

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable G. Thomas Cooper, Circuit Court Judge

JAMARCUS FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002476

APPENDIX

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S.C. SUPREME COURT

INDEX

INDEX i

TRIAL TRANSCRIPT DATED JULY 22, 20161

APPLICATION FOR POST-CONVICTION RELIEF FILED JANUARY 17, 201744

RETURN AND PARTIAL MOTION TO DISMISS52

AMENDMENTS TO POST- CONVICTION RELIEF APPLICATION
FILED JULY 27, 201758

POST-CONVICTION RELIEF HEARING TRANSCRIPT
DATED NOVEMBER 15, 2017.....62

ORDER OF DISMISSAL FILED NOVEMBER 27, 201772

INDICTMENTS AND SENTENCING SHEETS76

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHEROKEE)

THE STATE OF SOUTH)
CAROLINA)
) TRANSCRIPT OF RECORD
-vs-) 2015-GS-11-00832
) 2015-GS-11-00833
JAMARCUS FOSTER,) 2016-GS-11-00769
) 2016-GS-11-00987
DEFENDANT.) 2016-GS-11-00988
)
) JULY 22, 2016
) GAFFNEY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. KEITH KELLY, JUDGE.

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

KIM LESKANIC, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

MICHAEL MORIN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

PROBATION AGENT MONICA LAWTER
APPEARING FOR THE PROBATION DEPARTMENT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

WITNESSES

PAGE

(NO WITNESSES CALLED)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
S-1	C.D.	9	
S-2	C.D.	9	

1 (PROCEEDINGS, JULY 22, 2016)

2 MS. LESKANIC: This is a motion, Brandy, on
3 Jamarcus Foster.

4 And, Your Honor, if I may give you just a little
5 bit of history.

6 Mr. Foster was on the trial docket for this week,
7 I believe, but I was -- we had extended some offers that
8 were rejected on a distribution of methamphetamine and
9 distribution of methamphetamine within half mile, third
10 offense charges. He's been served with notice of life on
11 those charges. And then Monday morning when he was
12 appearing for roll call he was arrested on new distribution
13 charges for distribution of methamphetamine and distribution
14 of methamphetamine within a half mile of Alma Elementary
15 School.

16 I extended an offer to Mr. Morin of eighteen years
17 and I explained that that offer would expire this week and
18 then we would be back on the life, if we were going to
19 trial.

20 And I also filed a motion to revoke his bond based
21 on the new charges, in the event he did not accept the plea.

22 It was my understanding that he was considering
23 the plea, but I believe this morning -- I do not have any
24 signed sentencing sheets, so I'm assuming that that offer of
25 eighteen years is rejected. And if that is the case, I just

1 wanted it to be on the record that Mr. Foster will be on the
2 docket again August 1st. He's the number two case on the
3 docket, and that no additional offers will be made. The
4 eighteen year offer will not be re-offered.

5 We have served him with notice of life and we
6 intend on going forward with that, if he is convicted of
7 either of those charges, because both are serious offenses
8 and he has two prior serious offenses on his record.

9 So I wanted that to be clear, first of all, that
10 the offer is gone if it is not accepted today.

11 And then, Your Honor, I am moving, based on my
12 motion, that his bond be revoked, because he has -- he had
13 pending from June of 2015 a distribution of methamphetamine
14 and distribution half mile. Then in January of 2016 he was
15 arrested for domestic violence in the second degree, and
16 then he was just arrested on Monday in a roundup for a new
17 distribution of meth and distribution within half mile of a
18 school with methamphetamine, Your Honor. And based on a
19 violation of the good behavior provision of his bonds, we
20 are moving that his bond be revoked.

21 MR. MORIN: If it please the court, Your Honor, I
22 have discussed all of that with my client.

23 My client has indicated to me, while we were
24 standing here, that he would --

25 No? Okay.

1 I guess we are just going to have the bond
2 revocation then.

3 I represent him on only the first distribution. I
4 don't represent him on his new charge.

5 THE COURT: Okay. Well, let's do this.

6 Sir, let me -- let's be clear on the record now.
7 You are telling your lawyer, because I don't want you coming
8 and filing some PCR on him later saying he didn't tell you.
9 Do you understand what the offer is?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Put him under oath then,
12 Brandy.

13 THE CLERK: Please raise your right hand.

14 THE DEFENDANT: I'm going to take the fifth.

15 MR. MORIN: Well, you got to raise your right hand
16 first.

17 THE CLERK: Raise your right hand, please.

18 JAMARCUS FOSTER, having been first duly sworn,
19 testified as follows:

20 THE DEFENDANT: Yes, sir.

21 THE CLERK: You can put your hand down.

22 THE COURT: Sir, you are Mr. Jamarcus Foster?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Foster, are you represented by Mr.
25 Morin?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, now that we got you under
3 oath, there is an offer on the table you don't have to take.
4 In fact, you have a Constitutional Right, both state and
5 federal, to go to trial, and there is plenty of us in this
6 courtroom that carried a rifle for Uncle Sam to ensure that
7 right. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You are set on an August 1st trial --
10 on the August 1st docket. I think Judge Cole will be -- let
11 me look right here.

12 MR. MORIN: That's correct, Your Honor.

13 MS. LESKANIC: That's correct.

14 THE COURT: Judge Derham Cole is going to be here.
15 Now, the offer will be rescinded after today.

16 Let the record reflect it's 12:02 p.m., so
17 whenever this court adjourns for this week, that offer is
18 gone. You don't have to take it.

19 Do you want a trial by jury on those charges?

20 THE DEFENDANT: No, sir, I want to go ahead with
21 the plea.

22 THE COURT: You want to take the plea?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is it your -- is it your decision to
25 take that plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you need time to talk to your
3 lawyer?

4 THE DEFENDANT: No, sir.

5 THE COURT: Mr. Morin, he says he wants to take
6 the plea and that there is nobody making him do it.

7 Have you had plenty of time to talk to Mr. Morin?

8 I'm going to ask you a whole series of questions
9 during the plea, but I want to make sure that you know what
10 you are doing.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Well, we need to get some
13 paperwork filled out and I'll be right back with you.

14 These two ladies can have a seat out there.

15 (Off the record)

16 (Back on the record)

17 MS. LESKANIC: This is everything that I have
18 provided Mr. Morin -- I know Mr. Morin doesn't represent
19 him, but I have provided him with two still photographs from
20 the video on the most recent charges, Your Honor, and I'm
21 certainly willing to let Mr. Foster look through anything
22 that he wants to, if he's pro-se on those charges, look
23 through our file, but I have given these to Mr. Morin and
24 it's my understanding that Mr. Morin has shared the still
25 photographs with Mr. Foster, so -- but anything that he

1 would like to see prior to the plea he's welcome to, Your
2 Honor.

3 THE COURT: Sir, do you need to review anything?
4 I'm going to ask you -- I'm going to ask you a whole series
5 of questions.

6 (Off the record).

7 (Back on the record).

8 (C.D. marked as State's Exhibit No. 1 for
9 identification).

10 (C.D. marked as State's Exhibit No. 2 for
11 identification).

12 THE COURT: Is he on probation?

13 MS. LESKANIC: I haven't done anything with
14 probation, Your Honor. All of our charges are a negotiated
15 sentence, concurrent.

16 THE COURT: Concurrent?

17 MS. LESKANIC: I haven't --

18 MR. MORIN: We haven't negotiated that, but I'm
19 going to ask that, since he's doing eighty-five percent of
20 that.

21 (Off the record).

22 (Back on the record)

23 MS. LESKANIC: May it please the court?

24 THE COURT: Yes, ma'am.

25 MS. LESKANIC: Standing before you is Jamarcus

1 Foster. He is pleading guilty on five indictments.

2 2016-GS-11-769 is a true bill indictment for
3 domestic violence in the second degree. There is a
4 negotiated sentence in that case of three years concurrent
5 with the other charges.

6 2015-GS-11-832 is a true bill indictment for
7 distribution of methamphetamine. It is a third offense.
8 There is a negotiated sentence of eighteen years.

9 2015-GS-11-833 is a true bill indictment for
10 distribution of methamphetamine within one-half mile of a
11 park or school. There is a negotiated sentence of ten years
12 concurrent.

13 2016-GS-11-987 is an indictment for distribution
14 of methamphetamine. It is a third offense. The defendant
15 is waiving presentment to the grand jury, as indicated by
16 his initials on the sentencing sheet. There is a negotiated
17 sentence of eighteen years concurrent.

18 And 2016-GS-11-988 is an indictment for
19 distribution of methamphetamine within one-half mile of a
20 park or school. The defendant is waiving presentment to the
21 grand jury on that charge, as indicated by his initials on
22 the sentencing sheet, and there is a negotiated sentence in
23 that case of ten years concurrent.

24 The defendant is represented by Mr. Morin on all
25 charges.

1 MR. MORIN: Your Honor, I was just thinking. I
2 signed the sentencing sheets on these new charges, but his
3 new distribution and half mile I do not represent him on. I
4 have just briefly spoken to him about them and he has seen
5 the photographs from the video that Ms. Leskanic has
6 referred to.

7 THE COURT: Okay. He's pro-se on 987 and 988?

8 MR. MORIN: Correct.

9 THE COURT: Okay.

10 Sir, you are Jamarcus Foster?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Foster, you were sworn just a few
13 minutes ago and you remain under oath.

14 You are in custody. Have you consumed any
15 substance that affects your thinking ability?

16 THE DEFENDANT: No, sir.

17 THE COURT: Mr. Foster, the government says in
18 Indictment 2015-0833 that you did, in Cherokee County, South
19 Carolina, on or about June 5 of 2015 distribute, sell,
20 purchase, manufacture; or, unlawfully possess with the
21 intent to distribute a controlled substance, being a
22 quantity of methamphetamine, a Schedule II controlled
23 substance, within one-half mile of Alma Elementary School
24 located in this county and state, such distribution not
25 having been authorized by law and in violation of law.

1 That matter has been true billed by the grand
2 jury.

3 It is my understanding that you are pleading as
4 indicted.

5 It is serious.

6 It's nonviolent, is that right?

7 MS. LESKANIC: That's correct, Your Honor.

8 THE COURT: Nonviolent, but serious.

9 MS. LESKANIC: But it is serious.

10 THE COURT: It carries with it up to ten years
11 and/or a fine of up to \$10,000.

12 You, your lawyer and the government have
13 negotiated a sentence of a ten year sentence concurrent with
14 all other indictments. Do you understand what I told you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Indictment 2015-0832 alleges that you
17 did, in Cherokee County, South Carolina, on or about June 5
18 of 2015, manufacture, distribute, dispense, deliver,
19 purchase, aid, abet, attempt, or conspire to manufacture,
20 distribute, dispense, deliver, or purchase, or possess with
21 the intent to do so a quantity of methamphetamine, a
22 controlled substance as defined by state law and in
23 violation thereof.

24 Now, that matter was presented to the grand jury
25 and a true bill returned.

1 It's my understanding you are pleading as
2 indicted.

3 It's nonviolent.

4 It is serious.

5 It carries from ten years up to thirty years
6 and/or a fine of up to \$50,000.

7 You, your lawyer, and the government negotiated a
8 sentence of eighteen years. Do you understand what I told
9 you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: On Indictment 2016-0769 the government
12 says that you did, in Cherokee County, South Carolina, on or
13 about January 10 of 2016, cause physical harm or injury to a
14 person's own household, that being Jessica Moss; or that you
15 did offer or attempt to cause physical harm or injury to
16 your own household member with the apparent present ability
17 under circumstances reasonably creating fear of imminent
18 peril and moderate bodily injury to her resulted; or, the
19 act was accomplished by means likely to result in moderate
20 bodily injury; or, in the process of committing domestic
21 violence in the third degree one of the following was also
22 present or resulted: The offense was committed in the
23 presence of, or while being perceived by a minor child; or,
24 the offense was committed during the commission of a
25 robbery, burglary, kidnapping, or theft; or, the offense was

1 committed by impeding the victim's breathing or air flow,
2 all in violation of State law.

3 That matter has been true billed by the grand
4 jury.

5 It's my understanding you are pleading as
6 indicted.

7 It's nonviolent by definition.

8 It carries with it a fine of between \$2,500 and
9 \$5,000, and/or it carries up to three years.

10 You, your lawyer and the government negotiated a
11 sentence of three years.

12 Do you understand what I told you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: In Indictment 2016-0987, it is my
15 understanding that the government says, or alleges, that you
16 did, in Cherokee County, South Carolina, on or about June 16
17 of this year, manufacture, distribute, dispense, deliver,
18 purchase, aid, abet, attempt; or, conspire to manufacture,
19 distribute, dispense, deliver, or purchase; or, possess with
20 the intent to do so, a quantity of methamphetamine, a
21 Scheduled II controlled substance as defined by law.

22 That matter has not been presented to the grand
23 jury for its consideration.

24 You were recently arrested on that charge, is that
25 true?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: It is my understanding, sir, that you,
3 yourself -- you represent yourself in this matter; that is
4 nonviolent. It carries from ten years up to thirty years
5 and up to \$50,000.

6 You waive presentment to the grand jury, and you
7 have negotiated a sentence with the government of an
8 eighteen year concurrent sentence with the other
9 indictments. Is that true?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did you understand what I said?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: 2016-0988, the government alleges that
14 you did, in Cherokee County, South Carolina, on or about
15 June 16 of 2016, distribute, sell, purchase, manufacture;
16 or, unlawfully possess with the intent to distribute a
17 controlled substance, being a quantity of methamphetamine, a
18 Scheduled II controlled substance, within one-half mile of
19 Alma Elementary School, located in this county and state,
20 such distribution not having been authorized by law, and,
21 therefore, in violation of law.

22 That matter has not been presented to the grand
23 jury, but I understand from your initials that you desire to
24 waive presentment. Is that true?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: It's nonviolent by definition.

2 It carries with it up to ten years, and/or a fine
3 of up to \$10,000.

4 You and the government have entered into a
5 negotiated sentence of ten years to run concurrent with all
6 other indictments. Is that true?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, Mr. Foster, you are pro-se,
9 meaning you represent yourself on 2016-0987 and 0988. Is
10 that true?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you had plenty of time to review
13 any of the materials, discovery materials, in these two
14 cases?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you need any time to talk with the
17 lawyer? Mr. Morin is standing there. He does not represent
18 you in these two, but he's standing there. Do you need to
19 ask him any questions?

20 THE DEFENDANT: No, sir.

21 THE COURT: I believe he's told me, and he may
22 again, but that he's actually talked with you about these,
23 even though he's not appointed at this point, but he's
24 discussed it with you. Is that true?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you had all your questions
2 answered?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Now, Mr. Foster, there are
5 certain rights that you must waive and give up in order to
6 enter into these pleas. You have the right to remain silent
7 under both the State and Federal Constitution. Do you
8 understand that right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you give up that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Foster, you have the right to go
13 to trial, trial by jury. We'll put twelve folks in that box
14 right there and try your case. In fact, we have been trying
15 cases to a jury this week, and you probably know that, and
16 be back here -- I won't be, but Judge Durham Cole will be
17 the first week of August, and then I'll be back later in
18 August. Do you want a trial by jury on any of these
19 indictments?

20 THE DEFENDANT: No, sir.

21 THE COURT: Okay. Sir, you have the right to call
22 any witness that you choose to this witness stand to testify
23 for you, and you have the right to confront any witness who
24 would testify against you. Usually that would be a law
25 enforcement officer or someone who investigated the cases.

1 Do you waive and give up that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, finally, Mr. Foster, as to the
4 new indictment, 2016-0987 and 0988, sir, you have the right
5 to have both of these presented to the grand jury of
6 Cherokee County. They sit right over here. That's why
7 there are so many chairs over there. Do you give up that
8 right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Sir, how do you plead on 2016-0769;
11 guilty or not guilty?

12 THE DEFENDANT: I plead guilty.

13 THE COURT: And 2015-0832?

14 THE DEFENDANT: I'm guilty.

15 THE COURT: And 2015-0833?

16 THE DEFENDANT: I'm guilty.

17 THE COURT: And on 2016-0987?

18 THE DEFENDANT: Which charge is that?

19 THE COURT: That's one of the new ones, 2016-0987?

20 THE DEFENDANT: Guilty.

21 THE COURT: And the other one is 2016-0988.

22 THE DEFENDANT: Guilty.

23 THE COURT: Sir, do you plead guilty on all
24 offenses, all indictments, because you are guilty of all
25 offenses?

1 THE DEFENDANT: I'm guilty of everything but the
2 domestic violence.

3 THE COURT: Okay. Well, hang on a minute.

4 All right. 2016-0769 is domestic violence. Are
5 you going to plead guilty to that?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. I'll set that one aside.

8 So you plead guilty on everything else?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. All right, sir.

11 Mr. Foster, did anyone talk you into pleading
12 guilty?

13 THE DEFENDANT: No, sir.

14 THE COURT: Did anyone force you to do so?

15 THE DEFENDANT: No, sir.

16 THE COURT: Well, are you doing so freely?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Intelligently?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Voluntarily?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Have you had plenty of time to
23 talk with your lawyer about the two cases? There is only
24 two now that he represents you on, so have you talked to
25 him -- had plenty of time to talk to him about these two,

1 0832 and 0833?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you satisfied with his services?

4 THE DEFENDANT: No, sir.

5 THE COURT: Okay. Do you think you need another
6 lawyer?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Well, sir, the court is not
9 going to let you plead guilty at that point.

10 Do you want to fire him?

11 THE DEFENDANT: No, sir, I just want to go ahead.

12 MR. MORIN: If I -- if I may, Your Honor?

13 THE COURT: Yes, sir.

14 MR. MORIN: During the course of my representation
15 of Mr. Foster it came to my occasion to have to give him my
16 opinion as to what the facts of the case may result in. And
17 as can be the case from time to time, a defendant takes your
18 opinion as to what you think is best and what you think is
19 the law and what you think will result in a jury trial and
20 become upset with the attorney because they are not --
21 because they are telling you something that you don't want
22 to hear and you feel like you are not being represented.
23 And I have tried to explain to him, and I believe he
24 understands this, that my view of the facts and
25 circumstances and law of this case are not as he wishes it

1 would be. However, I feel like I have an obligation and I
2 feel like he's hired me to tell him what it is I believe
3 will occur. That's part of what my representation of him
4 is. And I believe that part is what has upset him, in that
5 my advice or my opinions of the case do not match what he
6 would like them to be.

7 THE COURT: Okay.

8 MR. MORIN: And I think that's why he's saying he
9 doesn't want to fire me. He's just upset with me because he
10 doesn't like my evaluation.

11 THE COURT: Well, let me inquire, Mr. Foster. Is
12 that true, you just don't like his evaluation of the case?

13 THE DEFENDANT: To be honest, the case -- the case
14 has a lot of loopholes in it.

15 THE COURT: Oh. I'm talking about the ones he
16 represents you on.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Do you want me to set those
19 aside just for a minute?

20 Let me ask you about these others. How about the
21 two that you represent yourself on now, sir?

22 THE DEFENDANT: I feel like I'm more guilty on
23 those than I am of the ones that --

24 THE COURT: Okay.

25 THE DEFENDANT: -- he's representing me on.

1 THE COURT: Yes, sir.

2 THE DEFENDANT: And I don't even know much about
3 those, but I just know the time frame of where it happened.

4 And the cases that you just set aside, I mean,
5 like a bunch of stuff was wrong in that case, but I don't
6 want to take it to trial and be found guilty and get a life
7 sentence.

8 THE COURT: Well, I'm going to talk about those in
9 just a minute. I want to talk about the two now. I'll set
10 those aside too, but I want to talk about these two. These
11 are the two from Monday of this week. Now, you have entered
12 guilty pleas on these. You don't need to talk to a lawyer.
13 You have already talked to him a little bit. Do you want to
14 talk to anybody else?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. You are guilty of these two?

17 THE DEFENDANT: (Shaking head yes).

18 THE COURT: These are the ones that you freely
19 admit to.

20 THE DEFENDANT: That's why they came back and
21 tried to get me on those, because they felt that I wasn't
22 guilty on these.

23 THE COURT: I got you. I'm with you. I
24 understand.

25 I just want to make to sure, but on these two,

1 16-0988 and 0987, you freely admit that you are guilty on
2 these two?

3 THE DEFENDANT: On those two, yes, sir.

4 THE COURT: On these two. Okay.

5 And you have negotiated this sentence and Mr.
6 Morin didn't have anything to do with this now. You
7 negotiated --

8 THE DEFENDANT: He didn't have nothing to do with
9 it.

10 THE COURT: You negotiated with Ms. Leskanic from
11 the State and this is what you want?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Sir, you have ten days from
14 today's date to appeal your guilty plea on these two and
15 your sentence. To do so, although you have negotiated it,
16 so, but, anyway, I'm telling you in writing you have ten
17 days to do that. Do you understand?

18 THE DEFENDANT: (Shaking head yes).

19 THE COURT: And you have to file that with the
20 Clerk of Court. Do you understand?

21 THE DEFENDANT: (Shaking head yes).

22 THE COURT: He's recording it.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Thank you so much.

25 Ms. Leskanic, tell me about these two, 0988 and

1 0987.

2 MS. LESKANIC: Yes, sir.

3 And just so the record is clear, I have not
4 directly spoken with Mr. Foster negotiating this time. I
5 have communicated that through Mr. Morin that I would make
6 an eighteen year global offer on everything, rather than
7 going forward on seeking life, which I can do either on the
8 charges that Mr. Morin represents him on or the new charges.
9 So I just -- I wanted to be clear that that negotiation was
10 not something I had directly with Mr. Foster. However, if I
11 could speak directly with Mr. Foster, and I guess I could on
12 those charges, that would be the offer as well, but if it is
13 not taking care of everything, the State still plans on
14 going forward on the set of charges that Mr. Morin
15 represents him on and the domestic violence at a separate
16 time and that will not encompass this eighteen year offer.

17 The facts of this case, Your Honor, that Mr.
18 Foster is representing himself on occurred on June 16th of
19 2016 at the defendant's residence, at ■■■ Evans Street here
20 in Cherokee County. It was approximately 3:30 in the
21 afternoon. An undercover operative who was working with the
22 Cherokee County Sheriff's Narcotics Division was equipped
23 with audio and video capability. That undercover operative
24 was searched prior to going out to make this purchase. The
25 undercover operative was given money by the sheriff's

1 department in order to make a purchase of methamphetamine
2 from this defendant, and the undercover operative did make
3 the purchase from this defendant at the defendant's home on
4 Evans Street. That location is within one-half mile of Alma
5 Elementary School.

6 I have what I have previously marked State's
7 Exhibit 2, which are two photographs, still photographs from
8 the video, that I would like to hand up and make part of the
9 record in this case.

10 Due to the fact that this is a new case, Your
11 Honor, the substance has not yet been tested by SLED, but
12 again, this was an encompassing offer, I thought, to take
13 care of all of his charges.

14 So those are the facts that the State would go
15 forward on at trial.

16 THE COURT: Okay. Sir, I'm just talking about
17 these that are left now. I've set those aside. So these
18 are just these two.

19 THE DEFENDANT: Okay.

20 THE COURT: Is that true what she said?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. The court accepts your pleas on
23 2016-0987 and 0988 as being freely, intelligently and
24 voluntarily given.

25 Sir, I will be happy to hear anything from you.

1 Well, let's -- I tell you what. Give me a chance.

2 Madam probation?

3 THE DEFENDANT: Oh, excuse me, I would like to
4 have the other charges ran with it too also.

5 MR. MORIN: He's going to --

6 THE COURT: No, sir, I'm dealing with these two.
7 I set those aside.

8 Go ahead. Madam Probation.

9 PROBATION OFFICER LAWTER: Your Honor, Mr. Foster
10 was sentenced here in Cherokee County General Sessions Court
11 on September 15th, 2011 by the Honorable Judge Couch on
12 Indictment 09-GS-11-1315 for distribution of crack cocaine
13 within a half mile of a school, for which he received a
14 sentence of ten years, provided upon the service of three
15 years, the balance suspended with three years probation.

16 Also on Indictment 09-GS-11-1316 for distribution
17 of crack cocaine, first offense. He received a sentence of
18 fifteen years, provided upon the service of three years, the
19 balance suspended with three years of probation.

20 He appeared before Your Honor on February 29th,
21 2016. At that time he was extended one year to allow for
22 payment of his monies and to complete substance abuse
23 counseling.

24 THE COURT: And his pleas today violate?

25 PROBATION OFFICER LAWTER: Yes, sir.

1 THE COURT: Okay, sir, these two pleas violate
2 your probation. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Then, of course, you admit it.
5 You don't have to admit it, but you do admit it, right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. The court finds the violation.

8 Sir, I will be happy to hear from you. You
9 represent yourself on these two. Anything that you would
10 like to say?

11 THE DEFENDANT: No. I would like to run those
12 other charges with --

13 THE COURT: I'm not talking about them now. I set
14 those aside at your request.

15 I will be happy to hear about mitigation on these
16 two.

17 THE DEFENDANT: Oh, I'm guilty.

18 THE COURT: Okay. All right. Thank you, sir.
19 Give me a second.

20 Okay, sir, you negotiated that sentence with the
21 government and I'm going to accept your negotiations.

22 On 2016-0987, the State Department of Corrections
23 for a period of eighteen years. That would be concurrent
24 with Indictment 2016-0988.

25 2016-0988 you negotiated a sentence of ten years.

1 I'll accept that. State Department of Corrections for ten
2 years. It is concurrent with the other Indictment
3 2016-0987.

4 The probation matters are revoked in full and they
5 are consecutive to both indictments.

6 As to the other pleas, the court never accepted
7 those pleas. So Madam Solicitor, if you want to set them
8 for trial.

9 THE DEFENDANT: Consecutive?

10 MS. LESKANIC: Thank you, Your Honor.

11 MR. MORIN: If it please the court, Your Honor?

12 THE COURT: Yes, sir.

13 MR. MORIN: If I may have just a moment?

14 THE COURT: Yes, sir.

15 (Off the record).

16 (Back on the record).

17 MR. MORIN: If it please the court, Your Honor, I
18 represent Mr. Foster on the three pending charges that you
19 have in your hand; a distribution, a distribution of a half
20 mile of a school, and a criminal domestic violence.

21 I have met with Mr. Foster on at least three
22 occasions for over an hour. We have reviewed the video
23 together. He has a copy of the discovery. We have
24 communicated by e-mail and he's been very good about calling
25 my office and keeping up with what's going on.

1 There are issues in the case that if we had gone
2 to trial would have presented some credibility issues on the
3 State's case, in my professional opinion. I do not know
4 that they would have risen to the effect, to the point, that
5 a jury would find him not guilty, although it is possible.
6 Nonetheless, we would respectfully request that he be
7 allowed to enter a plea of no-contest with the eighteen year
8 concurrent sentences that were negotiated -- that I had
9 negotiated with the State regarding those three cases. I
10 believe that that is in his best interests. I believe he
11 believes that's in his best interests, and it would be
12 unfortunate if he had made the rash decision before Your
13 Honor today that would result in additional time, and we
14 would respectfully ask that you take the no-contest plea to
15 those under the negotiated sentences presented to you.

16 THE COURT: Well, Mr. Morin, I might consider
17 that, except that he says that he's not happy with your
18 services, although this court finds on the record you are a
19 mighty fine lawyer, but he's not happy.

20 MR. MORIN: Notwithstanding his unhappiness with
21 some of my representation, Your Honor, I believe that he
22 understands that he may not be happy with the things that I
23 have told him regarding his case, I don't think he disputes
24 that I am genuine and I am in a position to give him
25 accurate advice regarding the case, and I think he will tell

1 you that.

2 THE COURT: Well, let me ask him about that.

3 Mr. Foster, the reason I didn't take these other
4 pleas is, number one, you said the domestic violence, that
5 you are not guilty of it, so I set that one aside.

6 And you told me on these other two, 2015-0832 and
7 0833, that you are not satisfied with Mr. Morin's services.

8 Now, let me ask you. Are you dissatisfied,
9 unhappy with his services because he told you something that
10 you didn't like to hear, or did he not -- did he not help
11 you as a lawyer? Which is it?

12 THE DEFENDANT: It's not him. It's just I feel
13 better with taking the plea than putting it in twelve other
14 peoples hands. I don't want to take it to trial.

15 THE COURT: Well, you can waive your right to
16 trial for whatever you choose. I'm talking about your
17 lawyer here, so there is a thing called post-conviction
18 relief, PCR hearings. You might have heard about those and
19 people, they always file them, or when they do file them,
20 they come to court and point at their lawyer and they swear
21 to God that their lawyer did something wrong. Do you
22 understand? So I want to know what did he do wrong on your
23 case?

24 THE DEFENDANT: He didn't do anything wrong, Your
25 Honor.

1 THE COURT: Well, did he do everything that he
2 could for you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did he answer all of your questions?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did he go over all the discovery
7 materials with you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Well, what is it? Why are you
10 dissatisfied with him?

11 THE DEFENDANT: I felt like he could have done
12 better with the -- with the time. I felt he could have
13 gotten me a better plea bargain.

14 THE COURT: Oh, okay.

15 Well, let me ask you this. Did he give you
16 accurate legal advice?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did he tell you the truth about what
19 was going to happen, what he thought was going to happen?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. You understand he doesn't -- he
22 doesn't have any control necessarily -- he doesn't have any
23 control over what the court does. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Well, did he talk to any

1 witnesses that you have, any that you want him to talk to?

2 THE DEFENDANT: No, sir.

3 THE COURT: Well, do you have any witnesses?

4 THE DEFENDANT: No, sir.

5 THE COURT: Okay. Well, he couldn't talk to them
6 if you don't have them, right?

7 THE DEFENDANT: Like which case on?

8 THE COURT: Well, I'm talking about the two he
9 represents you, 2015-0832 and 0833.

10 THE DEFENDANT: Yes, sir, I don't have no witness.

11 THE COURT: You don't have any witnesses?

12 THE DEFENDANT: No, sir.

13 THE COURT: You don't have any defense?

14 THE DEFENDANT: No, sir.

15 THE COURT: Well, did he tell you that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Well, that's accurate legal advice, is
18 it not?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. So are you happy with his legal
21 advice?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: He gave you accurate legal advice?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You have no complaints about his legal

1 advice?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Do you want the court to
4 accept these two pleas?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you want the court to impose the
7 negotiated sentence?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. The court accepts both
10 pleas on 2015-0833 and 0832.

11 What about the other one? Did you do that or not?
12 This is the domestic violence.

13 THE DEFENDANT: I'm not guilty on that.

14 THE COURT: Okay. The court has now accepted
15 those two.

16 Madam Solicitor.

17 MS. LESKANIC: Thank you, Your Honor.

18 This first distribution and distribution within a
19 half mile occurred on June 5th of 2015, on Craft Street,
20 which is located here in Cherokee County.

21 On that occasion there was an undercover operative
22 working with the Cherokee County Sheriff's Department who
23 was given \$40 to make a purchase of methamphetamine. The
24 undercover operative did meet with this defendant within a
25 half mile of Alma Elementary School and the defendant did

1 sell methamphetamine to the undercover operative.

2 I have three photographs which represent State's
3 Exhibit 1. They are still photographs from the video. The
4 confidential informant was equipped with audio and video
5 capability, and the defense has been provided with a copy of
6 that, Your Honor.

7 I would like to state that substance was sent to
8 SLED. It was positive for methamphetamine and it was
9 0.35 grams.

10 Mr. Morin and I had negotiated this case. It was
11 my understanding the offers were rejected and the defendant
12 was served with a notice of life. We then turned over the
13 CI packet, as well as the video and all evidence that we
14 have in that case, and it is typically, and most typically,
15 the policy of our office that once that information is
16 turned over, we will no longer extend offers. And it was
17 only because Mr. Morin stayed in my office on Monday waiting
18 for me to have free time to speak with him that he told me
19 information about Mr. Foster and convinced me to take life
20 off the table, even though that information had been turned
21 over, which, as I state, is typically not the policy of our
22 office, and we got to an eighteen year sentence, but that
23 was not my offer and that's not where I was going with the
24 case until Mr. Morin waited to speak with me, and I just
25 want that to be on the record as well, Your Honor.

1 In this case the defendant spoke with law
2 enforcement after the sale and he gave a statement saying "I
3 only sold meth for probably less than a month. I lost my
4 job at Denny's and I owe child support, so I tried to get
5 money the best way I could." That was signed by the
6 defendant, so that would have been evidence in the trial as
7 well.

8 The informant was prepared to testify. We have
9 the video of the transaction, and we also have the
10 confession of the defendant that would have been provided to
11 the jury in this case, Your Honor.

12 THE COURT: Sir, is that about what happened? The
13 court has already accepted the pleas.

14 Yes, sir, Mr. Morin.

15 MR. MORIN: Thank you, Your Honor.

16 Your Honor, Mr. Foster is twenty-seven years old,
17 and two of the things that I think have led to the
18 difficulties between him and I, one is the offer basically
19 takes him from twenty-seven to his early forties. And
20 sometimes when you are as young as twenty-seven, it's hard
21 to imagine what forty is going to look like, and I think
22 that caused some hesitation on his behalf. He does have
23 three children.

24 The other thing, it's unfortunate and no fault but
25 his own, but his prior convictions, much like shoplifting,

1 they work where you get two sentences and you don't really
2 grasp the seriousness of it and the next thing you know you
3 are at ten years on a shoplifting, or life on a drug case.
4 And I think it was difficult for him to deal with that as
5 well, especially, again, him being as young as he is.

6 And, Your Honor, I'm going to do a little bit -- I
7 haven't done this before, but I'm going to do it in this
8 case. I wasn't representing him when he was sentenced on
9 his previous case or his probation violation. If I had
10 been, I would have argued and asked the court to consider
11 running that probation concurrent, and I would ask the court
12 to reconsider its consecutive sentence, in that it's those
13 cases that have gotten him into a situation where he could
14 get life in jail. And it's difficult for him, and I can
15 certainly understand when you are that young and you are
16 talking about those kinds of times, to perhaps not make the
17 best judgments regarding that, and it makes him nervous, and
18 it rightly should, and it scares him, and it rightly should.

19 Nonetheless, I think that Mr. Foster was a
20 different person when I spoke to him on Monday following the
21 meeting that Ms. Leskanic has referred to. At that time he
22 started to understand what he has done, what he's done to
23 himself, what he's done to his family. His mother is
24 present in the courtroom. I have talked to her.

25 We ask that you accept the negotiated sentence and

1 I, on his behalf, would respectfully ask that you reconsider
2 the consecutive revocation of his probation.

3 THE COURT: Mr. Morin, you had two ladies that
4 were standing here earlier. Did you want them to speak?

5 MR. MORIN: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. LESKANIC: And at the appropriate time I would
8 like to place his prior record on the record.

9 MR. MORIN: We will stipulate to it.

10 THE COURT: Okay.

11 Who is first?

12 MR. MORIN: You go first.

13 THE COURT: Ma'am, tell me your name, please.

14 DARLETTE FOSTER: I'm Darlette Foster. I'm the
15 mother.

16 This is all new to me. I don't know anything
17 about that.

18 I spoke with Mr. Morin on Friday -- Monday.
19 Monday. He -- you know, he called me and told me that he
20 was going to bring this to court -- the case to court on
21 Friday, which would be today. I said I don't know anything
22 about the distribution or anything, so he was telling me all
23 this stuff. I said "well, sir, I don't know anything about
24 it," but -- so when I got here this morning I wanted to meet
25 with him, you know, so he can break it down in laymen's

1 terms, because I don't know this law terminology or
2 whatever, and so he did just that. And so, you know, we
3 have been back and forth talking all morning. And I'm not
4 saying this for this to be my son, you know. I'm speaking
5 on behalf of all the dealers, I guess you would call them.

6 My son -- you know, he -- as a mother, he don't
7 tell me anything, you know what I'm saying? I don't know it
8 until it reach the court, or time to go to court, okay, to
9 make a long story short, so he -- you know, my momma wants
10 to talk to you about it this morning, but as far as I was
11 saying, as far as Jamarcus, he has gotten into this. And
12 being a drug dealer, he has done these things, according to
13 his record, but a drug dealer, I said he's a brokest drug
14 dealer I have ever seen, because he don't have any money. I
15 had to give him the money to try to retain him, you know,
16 and, you know, I know that doesn't have anything to do with
17 it, but I just ask the court to have mercy on him, because,
18 you know, I was a single parent mom. I had him at sixteen.
19 You see, my mom, she just told me "I'm going to raise this
20 kid to the best of my ability. You just go to school." So
21 I went to school there, you know. Two years of college, or
22 whatever, to make a long story short, and then my mom passed
23 away, so I had to do the best that I could do to provide for
24 him. His dad found out I was pregnant. He was older than I
25 was. I was sixteen and he was way older. But, anyway, so

1. when he found out I was pregnant with Jamarcus, he just
2 packed up and went in the military and Jamarcus was five or
3 six years old before he came back. To make a long story
4 short, he's never been there. He never had a father figure.
5 I don't have any brothers. I don't have any uncles that I
6 deal with, you know, and my dad does whatever. But like I
7 said, on Jamarcus' behalf he wanted to be grown. He moved
8 out of the home and he moved in with my dad. Once my mom
9 passed away, he moved in with my dad, but my dad just moved
10 in with his girlfriend, which is -- I was born and raised
11 down in the valley. I was born down there. But, anyway,
12 daddy moved in with his girlfriend and left Jamarcus down
13 there fendng for himself. And so, you know, it's no
14 excuse, but he has to fend for himself, what do you do?

15 So, you know, I told him -- he didn't live with
16 me, but he continued going to school and got his high school
17 diploma. As a mother I tried to push college onto him, but,
18 you know, he's grown, so he's going to do what he wanted to
19 do.

20 So, you know, waking up with various people -- and
21 I have always told him, everybody doesn't have your best
22 interests at heart. You may think that this is your friend
23 and that's your friend, but everybody is not your friend,
24 and I tried to tell him that.

25 But on his behalf of selling drugs, I can speak

1 because he don't live with me, he wants to be grown, okay, I
2 understand that, so you have to fend for yourself. I can't
3 take care of two households, my household and your
4 household, and so this is the result of this, to do whatever
5 he has to do to make ends meet with himself, because I
6 can't -- I mean, I'm single and I have another kid too. I
7 can't buy him groceries. I can't pay his bills. I can't
8 take his job for him, so this is part of the reason why he
9 has done what he's done.

10 And as far as -- and Jamarcus is really a good
11 person. If you ask around, he's really a good person. He
12 don't get in no trouble or anything like that, but as far
13 as -- Your Honor, this thing about the CDV. When the CDV
14 took --

15 THE COURT: I didn't take that one.

16 DARLETTE FOSTER: Okay, I'm sorry.

17 But as far as his behavior and the things that he
18 do, like I said, I don't really know about it when he comes
19 to court, but I just ask the court to have mercy on him in
20 this situation, because everybody deserves a second chance.
21 I mean, I know he's been given second and third chances, but
22 sometimes reality have to check in. You know, sometimes we
23 as people -- some may get it early in life. Some may get in
24 the middle, and some may get it later in life, but I'm
25 hoping that Jamarcus has gotten the big picture now. And I

1 do -- God gives us a fair chance. He don't throw the towel
2 in on us, and I just feel like if God would give us -- if we
3 serve a god of second chance and a third chance, or
4 whatever, and I feel like he deserves the same. That's all
5 I have to say.

6 THE COURT: Ma'am, would you like to speak?

7 JESSICA MOSS: Yes, sir, I do.

8 I'm his child's -- his last child's mom. There is
9 three kids.

10 Like she said, you know, Jamaricus, his kids are
11 his number one priority. He wasn't out there shooting
12 people or beating up people. He's picking on a way to make
13 money, and that's a big mistake. Yes, he knows it's a
14 mistake. All I want you to know is, a long story short,
15 like this, please take -- it's not just his life you are
16 taking, it's his child's. It's all three of his kids. He
17 has three kids. It's their life too. Fifteen -- eighteen
18 years, that's a long time. My son was just born, he will be
19 nineteen. I just hope you have some lenient on him and take
20 all that into consideration.

21 My name is Jessica Moss.

22 THE COURT: Ms. Moss, do you understand that he
23 negotiated this sentence? I'm not -- do you understand?

24 JESSICA MOSS: Yes, sir.

25 THE COURT: Okay.

1 All right. Sir, anything that you would like to
2 say that hasn't been said?

3 THE DEFENDANT: I would just like to apologize to
4 my family and God bless all of you guys.

5 THE COURT: All right. The court will reconsider
6 that sentence, sir. You got a lawyer there that worked hard
7 on your two cases that he didn't represent you on. Do you
8 understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: I'll reconsider that and make it
11 consecutive. It's revoked, but -- I mean, concurrent. I'm
12 sorry, concurrent. It's concurrent.

13 Sir, you and your lawyer have negotiated the
14 sentences on 2015-0832, the State Department of Corrections
15 for eighteen years. It's concurrent with all indictments
16 and the violation of probation.

17 Give him credit for time served.

18 2015-0833, State Department of Corrections for ten
19 years you gave negotiated.

20 It's also concurrent with everything.

21 Credit for time served.

22 MR. MORIN: Thank you, Your Honor.

23 MS. LESKANIC: Thank you, Your Honor.

24 (END OF REQUESTED TRANSCRIPT OF RECORD)

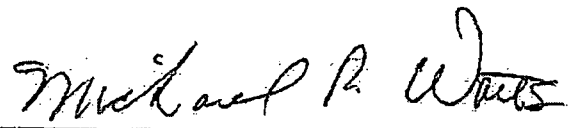
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh 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 trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 22nd day of July, 2016.

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

MARCH 10, 2017



Michael R. Watts
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Cherokee)

Ja Marchus Foster 335320)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

017CP-110047

APPLICATION FOR
POST-CONVICTION RELIEF

FILED IN THE OFFICE
CLERK OF COURT
2017 JAN 17 A 8:33
DORRIS W. HOBBS
CHEROKEE COUNTY, SC

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 Perry Corr. Inst. 430 Ogk Lawn Rd, Pelzer, SC 29669
2. Name and location of Court which imposed sentence 7th Circuit Cherokee County Gaffney, SC Court of General Session
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) dist 3rd offense ^{of sub} Schedule II 2 counts
 - (b) dist 3rd offense ^{of sub} PROX II 2 counts

15-65-1100883
15-65-1100832

(c) There was 2 different occasion from each court

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 7-22-16

(b) 18 Years

(c) no exact terms

6. 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 _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

no

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I was still shocked with the sentence I was giving.

(b) _____

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

- (a) ENTRAPMENT
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) _____

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

- (a) The informant was a sex-offender and the police sent him
- (b) to my house where kids live.
- (c) HE KNEW the informant was committing a crime to get me to commit a crime.

12. 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 (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? NO

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

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

017CP-110047

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) first time filing
- (b) _____
- (c) _____

17. 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 judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

- (a) the name and address of each attorney who represented you:
 - i. Michael Morin
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. The sentencing and plea
 - ii. _____
 - iii. _____

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

Time Reduce

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

NO

STATE OF SOUTH CAROLINA)

County of Chero kee)

VERIFICATION

I, J&MARCUS FOSTER, 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.

J&MARCUS FOSTER J&MARCUS FOSTER

SWORN to and subscribed before me this 9th day of January, 2017.

Nancy C. Merchant (L.S.)
Notary Public

My Commission Expires: 1/22/17 1-23-2023

FILED IN THE OFFICE
CLERK OF COURT
2017 JAN 17 A 8:34
BRYAN L. JUDGE
CHEROKEE COUNTY, SC

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

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

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

Jamarcus Foster Jamarcus Foster
Applicant

SWORN or affirmed to and subscribed before me this

9th day of January, 2017.

Nancy C. Murchant
Notary Public

My Commission Expires: 7/22/17 1-23-2023

FILED IN THE OFFICE
CLERK OF COURT
2017 JAN 17 A 8:34
JAMES H. HOBBS
CHEROKEE COUNTY, SC

ref 335320
2E COKER HWY

29162

Cherokee County
Clerk of Court
P.O. Box 2289
125 E. Floyd Baker Blvd.
Gaffney, SC 29342

COLUMBIA SC 290

12 JAN 2017 PM 2 L



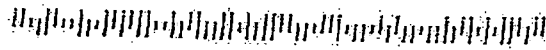
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2017 JAN 17 A 8:33

GEORGE W. FIDEE
CHEROKEE COUNTY, SC

0170110047

99940-910009



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE)	
Jamarcus Foster, #335320,)	Case No.: 2017-CP-11-0047
)	
Applicant,)	
)	RETURN AND PARTIAL
v.)	MOTION TO DISMISS
)	
State of South Carolina,)	
)	
Respondent.)	
_____)		

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on January 17, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. In September 2015, the Cherokee County Grand Jury indicted Applicant for distribution of methamphetamine, 3rd or subsequent (2015-GS-11-0832) and distribution of methamphetamine within one-half mile of a school (2015-GS-11-0833). Applicant was later indicted for domestic violence, 2nd degree (2016-GS-11-0769).¹ Michael D. Morin, Esquire represented Applicant on these charges. Assistant Solicitor Kim Leskanic, Esquire prosecuted the case. On July 22, 2016, Applicant pleaded guilty as indicted to distribution of meth, 3rd or subsequent, and distribution of meth within one-half mile of a school before the

¹ While out on bond on the aforementioned charges, Applicant was arrested for distribution of methamphetamine, 3rd or subsequent (2016-GS-11-0987) and distribution of methamphetamine within one-half mile of a school (2016-GS-11-0988). Applicant proceeded *pro se* on these charges at the same plea hearing. Pursuant to a negotiated sentence, Applicant waived presentment to the grand jury and pled guilty to these charges. Judge Kelly sentenced Applicant to imprisonment for 18 years for distribution of methamphetamine, 3rd or subsequent and 10 years for distribution of methamphetamine within one-half mile of a school. Both sentences were to run concurrent with all other sentences. Applicant does not challenge these convictions or sentences in his PCR application. Only the charges for which he was represented by Mr. Morin are mentioned in his PCR application.

Honorable R. Keith Kelly.² Pursuant to a negotiated sentence, Judge Kelly sentenced Applicant to imprisonment for concurrent terms of 18 years for distribution of methamphetamine, 3rd or subsequent, and 10 years for distribution of methamphetamine within one-half mile of a school.³ Applicant did not appeal from his guilty plea.

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

II.

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

1. Entrapment
 - a. "The informant was a sex offender, and the police sent him to my house where kids live."
2. Ineffective Assistance of Counsel
 - a. "He knew the informant was committing a crime to get me to commit a crime."

III.

Applicant attempts to raise the defense of entrapment in his application. This is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief

² Applicant pled not guilty to domestic violence. The charge was later dismissed.

³ At the time of his plea, Applicant was on probation for distribution of crack cocaine within a half mile of a school (09-GS-11-1315) and distribution of crack cocaine, 1st offense (09-GS-11-1316). Applicant admitted violating probation during the plea hearing. Judge Kelly revoked Applicant's probation in full and sentenced Applicant to his original, suspended sentence of 10 years, concurrent to all other sentences.

application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The failure to do so has waived this allegation as grounds for relief. Therefore, Respondent submits that this allegation should be summarily dismissed.

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRPC. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits, witnesses, and materials used to produce potential expert witness testimony be

provided to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

[Remainder of page left blank intentionally]

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

JAMARCUS FOSTER # 335320)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2017-CP-11-0047

AFFIDAVIT OF SERVICE BY MAIL

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

Rodney Wade Richey, Esquire
 Richey & Richey, PA
 PO Box 10916
 Greenville, SC 29603-0916

DATED this the 19th day of July, 2017.

Jennifer Jennison

 Jennifer Jennison, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMONS PLEAS
CASE NO: 2016-CP-11-0047
7

Jamarcus Foster, SCDC # 335320,
Applicant,

AMENDMENTS TO
POST CONVICTION
RELIEF APPLICATIONS

vs.

THE STATE OF SOUTH CAROLINA,
Respondent.

FILED IN THE OFFICE
CLERK OF COURT
2017 JUL 27 A 11:26
CHEROKEE COUNTY, SC

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

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

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

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

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were or whether or not I understood exactly what the term "criminal" element" actually meant.
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with

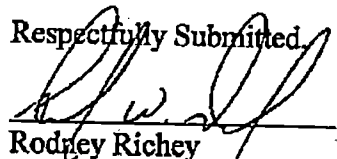
any adversarial litigation.

27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

July 24, 2017

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STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE) IN THE COMMON PLEAS COURT

Jamarcus Foster,)
Applicant,) TRANSCRIPT OF RECORD
-vs-) 2017-CP-11-47
The State.) November 15, 2017
Spartanburg, South Carolina

B E F O R E:

HONORABLE G. THOMAS COOPER, JUDGE

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

RODNEY W. RICHEY, ESQUIRE
Attorney for the Applicant

VALERIE GIOVANOLI, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

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INDEX

WITNESSES

PAGE

JAMARCUS FOSTER (AW)

Direct examination by Mr. Richey

5

Cross-examination by Ms. Giovanoli

7

No exhibits entered into evidence.

1 THE COURT: All right. Ms. Giovanoli, you may
2 proceed.

3 MS. GIOVANOLI: Thank you, Your Honor.

4 This is the case of Jamarcus Foster vs. the State of
5 South Carolina, Docket No. 2017-CP-11-0047.

6 We're before the court on an application for post
7 conviction relief filed on January 17th of 2017.

8 In September of 2015 applicant was indicted for
9 distribution of methamphetamine third or subsequent and
10 distribution of methamphetamine within one half mile of a
11 school.

12 Applicant was later indicted for criminal domestic
13 violence of a second degree.

14 while out on bond on the aforementioned charges
15 applicant was arrested for distribution of methamphetamine
16 third or subsequent and distribution of methamphetamine
17 within one half mile of a school.

18 Applicant proceeded pro se on those charges at the
19 same plea hearing that he was represented on by Mr. Michael
20 Morin.

21 Pursuant to a negotiated sentence applicant waived
22 presentment to the grand jury and pled guilty to the pro se
23 charges.

24 Judge Kelly sentenced applicant to imprisonment for 18
25 years for distribution of methamphetamine third or

Jamarcus Foster
Direct examination by Mr. Richey

1 subsequent and ten years for distribution of
2 methamphetamine within one half mile of a school. Both
3 sentences were to run concurrent with all of the other
4 charges.

5 Applicant does not challenge these specific
6 convictions in his P.C.R. application. Only the charges
7 for which he was represented by Mr. Morin are mentioned in
8 his P.C.R. application.

9 So that was on July 22nd of 2016 when applicant pled
10 guilty to the charges for which Mr. Michael Morin
11 represented him on. And the sentence was 18 years. It was
12 negotiated.

13 Applicant did not appeal his conviction or his
14 sentence, but now we're before the Court on an application
15 for post conviction relief.

16 The state is present and ready to proceed. Applicant
17 is also present, and he's represented by Mr. Rodney Richey.

18 As far as the allegations in the pro se application,
19 the state made a motion to dismiss with regard to one
20 allegation of entrapment as he is challenging sufficiency
21 of the evidence. This is a direct appeal issue, and P.C.R.
22 is not a substitute for a direct appeal.

23 I understand he's raising it as ineffective assistance
24 of counsel, that his counsel did not pursue that defense.
25 Then that is an acceptable allegation, but just challenging

Jamarcus Foster
Direct examination by Mr. Richey

1 the sufficiency is not proper P.C.R. grounds.

2 So I'll hand it over to counsel.

3 THE COURT: Mr. Richey.

4 MR. RICHEY: Thank you, Your Honor. We call
5 Mr. Foster.

6 JAMARCUS FOSTER, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. RICHEY

9 Q Sir, would you state your name, please?

10 A Jamarcus Foster.

11 Q Mr. Foster, are you currently incarcerated?

12 A Yes, sir.

13 Q And where are you incarcerated?

14 A Broad River Correctional.

15 Q And what type of sentence do you have right now?

16 A I have 18 years.

17 Q Okay. And when you came into the Department of
18 Corrections what was the status of that 18-year sentence?

19 A I came in the Department of Corrections as 18-year,
20 nonviolent offender.

21 Q And you were serving how much?

22 A I only had to do half my time.

23 Q Okay. Well, what happened within the last month?

24 A Well, not in the last month.

25 Q The last two months.

Jamarcus Foster
Direct examination by Mr. Richey

1 A What happened earlier this year, February.

2 Q And what happened?

3 A They changed my sentence from nonviolent to violent.

4 Q And you have to serve how much now?

5 A I have to serve 85 percent of my time.

6 Q And how much more additional time is that?

7 A They added six additional years to that.

8 Q And your purpose of doing this is you want to seek an
9 order saying that that was unlawful, is that correct?

10 A I mean, I was serving the sentence that I thought I was
11 going to be serving --

12 MS. GIOVANOLI: Your Honor, I'm going to object to
13 this line of questioning.

14 There has been no allegations made with regard to the
15 length of his sentence and he's, I guess, contesting that
16 in February of this year he was advised that he'd be
17 serving 85 percent. This application was filed in January
18 of this year. So this allegation has not been pled.

19 THE COURT: Well, I understand that. And I'm going to
20 take it as background information.

21 MS. GIOVANOLI: Okay.

22 THE COURT: Go ahead.

23 Q And that's your issue, correct?

24 A Yes, sir. But at the time I filed my P.C.R. my time
25 was -- it was a nonviolent sentence. They changed it a

Jamarcus Foster
Cross-examination by Ms. Giovanoli

1 month after, like you just said.

2 Q Okay. Thank you. Answer any questions the attorney
3 general has for you.

4 CROSS-EXAMINATION

5 BY MS. GIOVANOLI

6 Q Good morning.

7 A Good morning. How are you doing?

8 Q Doing all right. Thank you.

9 THE COURT: I guess if that's the only issue we'll
10 just have to address it.

11 What's the -- what's the state's position? You said
12 he get -- get these dates straight. When did he file his
13 P.C.R.?

14 MS. GIOVANOLI: In January of 2017. The specific date
15 was January 17th of 2017.

16 THE COURT: And when does -- he says his
17 classification was changed after that?

18 MS. GIOVANOLI: In February, I believe his testimony
19 was.

20 THE COURT: You say February?

21 THE WITNESS: February the 8th to be exact.

22 THE COURT: Did you file an amended application?

23 THE WITNESS: I don't know what that is.

24 MS. GIOVANOLI: Mr. Richey did file an amended
25 application, but that is not included.

1 Do you have a copy in the judge's packet of
2 amendments? It's got 31 allegations.

3 THE COURT: I do -- I do.

4 Well, this is not -- Mr. Richey, this is not a -- if
5 that's the only issue this is not effective -- ineffective
6 representation of counsel -- assistance of counsel, is it?

7 MR. RICHEY: Your Honor, we -- we understand that.

8 It's our position that he wants this issue on the
9 record, that if he withdraws his case it might affect his
10 ability to do a writ in federal court, because he didn't
11 exhaust all of his state remedies. So the purpose --
12 that's the purpose of us, I say, doing this, because it's
13 his position that the state unlawfully changed his
14 sentence.

15 THE COURT: All right. The state now moves to dismiss
16 this case because this is not part of his
17 post-conviction-relief application.

18 MR. RICHEY: We are -- we're aware of what the outcome
19 will be.

20 THE COURT: All right. Motion is granted.

21 MR. RICHEY: Thank you, Your Honor.

22 MS. GIOVANOLI: And, Your Honor, just for the record,
23 my only concern would be if he is alleging that his counsel
24 was ineffective in his advisement -- his advice about
25 parole, then I do believe that's proper for P.C.R. But if

1 his allegation is only that, you know -- not that his
2 counsel misadvised him but that parole advised him that he
3 was serving 85 percent --

4 THE COURT: Talking about his post-conviction-relief
5 counsel.

6 MS. GIOVANOLI: Mr. Richey?

7 Well, oftentimes because new allegations can be
8 raised, I understand that they try to pursue them the date
9 of the hearing.

10 Unfortunately, it's slightly prejudicial to the state
11 because we're not able to prepare to defend allegations
12 that are made during the hearing. That's my position on
13 that.

14 MR. RICHEY: Your Honor, that's what our intention was
15 anyway. We just believe that we couldn't come in and
16 withdraw the case, that it might affect him on his federal
17 side.

18 THE COURT: Anything further?

19 I grant the state's motion.

20 MR. RICHEY: Thank you, Your Honor.

21 MS. GIOVANOLI: Thank you, Your Honor.

22 Would you like a proposed order submitted?

23 THE COURT: I sure would. That's it. Thank you very
24 much.

25 END OF REQUESTED TRANSCRIPT OF RECORD

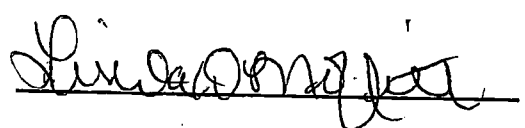
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 of the captioned cause, relative to appeal, in the Common Pleas Court for Cherokee County, South Carolina, on the 15th day of November 2017.

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

January 6, 2018



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Jamarcus Foster, #335320,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-11-0047

ORDER OF DISMISSAL
WITH PREJUDICE

BRANDY M. MCBEE

2017 NOV 27 AM 9:45

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Jamarcus Foster (Applicant) on January 17, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on November 15, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. This Court had before it a copy of the Cherokee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the PCR application, Respondent's return, and Applicant's supplemental application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. In September 2015, the Cherokee County Grand Jury indicted Applicant for distribution of methamphetamine, 3rd or subsequent (2015-GS-11-0832) and distribution of methamphetamine within one-half mile of a school (2015-GS-11-0833). Applicant was later indicted for domestic violence, 2nd degree

(2016-GS-11-0769).¹ Michael D. Morin, Esquire represented Applicant on these charges. Assistant Solicitor Kim Leskanic, Esquire prosecuted the case. On July 22, 2016, Applicant pleaded guilty as indicted to distribution of meth, 3rd or subsequent, and distribution of meth within one-half mile of a school before the Honorable R. Keith Kelly.² Pursuant to a negotiated sentence, Judge Kelly sentenced Applicant to imprisonment for concurrent terms of 18 years for distribution of methamphetamine, 3rd or subsequent, and 10 years for distribution of methamphetamine within one-half mile of a school.³ Applicant did not appeal from his guilty plea.

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

1. Entrapment
 - a. "The informant was a sex offender, and the police sent him to my house where kids live."
2. Ineffective Assistance of Counsel
 - a. "He knew the informant was committing a crime to get me to commit a crime."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the start of the hearing, the State addressed its partial motion to dismiss raised in its return. Applicant took the stand and testified regarding his complaints that SCDC informed him via letter in February 2017 that he was reclassified from non-violent to violent and was required

¹ While out on bond on the aforementioned charges, Applicant was arrested for distribution of methamphetamine, 3rd or subsequent (2016-GS-11-0987) and distribution of methamphetamine within one-half mile of a school (2016-GS-11-0988). Applicant proceeded *pro se* on these charges at the same plea hearing. Pursuant to a negotiated sentence, Applicant waived presentment to the grand jury and pled guilty to these charges. Judge Kelly sentenced Applicant to imprisonment for 18 years for distribution of methamphetamine, 3rd or subsequent and 10 years for distribution of methamphetamine within one-half mile of a school. Both sentences were to run concurrent with all other sentences. Applicant does not challenge these convictions or sentences in his PCR application. Only the charges for which he was represented by Mr. Morin are mentioned in his PCR application.

² Applicant pled not guilty to domestic violence. The charge was later dismissed.

³ At the time of his plea, Applicant was on probation for distribution of crack cocaine within a half mile of a school (09-GS-11-1315) and distribution of crack cocaine, 1st offense (09-GS-11-1316). Applicant admitted violating probation during the plea hearing. Judge Kelly revoked Applicant's probation in full and sentenced Applicant to his original, suspended sentence of 10 years, concurrent to all other sentences.

 2

to serve 85% of his sentence. The State objected to the testimony based on relevance because the issue was outside the scope of the allegations pled in his application. The objection was overruled. Applicant indicated the issue with SCDC was the only issue he wished to pursue in his PCR. This Court granted the State's motion to dismiss on the basis that Applicant failed to present any issues proper for PCR. The State noted that an ineffective assistance of counsel claim alleging Counsel had misadvised him regarding the amount of time he was required to serve was proper for PCR, but this Court notes Applicant neither pled such a claim in his application nor alleged such in his testimony. Applicant merely complained about SCDC's actions affecting his sentence. This issue is not proper for PCR.

CONCLUSION

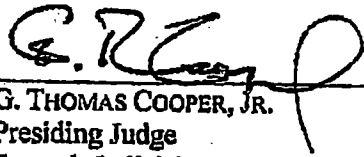
Based on all the foregoing, this Court finds and concludes Applicant has not established any claims that would warrant post-conviction relief. Therefore, the application for PCR is dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 16 day of November, 2017.


G. THOMAS COOPER, JR.
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

WITNESSES

Cherokee County Sheriff's Office

[Handwritten Signature]

ARREST WARRANT NUMBER

2015A1110100497

ACTION OF GRAND JURY

TRUE BILL

[Handwritten Signature]
Foreperson of Grand Jury
Date: 9-10-15

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 15-GS-11-00832

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 10 2015

TERM

THE STATE

vs.

JAMARCUS DELEON FOSTER

Indictment for

DISTRIBUTION OF METHAMPHETAMINE

SC Code: 44-53-375

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2015 SE
BRAN
CHEROK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

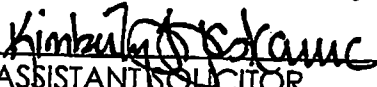
INDICTMENT

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

DISTRIBUTION OF METHAMPHETAMINE

That Jamarcus Deleon Foster did in Cherokee County on or about June 5, 2015, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Methamphetamine, a schedule II controlled substance under provisions Code §44-53-375, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such distribution not having been authorized by law.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS.

INDICTMENT/CASE#: 2015GS1100832
A/W#: 2015A1110100497
Date of Offense: 6/5/2015
S.C. Code § : 44-53-0375(B)(3)
CDR Code #: 3200

Jamarcus Deleon Foster
AKA:
Race: BLACK Sex: M Age: 27
DOB: SS#:
Address: Evans Street
City, State, Zip: Gaffney, SC 29340-2737
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Distribution of Methamphetamine, 3rd offense [10-30 years and/or 0-50k]

in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3200
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: LESKANIC, KIM SC Bar# 110837 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 18 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS
Recipient:
*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 8.25
TOTAL \$ 883.25
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:
Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (07/2016)

Presiding Judge: [Signature]
Judge Code: 2105
Sentence Date: July 22, 2016

ARREST WARRANT

2015A1110100497

STATE OF SOUTH CAROLINA

County/ Municipality of

Cherokee

THE STATE
against

Jamarcus Deleon Foster

Address: Evans Street

Gaffney, SC 29340-2737

Phone: _____ SSN: _____
Sex: M Race: B Height: 6 Weight: 165

DL State: SC DL #: _____

DOB: _____ Agency ORI #: SC0110000

Prosecuting Agency: Cherokee County Sheriff

Prosecuting Officer: Ronnie Painter - 0062

Offense: Drugs / Distribution, etc. of methamphetamine, 3rd or sub. (Excludes manufacturing meth; see CDR Code 3778)

Offense Code: 3200

Code/Ordinance Sec: 44-53-0375(B)(3)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Jamarcus Foster on 7-9-15

Mark H. Howell 33130
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
General Sessions
125 E. Floyd Baker Blvd
Gaffney, SC 29342

ORIGINAL

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STATE OF SOUTH CAROLINA
 County/ Municipality of
Cherokee

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AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 515

Personally appeared before me the affiant Ronnie Painter who being duly sworn deposes and says that defendant Jamarcus Deleon Foster did within this county and state on or about 6/5/2015 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Cherokee) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Distribution, etc. of methamphetamine, 3rd or sub. (Excludes manufacturing meth; see CDR Code 3778)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on June 5, 2015, in the County of Cherokee, one Jamarcus Deleon Foster did knowingly and without authorization distribute Methamphetamine, a Scheduled II controlled substance. Defendant has prior convictions for this offense. Incident occurred in Gaffney S.C. 29340. Warrant is based on the investigation of the Cherokee County Sheriffs Office and incident report # 1502426

Signature of Affiant

Ronnie Painter

STATE OF SOUTH CAROLINA
 County/ Municipality of
Cherokee

Affiant's Address 312 E. Frederick St.

Gaffney, SC 29340-

Affiant's Telephone (864)489-4722

ORIGINAL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/5/2015 defendant Jamarcus Deleon Foster did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Cherokee) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Distribution, etc. of methamphetamine, 3rd or sub. (Excludes manufacturing meth; see CDR Code 3778)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 7/8/2015

Robert Howell (L.S.)
Signature of Issuing Judge

Judge Code: 5882

Judge's Address Cherokee Magistrate's Court

Gaffney, SC 29342

Judge's Telephone (864)487-2533

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

FILED IN OFFICE OF CLERK OF COURT
CHEROKEE COUNTY, S.C.
JUL 13 2015
W. MOORE

WITNESSES

Cherokee County Sheriff's Office

[Handwritten signature]

ARRÊST WARRANT

2015A1110100499

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

9-10-15

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO

15-GS-11-00833

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 11 2015

TERM

THE STATE

vs.

JAMARCUS DELEON FOSTER

Indictment for

DISTRIBUTION OF METHAMPHETAMINE
WITHIN ONE-HALF MILE OF PARK/SCHOOL

SC Code: 44-53-445

St

FILED IN
CLERK

2015 SEP 1

BRANDY
CHEROKEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on SEP 10 2015, the
Grand Jurors of Cherokee County present upon their oath:

**DISTRIBUTION OF METHAMPHETAMINE
WITHIN ONE-HALF MILE OF PARK/SCHOOL**

That Jamarcus Deleon Foster did in Cherokee County on or about June 5, 2015, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a controlled substance, to wit: A quantity of Methamphetamine, a schedule II controlled substance, within one-half mile of Alma Elementary School, South Carolina, such distribution not have been authorized by law, in violation of § 44-53-445, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended

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

Kimberly K. Kovic
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Cherokee)
 STATE VS.)
 Jamarcus Deleon Foster)
 AKA:)
 Race: BLACK Sex: M Age: 27)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: Evans Street)
 City, State, Zip: Gaffney, SC 29340-2737)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS1100833
 A/W#: 2015A1110100499
 Date of Offense: 6/5/2015
 S.C. Code § : 44-53-0445
 CDR Code #: 0107

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Distribution of Methamphetamine within 1/2 mile of school [0-10 years and/or 0-10k].

in violation of § 44-53-0445 of the S.C. Code of Laws, bearing CDR Code # 0107
 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's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: Kim Leskanic 116837 Jamarcus Deleon Foster [Signature] 65094
 LESKANIC, KIM 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: all indictments
 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.
 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 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ — plus 20% fee: \$ —
 Payment Terms: —
 Set by SCDPPPS —

PTUP — days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. —
 May serve W/E beginning —
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ — beginning —
 \$ — paid to Public Defender Fund
 Other: —

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
3% to County (if paid in installments)	\$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk Brandi Mcabee
 Court Reporter: Maria Watts
 SCCA/217 (07/2016)

Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.
 Presiding Judge [Signature]
 Judge Code: 2105
 Sentence Date: July 22, 2016

ARREST WARRANT

2015A1110100499

STATE OF SOUTH CAROLINA

County/ Municipality of

Cherokee

THE STATE
against

Jamarcus Deleon Foster

Address: Evans Street
Gaffney, SC 29340-2737

Phone: _____ SSN: _____
Sex: M Race: B Height: 6 Weight: 165
DL State: SC DL #: _____
DOB: _____ Agency ORI #: SC0110000

Prosecuting Agency: Cherokee County Sheriff
Prosecuting Officer: Ronnie Painter - 0062

Offense: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

Offense Code: 0107
Code/Ordinance Sec: 44-53-0445(A)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Jamarcus Foster on 7-9-15

Mark H. [Signature] 33130
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
General Sessions
125 E. Floyd Baker Blvd
Gaffney, SC 29342

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of
Cherokee

AFFIDAVIT

ORIGINAL
Scanned

Form Approved by
U.S. Attorney General
April 21, 2000
SCCA 618

Personally appeared before me the affiant Ronnie Painter who being duly sworn deposes and says that defendant Jamarcus Deleon Foster did within this county and state on or about 6/ 5/2015 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Cherokee) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on June 5, 2015 in the County of Cherokee, one Jamarcus Deleon Foster did within one-half mile of Alma Elementary School, distribute Methamphetamine, a Schedule II Controlled Substance. Incident occurred in Gaffney S.C. 29340. Warrant is based on the investigation of the Cherokee County Sheriff's Office and incident report # 1502426

Signature of Affiant

Ronnie Painter

STATE OF SOUTH CAROLINA

County/ Municipality of
Cherokee

Affiant's Address 312 E. Frederick St.
Gaffney, SC 29340-
Affiant's Telephone (864)489-4722

ORIGINAL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY
It appearing from the above affidavit that there are reasonable grounds to believe that on or about 6/ 5/2015 defendant Jamarcus Deleon Foster did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Cherokee) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 7/8/2015

Signature of Issuing Judge
Robert Howell
Judge Code: 5882

Judge's Address Cherokee Magistrate's Court
Gaffney, SC 29342
Judge's Telephone (864)487-2533

Issuing Court: Magistrate Municipal Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, SC
JUL 13 PM 10
JAMARCY W. MORGAN

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

2016A1110100603

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **16-GS-11-00987**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 18 2016

TERM

THE STATE

vs.

JAMARCUS DELEON FOSTER

Indictment for

DISTRIBUTION OF METHAMPHETAMINE

SC Code: 44-53-375

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT


JUL 18 2016

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

DISTRIBUTION OF METHAMPHETAMINE

That Jamarcus Deleon Foster did in Cherokee County on or about June 16, 2016, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Methamphetamine, a schedule II controlled substance under provisions Code §44-53-375, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such distribution not having been authorized by law.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee STATE VS.

Jamarcus Deleon Foster

AKA: Race: BLACK Sex: Age: 27 DOB: -1988 SS#: Address: Evans Street City, State, Zip: Gaffney, SC 29340-2737 DL#: SID#:

INDICTMENT/CASE#: 16-GS-11-987 A/W#: 2016A1110100603 Date of Offense: 6/16/2016 S.C. Code §: 44-53-0375(B)(3) CDR Code #: 3200

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Distribution of Methamphetamine, 3rd offense [10 -30 years and/or 0-50k]

CONVICTED OF or PLEADS

in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3200 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or 2nd Act) §17-25-45

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

ATTEST: Solicitor 16B37 Defendant Attorney for Defendant 65099 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 18 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. 2016-0988

CONCURRENT or CONSECUTIVE to sentence on: VOP Sentence 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. 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP days/hours Public Service Employment

Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and fees. Total: \$ 283.25

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Court Reporter SCCA/217 (07/2016)

Presiding Judge Judge Code: Sentence Date: 7/22/16

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT

2016A1110100604

ACTION OF GRAND JURY

**Foreperson of Grand Jury
Date:**

VERDICT

**Foreperson of Petit Jury
Date:**

DOCKET NO.

16-GS-11-00988

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 18 2016

TERM

THE STATE

vs.

JAMARCUS DELEON FOSTER

Indictment for

**DISTRIBUTION OF METHAMPHETAMINE
WITHIN ONE-HALF MILE OF PARK/SCHOOL**

SC Code: 44-53-445

STATE OF SOUTH CAROLINA }
COUNTY OF CHEROKEE }

INDICTMENT

JUL 18 2016

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

**DISTRIBUTION OF METHAMPHETAMINE
WITHIN ONE-HALF MILE OF PARK/SCHOOL**

That Jamarcus Deleon Foster did in Cherokee County on or about June 16, 2016, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a controlled substance, to wit: A quantity of Methamphetamine, a schedule II controlled substance, within one-half mile of Alma Elementary School, South Carolina, such distribution not have been authorized by law, in violation of § 44-53-445, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee
STATE VS.

Jamarcus Deleon Foster

AKA:

Race: BLACK Sex: [redacted] Age: 27

DOB: [redacted]-1988 SS#: [redacted]

Address: Evans Street

City, State, Zip: Gaffney, SC 29340-2737

DL#: [redacted] SID#: [redacted]

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Distribution of Methamphetamine within 1/2 mile of school [0-10 years and/or 0-10k]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 16-GS-11-988

A/W#: 2016A1110100604

Date of Offense: 6/16/2016

S.C. Code §: 44-53-0445(A)

CDR Code #: 0107

SENTENCE SHEET

CONVICTED OF or PLEADS

In violation of § 44-53-0445(A) of the S.C. Code of Laws, bearing CDR Code # 0107

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. JPF (defendant's initials)

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

ATTEST: [Signature] Solicitor 116837 SC Bar# [Signature] Defendant [Signature] Attorney for Defendant [Signature] 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. 2016-0987

CONCURRENT or CONSECUTIVE to sentence on: VOP [Signature]
 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.
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 (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: ___
 Set by SCDPPPS

Recipient: ___

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$708
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 8.25

TOTAL \$ 883.25

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (07/2016)

Presiding Judge [Signature]
Judge Code: [Signature]
Sentence Date: 7/22/16

WITNESSES

Cherokee County Sheriff's Office

[Signature]

ARREST WARRANT

2016A1110100017

ACTION OF GRAND JURY

~~TRUE BILL~~
TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 6-9-16

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

16-GS-11-00769

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 09 2016

TERM

THE STATE

VS.

JAMARCUS DELEON FOSTER

Indictment for

DOMESTIC VIOLENCE IN THE SECOND DEGREE

SC Code: 16-25-20 (A)(C)

CDR: 3812

Class: MIS/A

FILED IN THE OFFICE
CLERK OF COURT

2016 JUN -9 A 10:10

BRANDY W. MCBEE
CHEROKEE COUNTY, SC

6/16/17 - NP without
prejudice. A serving
an 18 yr. sentence.

[Signature]

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHEROKEE

At a Court of General Sessions, convened on JUL 09 2016 the Grand Jurors of Cherokee County present upon their oath:

DOMESTIC VIOLENCE IN THE SECOND DEGREE

That Jamarcus Deleon Foster did in Cherokee County on or about January 10, 2016,

(1) cause physical harm or injury to a person's own household member (Jerrica Moss);
or

(2) did offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril; and

(1) moderate bodily injury to the person's own household member resulted or the act was accomplished by means likely to result in moderate bodily injury to the person's own household member; or

(2) in the process of committing domestic violence in the third degree one of the following also resulted:


(a) the offense was committed in the presence of, or while being perceived by, a minor, or

(b) the offense was committed during the commission of a robbery, burglary, kidnapping, or theft; or

(c) the offense was committed by impeding the victim's breathing or air flow,

in violation of 16-25-20(A)(C), CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

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


ASSISTANT SOLLICITOR