEX...: M
 CURR INCARC SENT...: 45 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 04/09/2043
 CENTRAL MONITORING.: NO PROJ PAROLE DATE: 09/20/2032
 SOCIAL SECURITY #....: EWC JOB...: FURNITURE ASSEMBLER
 EDUC PSM.: NO CURR EDUC PROGRA
 EWC LEVEL: 3F5 EEC LEVEL:
 ASSIGNMENT...: PRISON INDUSTR

CURRENT PROGRAM...: NO CURRENT PROGRAM
 AGE...: 31 DATE OF BIRTH...: 7/10/79

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	U/NU	CATEG
TRAF MARIJ(10-100LBS,1ST	10	0	0	GREENVILLE	9/20/20	7 U	4
TRAF MARIJ(10-100LBS,1ST	10	0	0	GREENVILLE	9/20/20	7 U	4
TRAF MARIJ(10-100LBS,1ST	10	0	0	GREENVILLE	9/20/20	7 U	4
TRAFFICK METH 28-100GR 1	10	0	0	GREENVILLE	9/20/20	7 U	4
TRAFFICKING IN CRACK COC	25	0	0	GREENVILLE	9/20/20	7 U	4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD,WANTED,NOTIFY):

CODE NOT IN TABLE HOLD PRESIDING JUDGE CATEG:

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

2/26/10	PERRY	INCARCERATED	ADMINISTRATIVE
2/26/10	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
12/ 8/ 9	PERRY	INCARCERATED	ADMINISTRATIVE
10/26/ 9	KIRKLAND	INCARCERATED	R&E PROCESSING
10/26/ 9	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	J
FURNITURE ASSEMBLER	04/22/10	0/ 0/ 0		L
GENERAL WORKER	04/05/10	4/ 5/10	LATERAL TRANSFER	Y

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 3 - FULL TIME(NO EWC)	12/31/09	3/31/10	INMATE REQUEST

***** END OF REPORT *****

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

OCT 23 2009

INDICTMENT/CASE#: 2006 -GS- 47 - 09

VS.

JAMES R. PARKS
CLERK, STATE GRAND JURY

NICANOR PEREZ RODRIGUEZ
AKA: "SKINNY"
Race: H Sex: M Age: 30
DOB: 6/10/79 SS#:
Address:
City, State, Zip:
DL# SID#

AW#:
Date of Offense: 6/1/01-8/7/07
S.C. Code §: 44-53-370(c)(1)(b)
CDR Code #: 0283

Count 1

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: **TRAFFICKING MARIJUANA 10-100 LBS.(CONSPIRACY)**

CONVICTED OF or PLEADS *1-10 yrs + \$100k Fine*

In violation of § 44-53-370(c)(1)(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2360
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lawd Act)

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: *C. P. ...* Solicitor AAG SC Bar # *68624* 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.
 The Defendant is to be placed on 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: \$ days/hours Public Service Employment

Payment Terms:

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:

Set by SCDPPPS

Recipient:

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$ 100.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 236.90

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

Clerk of Court/Deputy Clerk *James R. Parks*
Court Reporter: *Tere Johnson*
SCCA/217 (06/2009)

Presiding Judge *[Signature]*
Judge Code: 2123
Sentence Date: 10/23/09

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF STATE

OCT 23 2009

INDICTMENT/CASE#: 2006 -GS- 47 - 09

VS.
NICANOR PEREZ RODRIGUEZ
AKA: "SKINNY"
Race: H Sex: M Age: 30
DOB: 6/10/79 SS#:
Address:
City, State, Zip:
DL# SID#

JAMES R. PARKS
CLERK, STATE GRAND JURY

AW#: *Count 13*
Date of Offense: 5/4/07
S.C. Code §: 44-53-370(e)(1)(a)(1)
CDR Code #: 2360

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: **TRAFFICKING MARIJUANA 10-100 LBS.**

CONVICTED OF or PLEADS *1-10 yrs. + \$10K fine*

In violation of § 44-53-370(e)(1)(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2360
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted. Lesser Included Offense. Defendant Waives Presentation to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation. Negotiated Sentence. Recommendation by the State.

ATTEST:

Solicitor 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: *Count 22 of 07-47-02*
 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.
 The Defendant is to be placed on 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: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED

Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning
Substance Abuse Counseling

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$ 100.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 6.90
TOTAL		\$ 236.90

Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ Beginning
\$ Paid to Public Defender Fund

Other:

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

Clerk of Court/Deputy Clerk *James R. Parks*
Court Reporter: *Tracie Johnson*
SCCA/217 (06/2009)

Presiding Judge *[Signature]*
Judge Code: *2123*
Sentence Date: *10/23/09*

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF STATE

OCT 23 2009
JAMES R. PARKS
CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2006 -GS- 47 - 09

VS.
NICANOR PEREZ RODRIGUEZ
AKA: "SKINNY"
Race: H Sex: M Age: 30
DOB: 6/10/79 SS#:
Address:
City, State, Zip:
DL# SID#

AW#:
Date of Offense: 5/4/07
S.C. Code §: 44-53-370(e)(1)(a)(1)
CDR Code #: 2360

Count 14

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: TRAFFICKING MARIJUANA 10-100 LBS.

CONVICTED OF or PLEADS

1-10 yrs. +
\$10K fine

In violation of § 44-53-370(e)(1)(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2360

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

(CSC w/minor 1st or Lawd Act)

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:

Solicitor 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: Count 13
 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.
 The Defendant is to be placed on 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: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED

Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning Substance Abuse Counseling

*Fine: \$
§14-1-206 (Assessments 107.5%) \$
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$
§56-5-2995 (DUI Assessment) \$12 \$
§56-1-286 (DUI Breath Test) \$25 \$
§47.12 (Public Def/Prob) \$500 \$
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$100 \$ 100.00
§50-21-114 (BUI Breath Test Fee) \$50 \$
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$
§90.7 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 6.50
TOTAL \$ 236.50

Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning Paid to Public Defender Fund

Other:

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

Clerk of Court/Deputy Clerk
Court Reporter: *James R. Parks*
Torise Johnson

Presiding Judge
Judge Code: 2123
Sentence Date: 10/23/09

SCCA/217 (06/2009)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

Nicador Perez Rodriguez

AKA: _____

Race: H Sex: FM Age: 30

DOB: 6/10/79 SS#: _____

Address: _____

DL#: _____ SID#: _____

INDICTMENT/CASE#: 2007-65-47-02 Count

A/W#: _____

Date of Offense: 1/1/06 - 8/7/07

S.C. Code §: 44-53-375(C)(3)

CL# Code #: 0368 (3-10)

FILED

OCT 23 2009 SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was JAMES R. PARKS CONVICTED OF or PLEADS TO: Trafficking Methamphetamine 10-20 grams (conspiracy)

in violation of § 44-53-375(C)(3) of the S.C. Code of Laws, bearing CDR Code # _____

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)

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

ATTEST: [Signature] 68671

[Signature] 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 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 § 24-13-0 to be calculated and applied by the State Department of Corrections.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED _____

set by SCDPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling _____

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ Other: _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 236.90

James R. Parks
Clerk of Court/ Deputy Clerk

Court Reporter: Teresa Johnson

PRESIDING JUDGE [Signature]
Judge Code: 1
Sentence Date: 10/23/09
SCCA/217(03/2009)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE

FILED

INDICTMENT/CASE#: 2007 GS 47-02

Nicanor Perez Rodriguez VS. Rodriguez

OCT 2009

AKA: _____
Race: H. Sex: M Age: 0
DOB: 7/10/77 SS#: _____

Date of Offense: 4/20/07
JAMES R. PARKS : 44-53-375(C)(3)
CLERK, STATE GRAND JURY 0368

C# 2

Address: _____
DL#: _____ SID#: _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Trafficking Methamphetamine 100g or more
in violation of § 44-53-375(C)(3) of the S.C. Code of Laws, bearing CDR Code # 0368
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

APPEAR: Carla Spaulding 68071
Sims, Donnie 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 25 ~~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.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED _____

set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling _____

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

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§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 336.90

PRESIDING JUDGE _____
Judge Code: _____

Sentence Date: _____

James R. Parks
Clerk of Court Deputy Clerk

Court Reporter: Terese Johnson

SCCA/217 (03/2009)

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08/17/2011

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W Y C H E

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Greenville, SC 29601-3512

Hon. Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

*Micahor
Perez
Rodriguez*