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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Perry H. Gravely, Circuit Court Judge

RANDALL EARL SIGHTLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002415

APPENDIX

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INDEX

INDEX	i
GUILTY PLEA HEARING TRANSCRIPT (dated June 7, 2011)	1
APPLICATION FOR POST-CONVICTION RELIEF	21
RETURN.....	28
RECONSTRUCTION HEARING TRANSCRIPT (dated September 8, 2017).....	34
APPLICANT’S EXHIBIT 1	109
APPLICANT’S EXHIBIT 2	111
APPLICANT’S EXHIBIT 3	112
STATE’S EXHIBIT 1	114
ORDER OF DISMISSAL.....	117
APPLICATION FOR POST-CONVICTION RELIEF	129
RETURN.....	136
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated April 18, 2016).....	141
ORDER GRANTING PCR.....	165
MOTION TO ALTER OR AMEND	169
AMENDED ORDER GRANTING PCR.....	174
INDICTMENTS	178

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

5 STATE OF SOUTH CAROLINA

6 -vs-

7 RANDALL EARL SIGHTLER,

8 Defendant.

TRANSCRIPT OF RECORD

11-GS-32-6009, et al

10 June 7, 2011
11 Lexington, South Carolina

14 B E F O R E:

15 HONORABLE EDWARD B. COTTINGHAM, Judge.

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

19 JONATHAN D. WALLER, Asst. Attorney General
Attorney for the State

20 SARAH A. HAHN, Asst. Public Defender
21 Attorney for the Defendant

22
23
24 L. COCONUT PANTSARI, R.P.R.
25 Circuit Court Reporter

INDEX

Guilty Plea 06/07/11	3
Statement of Facts	9
Sentence of the Court	19
Certificate	20

INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 June 7, 2011.)

3 CLERK: Indictment 2011-GS-32-6009, the State
4 versus Randall Earl Sightler, indicted for trafficking
5 methamphetamine second, he is pleading as charged.

6 Indictment 2011-GS-32-6010, the State versus
7 Randall Earl Slightler, indicted for manufacturing
8 methamphetamine second, he has waived presentment and is
9 represented by Ms. Hahn.

10 Raise your right hand.

11 RANDALL EARL SIGHTLER is first
12 duly sworn.

13 PROBATION OFFICER: Judge Cottingham?

14 THE COURT: Yes.

15 PROBATION OFFICER: Mr. Sightler is on
16 probation. We issued a warrant that has been served and
17 the charges he is pleading to today would violate his
18 probation also.

19 THE COURT: Tell me what he is on probation
20 for.

21 PROBATION OFFICER: Judge, he is on probation
22 for possession of less than 1-gram of methamphetamine.

23 THE COURT: How much time does he have?

24 PROBATION OFFICER: He was sentenced to three
25 years, suspended upon the service of 30 days, with two

1 years probation.

2 THE COURT: So he has got three years minus 30
3 days; right?

4 PROBATION OFFICER: Correct, Your Honor.

5 THE COURT: And what was his -- if he pleads
6 today, that's an obvious violation. But what else did
7 he do?

8 PROBATION OFFICER: Your Honor, he failed to
9 report to our office June of 2010. He was told -- he
10 failed to report after his release from the Lexington
11 County Department of Corrections.

12 Also, in September he violated state or local
13 law, having been arrested by the West Columbia Police
14 Department in June of 2010 for shoplifting, simple
15 possession of marijuana --

16 THE COURT: Have those charges been disposed
17 of?

18 PROBATION OFFICER: I am not sure.

19 MR. WALLER: Some of the magistrate level
20 charges have been disposed of. We are going to take
21 care of the rest of them today, Your Honor.

22 PROBATION OFFICER: Possession of drug
23 paraphernalia, possession of pseudoephedrine, P.W.I.D.
24 methamphetamine.

25 THE COURT: All of this while on probation?

1 PROBATION OFFICER: Yes, sir.

2 THE COURT: He is obviously not a candidate
3 for probation.

4 PROBATION OFFICER: No, sir. This was two
5 months after he received probation.

6 THE COURT: Counsel, do you represent him?

7 MS. HAHN: I do, Your Honor.

8 THE COURT: Obviously these are the basis to
9 be revoked clearly, and an entry of this plea will be
10 another basis for that. Do you agree with that?

11 MS. HAHN: I do, Your Honor.

12 THE COURT: You have heard the violations.
13 You agree that you did those violations?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You agree that you are looking at
16 a possible three years minus 30 days on those alone?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And what is he charged with now?

19 MR. WALLER: Manufacturing methamphetamine
20 second and trafficking methamphetamine second also.

21 THE COURT: Neither one of these has been
22 presented to the grand jury. I note his signature.

23 Counsel, can you certify to me as an officer
24 of the Court that his signature is freely,
25 intelligently, and voluntarily made?

1 MS. HAHN: Yes, Your Honor.

2 THE COURT: Are you satisfied that he
3 understands the process of indictment by the grand jury?

4 MS. HAHN: I am, Your Honor.

5 THE COURT: Are you satisfied that this is an
6 intelligent waiver?

7 MS. HAHN: I am, Your Honor.

8 THE COURT: Do you agree with that,
9 Mr. Defendant?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: These are serious charges that
12 have not been presented to the grand jury. I see that
13 you have waived it, and this is your signature?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: That signature is voluntary; is
16 that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: How is he pleading to trafficking
19 methamphetamine second offense?

20 MS. HAHN: Guilty, Your Honor.

21 THE COURT: And what penal statute is that?

22 MR. WALLER: That is 44-53-375(b)(2).

23 THE COURT: What is the penal statute -- it
24 has changed. Is this under the new or old statute?

25 MR. WALLER: This is under the new one, Your

1 Honor.

2 THE COURT: What does the new statute by way
3 of penalty?

4 MR. WALLER: Five to 30.

5 THE COURT: Do you agree with that, Counsel?

6 MS. HAHN: Yes, sir.

7 THE COURT: That fine is a minimum too; isn't
8 it?

9 MS. HAHN: Yes, sir.

10 MR. WALLER: Yes, Your Honor.

11 THE COURT: How about the manufacturing? Both
12 of them are second offenses?

13 MR. WALLER: Yes, sir. They both carry the
14 same penalty.

15 THE COURT: Five to?

16 MR. WALLER: Thirty.

17 THE COURT: Thirty?

18 MR. WALLER: Yes, sir.

19 THE COURT: Have you negotiated in any way
20 with references to these charges?

21 MR. WALLER: Your Honor, he was arrested and
22 he has a pretty extensive record. This is actually a
23 reduction in charge from his arrest warrants.

24 THE COURT: What is his prior record if it's
25 a reduction to second?

1 MR. WALLER: He was facing third offenses on
2 several charges.

3 THE COURT: Do you agree with that, Counsel?

4 MS. HAHN: I do and I would like to add that
5 the attorney general has agreed to recommend that the
6 sentences run concurrently as well.

7 MR. WALLER: Yes, that's correct.

8 THE COURT: Why is the Attorney General's
9 Office handling this?

10 MR. WALLER: I believe Mr. Sigtler was the
11 victim in a case that is being prosecuted by Lexington
12 County.

13 MS. HAHN: That's right.

14 THE COURT: And that created an apparent
15 conflict?

16 MS. HAHN: Yes, sir.

17 THE COURT: Counsel for the Defendant -- you
18 are looking now at a possible 60 years. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: These indictments, do you want to
24 give me the factual basis for both these pleas.

25 MR. WALLER: Yes, sir.

1 THE COURT: And you tell me if it's true.

2 MR. WALLER: On June 13, 2010, officers with
3 the West Columbia Police Department responded to 1210
4 Charleston Highway -- that's within Lexington County.
5 It's a C.V.S. store -- to a complaint by the clerk of
6 shoplifting.

7 When they arrived there, they found
8 Mr. Sightler and several of the codefendants outside in
9 the parking lot. Upon basically getting consent to
10 search of the vehicle or searching the vehicle, they
11 found the makings of a methamphetamine lab.

12 There was approximately 200 pseudoephedrine
13 pills, batteries, scales, balloons, rubber gloves,
14 tubing, a heater. It was Mr. Sightler's -- either his
15 car or he was in possession of the car. He was the
16 driver. That's what led to the manufacturing charge.

17 THE COURT: How about the second one?

18 MR. WALLER: The second one was October 18,
19 2010. Again, officers with the West Columbia Police
20 Department made a traffic stop in the 2400 block of
21 Sunset Boulevard. That's also in Lexington County.

22 Mr. Sightler was a passenger in a car. The
23 driver gave consent to search the vehicle. Between the
24 trunk and the passenger compartment, they found, again,
25 some makings of a methamphetamine lab.

1 The three codefendants there were taken to
2 jail. One of the codefendants told a cellmate that
3 there was drugs in the car that were not found at the
4 scene.

5 Officers went back. The car had been
6 impounded. They searched the glove box, which is where
7 the codefendant said the additional drugs were, and
8 found approximately 11-grams of methamphetamine and
9 approximately 18-grams of pseudoephedrine.

10 I have here with me today the investigators
11 from the West Columbia Police Department, particularly
12 Investigator Doug Hook was present and made both
13 arrests. I think they would like to address the Court
14 as to these also.

15 THE COURT: Yes, sir. I thank you for your
16 presence. I would be glad to hear from you.

17 Let me ask you before we proceed, has he been
18 convicted of this same charge before? I know he has got
19 a significant prior record.

20 MR. WALLER: Yes, sir. His complete record is
21 in 2000, he had a possession of alcohol by a minor, a
22 public drunk, a disorderly conduct, a possession of
23 marijuana.

24 In 2001 he had a driving under suspension
25 and a simple assault. 2005, he had possession of

1 Schedule II controlled substance, a trafficking of
2 methamphetamine first offense.

3 In 2008 he had an assault and battery of a
4 high and aggravated nature. In 2010 possession of
5 marijuana, a shoplifting, and a possession of
6 methamphetamine.

7 THE COURT: When was the last trafficking in
8 methamphetamine? When was that?

9 MR. WALLER: 2005.

10 THE COURT: I would be glad to hear from
11 either one or both of you gentlemen. I thank you for
12 your presence.

13 INVESTIGATOR HOOK: I'm Investigator Hook with
14 the West Columbia Police Department, the narcotics
15 division. The trafficking charge, Investigator Williams
16 and I made the traffic stop on the vehicle, found the
17 makings of a meth lab.

18 An informant in the jail advised Lieutenant
19 Hamilton of the N.E.T. team about possible drugs in the
20 vehicle that we missed. I went back, since the vehicle
21 was in our possession the whole time. The
22 methamphetamine were located behind the glove box. You
23 had to push the glove box in and fold it down. It was
24 stored in the back, well hidden.

25 THE COURT: He admitted it was his?

1 INVESTIGATOR HOOK: No, sir. I charged all
2 three defendants in the vehicle with the trafficking.
3 We just wanted to address the Court. When we come
4 across people on the streets and ask them about
5 methamphetamine, Mr. Sightler is always popping up.
6 It's our belief he is one of the main cooks in the
7 county, and we are tired of dealing with Mr. Sightler.

8 THE COURT: He has got a prior record for
9 doing the same thing.

10 INVESTIGATOR HOOK: And it shows that he is
11 not going to stop. We ask the Court to impose the
12 maximum sentence that the Court can do on Mr. Sightler.

13 THE COURT: Officer Williams.

14 INVESTIGATOR WILLIAMS: Yes, Your Honor. I
15 just wanted to reiterate that every -- most every case
16 that we deal with meth, his name pops up with the
17 hotels, cooking in hotels, cooking in vehicles, putting
18 the public in danger, Your Honor.

19 THE COURT: You consider, by reputation and
20 prior conviction, that he is one of the main major
21 players in the distribution of methamphetamine?

22 INVESTIGATOR WILLIAMS: Yes, Your Honor.

23 THE COURT: Mr. Defendant, I think I have
24 inquired before, but I will now again. You have heard
25 the factual basis for these charges.

1 Incidentally, have the codefendants been --
2 what happened to the codefendants? You said there were
3 three of them?

4 MR. WALLER: Yes, sir. The second set of
5 charges, the trafficking charges in this scenario, I
6 don't have. I don't know what has happened to the
7 codefendants.

8 I know the first set of charges, the
9 manufacturing charges from June, both of the
10 codefendants have pled guilty. One received five years,
11 suspended on five years probation, and one deferred
12 sentencing and has not been sentenced yet.

13 THE COURT: The second one did what?

14 MR. WALLER: He deferred sentencing. He has
15 pled guilty and he is cooperating with law enforcement.

16 THE COURT: One received probation for
17 trafficking methamphetamine?

18 MR. WALLER: No, sir. That was for the
19 manufacturing.

20 MS. HOWARD: Your Honor, if I may. I have
21 that case, this case. The one who got five suspended on
22 five years probation had no prior record.

23 THE COURT: Mr. Defendant, do you acknowledge
24 that you are guilty of these charges?

25 THE DEFENDANT: Yes, sir, I'm guilty.

1 THE COURT: You have heard the facts in the
2 case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You found several -- you tell me
5 about the several hundred that you found in the glove
6 compartment.

7 INVESTIGATOR HOOK: The meth?

8 THE COURT: Yes.

9 INVESTIGATOR HOOK: Yes, sir.

10 THE COURT: And you admit that you are guilty
11 as to that too?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You admit guilt as to both
14 charges?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You understand now that you are
17 presumed innocent, and the State would have to prove you
18 guilty beyond a reasonable doubt?

19 THE DEFENDANT: I understand, sir.

20 THE COURT: Do you understand that in my
21 discretion, I could put you in jail for 30 years
22 consecutive on each one of these things?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you had a jury trial, I would
25 charge the jury that you are presumed innocent, and the

1 State would have to prove you guilty beyond a reasonable
2 doubt. Do you understand that?

3 THE DEFENDANT: I do, sir.

4 THE COURT: You, at trial through your
5 attorneys, would have the right to confront the
6 witnesses against you. You would have a right to
7 testify in your own behalf. Do you understand these
8 things?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If you elected to remain silent
11 and not testify, I would charge the jury that that fact
12 could not be used against you, that it could not even
13 enter into the jury room during their deliberations. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: In accepting this plea, you are
19 saying to me under oath: I understand my constitutional
20 rights. My attorney has also explained them to me. I
21 wish to waive these rights and plead guilty. Is that
22 true?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you agree with that, Counsel?

25 MS. HAHN: Yes, sir.

1 THE COURT: All right. What do you want to
2 tell me?

3 MS. HAHN: Your Honor, he is 28 now. He went
4 only as far as the seventh grade in school, but he has
5 done considerable work since he got out of school. He
6 has done primarily painting and construction type work.

7 For a long time he worked with his uncle that
8 owned a company called Mustard Seed. They did
9 construction work and did volunteer work with churches
10 and kind of thing. Mr. Sightler helped him out with
11 that.

12 You heard from his record and the facts in
13 these cases that he does have a drug problem. I talked
14 to him about this. He says that he had used drugs since
15 the time he was 18 or 19, began using meth at 21.

16 THE COURT: He has gone beyond that though.
17 He is trafficking and manufacturing.

18 MS. HAHN: Your Honor, he understands that he
19 is in a terrible situation. I think he is very sorry
20 that he has put his family through this. He knows he
21 put himself into this situation.

22 I think that he began as a user and things got
23 worse and worse, and he gradually got in over his head.
24 He understands his record and he understands that he has
25 violated probation. He knows that he is in a bad

1 situation here today.

2 I will say that he has some good things going
3 for him. He knows he will have to serve at least five
4 years on this charge. That's a no-parole offense. He
5 will be doing 85 percent of what ever Your Honor gives
6 him. He's got to do at least the five.

7 This is a violent offense.. He will be serving
8 this with other violent offenders in the Department of
9 Corrections. This will not be an easy term of prison
10 for him.

11 He is already thinking ahead about what is
12 going to happen once he gets out. He asked me to ask
13 the Court to recommend A.T.U. while he is locked up if
14 he is eligible for that.

15 While he has been incarcerated, he has
16 enrolled in the L.R.A.D.A.C. program at the jail. It's
17 a drug treatment program for inmates. He completed that
18 successfully, and he also applied to another drug
19 treatment program in the upstate and wanted to do that
20 as well.

21 Once he has served his sentence, he's got some
22 very good family support. His mother and grandmother
23 are here with him today. They have told him that he can
24 come and live on their family's property, and they will
25 try and help him get back on his feet with a job and

1 that kind of thing.

2 Like I said, he wants to do A.T.U. while he is
3 in the Department of Corrections, but he wants to do
4 drug treatment in a more structured setting after that
5 too, not just N.A. meetings or something like that. He
6 wants to do something when he gets out.

7 We are asking the Court to consider the
8 minimum on this case since it is going to be an
9 85 percent sentence. That is certainly a substantial
10 sentencing. We'd ask that the Court consider that.

11 He certainly acknowledges his guilt in these
12 cases. He doesn't admit that he is behind every meth
13 case in West Columbia. I don't think that would be
14 possible, but he does acknowledge that he made some --

15 THE COURT: The minimum sentence is not
16 appropriate in this case based on his prior record by
17 having done the same thing.

18 First, Rusty.

19 PROBATION OFFICER: Yes, sir.

20 THE COURT: I revoke him in full.

21 PROBATION OFFICER: Okay.

22 THE COURT: They will run concurrent with the
23 sentence I am getting ready to impose.

24 You know we are faced with the scourge of
25 drugs in this community and in this County and in this

1 State. I want to congratulate the officers for their
2 effort in purging this community of that terrible
3 disease. I thank you for that.

4 Manufacturing methamphetamine is really
5 impacting on a lot of young people who get a hold of
6 this stuff. To the extent you can eradicate it, I
7 congratulate you.

8 I regard this particular methamphetamine
9 manufacturing in the most serious way, particularly with
10 the fact he has already been convicted one time of it,
11 coupled with the other charges.

12 I am going to sentence him on each charge to
13 15 years. I will let it run concurrent, and I will let
14 the probation revocation also run concurrent and give
15 him credit for time served.

16 I am mindful of the fact of your consideration
17 that this is an 85 percent sentence. He will serve 85
18 percent of 15 years. That's the judgment of the Court
19 and I thank you.

20 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 7th day of June, 2011.

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

November 20, 2011

L Coconut Pantsari

Court Reporter

FORM 5

Return ORIGINAL^{21 REM}

STATE OF SOUTH CAROLINA

County of Lexington S.C.Randall Earl Sighler #311918

Full name and prison number (if any) of Applicant

v.

State of South Carolina

FILED IN THE COURT OF COMMON PLEAS

SEP 23 12:44

2011 CP 3203685

APPLICATION FOR

POST-CONVICTION RELIEF

2011CP3203685

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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Lexington County Court General Sessions
3. Name(s) of co-defendant(s) (if any) Greg Addy, Rally Quack, Chrystal Michaels, Tonya?, Brittany Lanzieri, Jennifer Hagins
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-32-6010
 - (b) 2011-GS-32-6009

A TRUE COPY
 Lex. Co. C.C.P., Q.S. & F.C.

(c) 10-GS-32-01202

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

(a) June 7, 2011 - Probation Violation - 3 years(b) June 7, 2011 - Trafficking Methamphetamine 2nd - 15 years(c) June 7, 2011 - Manufacturing Methamphetamine 2nd - 15 years

} Concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty 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. N/Aii. N/Aiii. N/A

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

i. N/Aii. N/Aiii. N/A

(c) the date of each such result:

i. N/Aii. N/Aiii. N/A

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

i. N/Aii. N/Aiii. N/A

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

(a) Was not advised by counsel of that right(b) It wasn't made aware by the Judge that I could

(c) _____

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

- (a) Ineffective Assistance of Counsel ~~COCA~~
- (b) Prosecutor Misconduct
- (c) Conflict of Interest

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

- (a) Counsel failed to withdraw plea, Lack of Communication, Misled
- (b) Breach of plea agreement by State, Misled
- (c) Co-defendants represented by same public defenders office, and guy that Shot me

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

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

(a) the specific nature thereof:

- i. NA
- ii. NA
- iii. NA
- iv. NA

(b) the name and location of the Court in which each was filed:

- i. NA
- ii. NA
- iii. NA
- iv. NA

201 SEP 23 12 44

FILED

(c) the disposition thereof:

- i. NA
- ii. NA
- iii. NA
- iv. NA

(d) the date of each such disposition:

- i. NA
- ii. NA
- iii. NA
- iv. NA

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

- i. NA
- ii. NA
- iii. NA
- iv. NA

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. NA
- ii. NA
- iii. NA

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

- i. NA
- ii. NA
- iii. NA

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201 SEP 28 12:44
FEDERAL COURT

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) N/A
 (b) N/A
 (c) N/A

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? NO Trial
 (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. Sarah Haha Eleventh Judicial Circuit
Public Defenders Office 407 1/2 W. Main St. Lexington
SC, 29026
 ii. Casey Cornwell Eleventh Judicial Circuit
Public Defender's Office 407 1/2 W. Main St. Lexington, SC, 29012
 iii.
 (b) the proceedings at which each such attorney represented you:
 i. At plea Hearing June 7, 2011
 ii. was relieved due to ineffective assistance of counsel
 iii.

FILED
 SEP 28 2 12 PM
 2011
 Revised 3/2003

ORIGINAL

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

1) Vacate my conviction and sentence

2) ~~2~~ Specific Sentence Performance

3) They renegeed on the deal 5 to 10 and gave me 15 yrs

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

No

2011CP3203685

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

2011 SEP 28 12:44

FILED

I, Randall Earl Sighler, 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.

Randall Earl Sighler

SWORN to and subscribed before me this 27th day of June, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: October 8, 2014

2011 SEP 28 12:44

FILED

2011CP3203685

ORIGINAL²⁷

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

I, Randall Earl Sichter, 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.

Randall E. Sichter
Applicant

SWORN or affirmed to and subscribed before me this

23rd day of June, 2011.

[Signature]
Notary Public

My Commission Expires: October 8, 2014

2011 SEP 28 12:44

FILED

Return

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Randall Earl Sightler, #311918,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

Case No: 2011-CP-32-3685

ORIGINAL**RETURN**

FILED
2012 179 - 9 12 12:03
CLERK OF COURT
LEXINGTON, SC

The Respondent, making its Return to the application for post-conviction relief (PCR) filed September 23, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant waived presentment of indictments for Trafficking Methamphetamine 10-28grams – 2nd Offense (2011-GS-32-6009) and Manufacturing Methamphetamine – 2nd Offense (2011-GS-32-6010). Applicant was represented by Sarah Hahn, Esquire. On June 7, 2011, the Applicant pled guilty as charged. The Honorable Edward B. Cottingham sentenced the Applicant to confinement for a period of fifteen (15) years on each charge to run concurrent. Additionally, the Applicant violated his probation for Possession of Less Than 1gram of Methamphetamine (2010-GS-32-1202), for which Applicant was originally sentenced to three (3) years, suspended upon thirty (30) days with probation for two (2) years. Judge Cottingham revoked Applicant in full with the sentence to run concurrent.

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

II.

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

1. Ineffective Assistance of Counsel
 - (a) Failure to inform of right to appeal;
 - (b) Failure to withdraw plea;
 - (c) Lack of communication;
 - (d) misled ;
2. Conflict of Interest
 - (a) "co-defendant represented by same public defender's office, and guy that shot me;"
3. Prosecutorial Misconduct
 - (a) "Breach of plea agreement by State; misled."

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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.

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

IV.

Respondent submits that the Applicant's allegation of a conflict of interest is without merit. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post conviction relief. Rather, this allegation is a direct appeal issues 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 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 Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

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

FILED
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CLERK OF COURT
LEXINGTON, SC

VII.

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

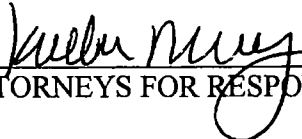
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 5, 2012

FILED
CLERK OF COURT
LEXINGTON, SC

2012 APR -9 12:03

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

2011-CP-32-3685

RANDALL EARL SIGHTLER, #311918,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

FILED
CLERK OF COURT
LEXINGTON, SC
APR -9 PM 12:01
JL

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

Elizabeth Ondera Graham, Esquire
6326 St. Andrews Rd.
Columbia, SC 29212

DATED this 6th day of April, 2012.

Lena Pelishenko
 Lena Pelishenko, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
-----)

2011-CP-32-03685

ORIGINAL

RANDALL EARL SIGHTLER,)
APPLICANT)
vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,)
DEFENDANT)
-----)

SEPTEMBER 8, 2017
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

JOHN HARRISON STROM, ESQUIRE
ATTORNEY FOR PLAINTIFF

WILLIAM JOSEPH MAYE, ESQUIRE
ATTORNEY FOR DEFENDANT

VIVIAN CROSS,
CIRCUIT COURT REPORTER

I N D E X:

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
RANDALL EARL SIGHTLER				
BY MR. STROM	3		29	
BY MR. MAYE		16		
SARA MAULDIN				
BY MR. STROM	31		66	
BY MR. MAYE		49		

E X H I B I T S:

APPLICANT'S 1	VOLUNTARY STATEMENT/HAGINS	8
APPLICANT'S 2	PLEA OFFER SHEET	40
APPLICANT'S 3	AG OFFICE/J. WALLER/LETTER	66
STATE'S 1	AFFIDAVIT OF WALT WHITMIRE	73

1 * * * SEPTEMBER 8, 2017 * * *

2
3 THE COURT: All right. For the record, this is
4 the matter of Randall E. Sightler vs. the State of
5 South Carolina. We're here in Anderson County, today
6 is September the 8th, 2017. The case number is
7 2011-CP-32-3685.

8 First, let me thank every one for agreeing to
9 hear this matter in Anderson County. Based on the
10 order from the Supreme Court, I am to hold a hearing to
11 reconstruct the record from the hearing that was held
12 in Lexington County on September 23, 2011.

13 Towards that end, Mr. Sightler, understand that
14 the sole purpose of this hearing is to create a record
15 so that the appellate courts in South Carolina can
16 review the denial of your PCR application. It is not
17 an opportunity for you to have me reconsider my
18 sentence -- I mean my denial of your application. That
19 would be the order of the court; do you understand
20 that?

21 MR. SIGHTLER: Yes, sir.

22 THE COURT: Towards that end as well, I met with
23 counsel in my chambers to go over procedure that we
24 would follow in this matter. I think it was agreed --
25 I want to be corrected if I am wrong, that we'd

1 essentially try to narrow the testimony down to the
2 issue involved in the appeal, which would include
3 without objection, putting in the record an affidavit
4 of the State's attorney at the PCR hearing. And there
5 was -- what -- there was one more affidavit, wasn't
6 there?

7 MR. STROM: We're going to attempt to get an
8 affidavit from the PCR counsel.

9 THE COURT: Yeah. You're going to attempt to get
10 an affidavit -- okay -- an affidavit from PCR counsel.
11 Okay. With that being said, I want to give the
12 applicant first an opportunity to supplement anything
13 that we stated in chambers that I haven't put on the
14 record here.

15 MR. STROM: May it please the court, I believe
16 that's an accurate, full recitation of what we talked
17 about.

18 THE COURT: Very good. Also the State's
19 perspective?

20 MR. MAYE: I believe that's also accurate. Just a
21 reiteration that we're limited to the rulings of the
22 court in the original order.

23 THE COURT: Right.

24 MR. MAYE: That's the only topic that might have
25 been discussed in a sentence or two.

R. SIGHTLER -- DIRECT

1 THE COURT: Okay. With that being said, go ahead
2 and -- and -- from a procedural standpoint, you want to
3 just call your witness and put him on the stand -- or
4 call whoever you want to call as your first witness.

5 MR. STROM: Yes, Your Honor. Since this is my
6 motion for guidance here, I figured I would call the
7 witnesses, and I'd call Mr. Sightler.

8 THE COURT: Come around, please, sir, and be
9 sworn.

10 THE CLERK: Please raise your right hand to the
11 best of your ability.

12 RANDALL E. SIGHTLER, having
13 been first duly sworn, testified as follows:

14 THE CLERK: Thank you. Please have a seat around
15 there on the witness stand.

16 THE COURT: All right. Mr. Sightler, I'm going to
17 ask you to speak loud so I --

18 THE WITNESS: Yes.

19 THE COURT: You're okay. But when you get to your
20 seat, pull the microphone to your mouth.

21 THE CLERK: Please state your name for the court's
22 record.

23 THE WITNESS: Randall Earl Sightler.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION BY MR. STROM:

R. SIGHTLER -- DIRECT

1 Q. Mr. Sightler, do you recall attending a PCR
2 hearing in your case?

3 A. Yes, sir.

4 Q. It was held on November 13, 2013?

5 A. Yes, sir.

6 Q. And do you recall the underlying case that --
7 excuse me -- is the reason for the application an
8 underlying guilty plea -- do you remember some of the
9 allegations that you raised as far as -- related to
10 ineffective assistance -- excuse me -- ineffective
11 assistance of counsel?

12 A. Um, conflict of interest --

13 Q. Well, just -- so you raised several specific
14 allegations that were made, including the Order of
15 Dismissal. Among them --

16 MR. STROM: And, Your Honor, I'm just going to
17 have to lead him in an effort to try to get him to
18 address what he recalls.

19 BY MR. STROM:

20 Q. The first allegation that you lodged is that
21 your plea counsel was ineffective for failing to
22 investigate a statement by a co -- made by a
23 co-defendant in your case, Ms. Jennifer Hagins?

24 A. Yes, sir.

25 Q. Do you -- so you -- do you have a specific

R. SIGHTLER -- DIRECT

1 recollection as to what you thought your attorney
2 should have done with respect to Ms. Hagins' statement?
3 How she should have approached the issue?

4 A. Well, Andrew Farley is the one that hand me
5 the statement. It was never in my -- the rule -- my
6 motion, Rule 5, the Brady. And she was supposed to be
7 subpoenaed. And my lawyer told me that -- that's why
8 she never got -- came to court, so I just want to know
9 why.

10 Q. Okay.

11 MR. STROM: Your Honor, may I approach with --

12 THE COURT: Absolutely.

13 MR. STROM: -- the statement.

14 BY MR. STROM:

15 Q. You referenced a document that your PCR
16 attorney handed you. Would you take a look at this and
17 see if you -- tell me if you recognize it?

18 A. Yes, sir.

19 Q. Is that the written statement from Ms. Hagins
20 that your PCR attorney first presented you with?

21 A. Yes, it's the same other than what's whited
22 out.

23 Q. Okay.

24 MR. STROM: For the record, Your Honor, what's
25 whited out is just her address and other personal

R. SIGHTLER -- DIRECT

1 information that complies with redact rules.

2 THE COURT: Yes, sir.

3 BY MR. STROM:

4 Q. So, the first time you saw this statement, to
5 the best of your recollection, was on PCR?

6 A. Yes, sir.

7 MR. STROM: And, Your Honor, at this point,
8 Applicant would move to have that admitted as
9 Applicant's Exhibit 1 for the purpose of reconstruction
10 as opposed to the -- we don't know, frankly, Your
11 Honor, if it was introduced as an exhibit. And so for
12 the purpose of reconstruction, we would like to have it
13 admitted.

14 MR. MAYE: No objection, Your Honor.

15 THE COURT: Very good. It will be admitted.

16 COURT REPORTER: Your Honor, may I have the
17 opportunity to mark it?

18 MR. STROM: I -- I will just have it marked --
19 this is the only exhibit I have for this witness.

20 (Applicant's Exhibit No. 1 marked.)

21 BY MR. STROM:

22 Q. So your allegation is that your plea counsel
23 was ineffective for failing to investigate Ms. Hagins'
24 claims and to relay that information to you?

25 A. Yes, sir.

R. SIGHTLER -- DIRECT

1 Q. And to the best of your recollection, you were
2 not presented -- do you recall testifying at the PCR
3 hearing that you were not presented with that
4 statement?

5 A. Yes, sir.

6 Q. Do you recall having any memory as to when Ms.
7 Hagins' might have made this statement, or do you have
8 any -- any knowledge of this statement prior to the PCR
9 counsel showing it to you?

10 A. No, sir. I don't know when it was wrote. I
11 just know he handed it to me at -- at the -- like,
12 right here at the PCR.

13 Q. At the PCR -- at the first PCR hearing?

14 A. Yes, sir.

15 Q. Do you recall how -- do you recall what your
16 testimony was regarding the impact that that statement
17 would have had on your decision to plead guilty?

18 A. Well, I -- I -- I felt like -- I know I
19 shouldn't go on my feelings, but what things -- proof,
20 but I felt like she wrote a statement saying that it
21 was hers, I should have never been charged with it.

22 Q. When you say "hers", you're referring to the
23 second set of charges you faced regarding the --

24 MR. STROM: And this -- this is in the guilty
25 plea, Your Honor.

R. SIGHTLER -- DIRECT

1 Q. -- regarding the failure -- the traffic stop
2 after the failure to signal, you were a passenger in
3 that vehicle?

4 A. Yes, sir. I was in the back seat.

5 Q. And you were charged with additional -- with
6 drugs that were found in the vehicle, and then a
7 subsequent search of the vehicle, additional drugs were
8 found?

9 A. Yeah. Well, they searched the vehicle and
10 found drugs, and then we all got locked up. And like
11 in a month, I had a -- however long -- it took over a
12 month, around that time, my co-defendant told my --
13 told her cellmate, or whatever, that the drugs were in
14 the vehicle and she told on it. And a month later, I
15 got charged with trafficking. They dropped all theirs.
16 And I didn't -- it wasn't my vehicle, but --

17 Q. And so do you recall your testimony at the PCR
18 hearing being that if you had had access to this letter
19 prior to pleading guilty, you would not have accepted
20 the guilty plea, or you would have wanted your attorney
21 to be aware of this statement?

22 A. Yeah, I -- I would want her to be aware of it.
23 That's -- because I felt like that I should have been
24 -- I shouldn't have been charged because that right
25 there freed me. If somebody wrote a statement against

R. SIGHTLER -- DIRECT

1 me, I'm going to jail. If they write one for me, I
2 felt like --

3 Q. Okay. Another issued you raised regarding the
4 searches of the two vehicles involved in your two
5 different drug arrests, do you recall what you
6 testified to at the PCR hearing regarding the search of
7 -- let's start with the first vehicle, which I believe
8 is a gold Expedition. Do you recall what you said you
9 wanted your attorney to challenge with respect to the
10 search of that vehicle?

11 A. I know that -- I just seen them, we -- they --
12 I don't know how they became my co-defendants. I knew
13 them and they just happen to be staying next door. I
14 don't -- I don't know if I'm understanding that --

15 Q. Okay. So one of the allegations you raised at
16 your PCR hearing is that your defense counsel was
17 ineffective for failing to challenge on fourth
18 amendment grounds, the search of your vehicles -- of
19 the vehicles that the drugs were found in; do you
20 recall your testimony regarding that point? Do you
21 have any specific recollection of the fourth amendment
22 ground that you wanted her to challenge?

23 A. I don't remember what -- but I just know they
24 weren't my vehicles, but I was in one of them.

25 THE COURT: And for the record, you were referring

R. SIGHTLER -- DIRECT

1 to the CVS incident, the first traffic stop?

2 MR. STROM: It was both -- both incidents, Your
3 Honor, the CVS parking lot incident and -- again, one
4 thing about the Order of Dismissal is that it doesn't
5 -- it doesn't specify which --

6 THE COURT: I got you.

7 MR. STROM: -- search is being contested --

8 THE COURT: Okay.

9 MR. STROM: -- or he wanted contested.

10 THE COURT: All right, sir.

11 BY MR. STROM:

12 Q. So you don't have a specific recollection as
13 to the fourth amendment grounds that you wanted or were
14 concerned about?

15 A. No, I'm --

16 Q. And, again, as we talked about, if you don't
17 have -- this happened back in 2013 -- if you don't have
18 a specific recollection, feel -- feel free to say so.

19 A. I don't.

20 Q. Okay. The next issue that appears in the
21 Order of Dismissal is an allegation that defense
22 counsel failed to enforce the terms of the plea
23 agreement between you and the State; do you recall that
24 issue?

25 A. I -- yes, sir.

R. SIGHTLER -- DIRECT

1 Q. Do you recall testifying about that issue?

2 A. Yes, sir.

3 Q. What is your specific recollection regarding
4 the breach of this agreement? What -- do you remember
5 the basis of which you testified to as your claim?

6 A. I -- yeah, I remember not word for word --

7 Q. And, again, just as best as you can remember.

8 A. All right. They gave me a deadline to take an
9 offer. If I didn't, that I was going to be -- get the
10 max, 30 years. And that shook me up. So they said
11 we're going to make no recommendations. So when I got
12 in front of Judge Cottingham, the State came forward
13 and recommended 30 years. I say the State --

14 Q. So -- so your understanding of the plea
15 agreement was it was going to be no recommendations
16 after the sentence?

17 A. Yeah. Yes, they speak what they going -- like
18 what my charges are or whatever, and my -- my attorney
19 speaks, and then the judge, you know, so it's solely on
20 him. And it came up, and they did all kind of stuff
21 and they --

22 Q. Well, let me -- so "they" meaning?

23 A. The narcotic agency, the State.

24 Q. Okay. And the "all kinds of stuff" being?

25 A. It was badgering. It made me look bad, but I

R. SIGHTLER -- DIRECT

1 guess --

2 Q. Do you recall they were recommending a
3 specific sentence?

4 A. Thirty years, which is the max.

5 Q. Okay. And so at your PCR hearing, to the best
6 of your recollection, you testified that you understood
7 that to be a breach of the plea agreement with the
8 attorneys?

9 A. Like I say, I don't know the law, but I felt
10 like they wasn't supposed to say nothing.

11 Q. Okay.

12 A. And they did.

13 Q. The next issue that appears in the Order of
14 Dismissal regards allegations of ineffectiveness due to
15 the conflict of interest involving your attorney; do
16 you recall that issue being raised?

17 A. Yes, sir.

18 Q. Do you recall you testifying to that issue at
19 the PCR hearing?

20 A. Yes, sir.

21 Q. Do you have any specific recollection as to
22 what your concern was regarding a potential conflict of
23 interest?

24 A. Well, I had -- I had multiple co-defendants --
25 like five or more -- I don't know right off. I'd have

R. SIGHTLER -- DIRECT

1 to think about it. But I had got shot twice. And the
2 guy, Vincent Pinkard, was the one who shot me. He was
3 being represented by the Public Defender's Office. And
4 I had them bouncing around from -- from Casey Cornwell,
5 Matt Buchanan -- it was like one or two other ones --
6 David -- no -- David Marlin -- David Marlin -- I don't
7 -- I don't remember the names, but -- so they bounced
8 me around. And then they put me -- I thought I was
9 going to get a pro bono lawyer, but they handed it over
10 to the Attorney General's Office with two of my
11 co-defendants, and the other one stayed so --

12 Q. Okay. So to the best of your recollection and
13 your testimony regarding the conflict of interest
14 issue, was it that you had another -- co-defendants
15 that were also represented by the Public Defender's
16 Office, and that you had a series of different Public
17 Defenders before Ms. Mauldin -- Ms. Hahn at the time?

18 A. Yes, sir.

19 Q. And then you also had -- were a victim in an
20 unrelated case where you were shot?

21 A. Yes, sir.

22 Q. And that individual was also represented by
23 the Public Defender's Office?

24 A. Yes, sir.

25 Q. Okay. Do you recall any specific --

R. SIGHTLER -- CROSS

1 testifying -- excuse me -- do you recall specifically
2 testifying as to Ms. Mauldin representing one of the
3 co-defendants or Ms. Mauldin representing the shooter
4 in your case?

5 A. I don't -- I'm not sure. I remember she come
6 and seen me and mentioned that -- or rather she handed
7 me -- because I brought it to her. She said, yeah, I
8 remember hearing it or talking about it or something.
9 Something like --

10 Q. If you don't -- if you don't have a specific
11 recollection, just --

12 A. Yeah. I don't know the specifics, but.

13 MR. STROM: Beg the court's indulgence for a
14 moment.

15 THE COURT: Yes, sir.

16 MR. STROM: I just want to make sure I cover your
17 order.

18 THE COURT: Take your time.

19 MR. STROM: I think that's all the questions I
20 have, Mr. Sightler.

21 THE COURT: All right. Counsel.

22 **CROSS EXAMINATION BY MR. MAYE:**

23 Q. Mr. Sightler, do you recall bringing your
24 concern of the conflict of interest you say you had --

25 THE COURT: Stand up.

R. SIGHTLER -- CROSS

1 MR. MAYE: Sorry, Your Honor.

2 THE COURT: That's all right.

3 BY MR. MAYE:

4 Q. Mr. Slighter, I'll start over. Do you recall
5 bringing your conflict of issue to the attention of
6 your counsel before your plea?

7 A. Yes, sir.

8 Q. Okay. Did you have a discussion about it?

9 A. Well, I had wrote letters to him -- over
10 there.

11 Q. Do you recall if your attorney discussed the
12 matter with you?

13 A. I --

14 Q. You don't recall that?

15 A. I -- I say I wrote -- I wrote letters.
16 They're over there and I never got responses back from
17 her. She came to visit me probably once or twice. I'm
18 not -- I'm not sure.

19 Q. Okay. Let me make sure I understand what
20 you're alleging your conflict of interest to be. Your
21 first -- you're saying your conflict existed because
22 you had co-defendants that are also being represented
23 by the Public Defender's Office?

24 A. I -- like I say, I don't know the law, but I
25 -- just going off what three of the other people have

R. SIGHTLER -- CROSS

1 told me, and I -- that's what I'm looking at.

2 Q. Okay. And then the other part was that the
3 Public Defender's Office was representing you, but also
4 representing an individual who was involved in an
5 altercation with you in a completely separate case;
6 does that sound correct?

7 A. Well, it was that and my co-defendants.

8 Q. Right. But those are the two, the
9 co-defendants, and then the issue with the individual
10 who shot you, but unrelated to the case that you were
11 being charged with?

12 A. Yes, sir.

13 Q. Okay. Are you aware of any relationship your
14 specific attorney had with any of the other cases?

15 A. I don't -- I don't -- like I say --

16 Q. You don't know exactly?

17 A. No, sir.

18 Q. Okay.

19 A. I would -- excuse me -- I would assume they --
20 they talked -- I don't know, because they all work
21 together, you know. I don't know for a fact.

22 Q. But you have to assume --

23 A. Yeah.

24 Q. -- that, you don't have any recollection, any
25 actual knowledge that your attorney spoke with any of

R. SIGHTLER -- CROSS

1 the other attorneys --

2 A. No.

3 Q. -- about your case under the circumstances,
4 they were representing your co-defendants?

5 A. I -- yeah. I -- I just know I've been handed
6 -- I've been bounced around that office, each one would
7 hand me off to the other one, to the other one, to the
8 other one, and I ended up with her.

9 Q. Mr. Sightler, you said that you were aware
10 that the maximum you were looking at under the plea
11 agreement would have been 30 years; is that correct?

12 A. It could have been -- I was told 60.

13 Q. With -- with the plea agreement?

14 A. No. No.

15 Q. Okay. Let's start from the start. Without
16 the plea agreement, do you know the maximum number of
17 years you could have been sentenced to?

18 A. Without the plea agreement, I was told 60
19 years, and that's what I was going to get if I didn't
20 take the plea. I was told that. I remember that
21 because it shook me up. And I remember the last time,
22 the PCR, Ms. William, they stood up and they said,
23 well, you know, if you went in, you could go and get
24 more time. And that's like -- that scare tactic. Who
25 knows -- probably it was a possibility, but I wasn't

R. SIGHTLER -- CROSS

1 done right.

2 Q. Okay. Strictly to my question, you are aware
3 that the maximum you could get without a plea agreement
4 was 60 years; yes or no?

5 A. Yes, sir.

6 Q. Okay. And you did receive a plea agreement;
7 correct?

8 A. Several.

9 Q. And the plea agreement that you accepted
10 involved -- wait for me to finish the question -- the
11 plea agreement that you accepted involved a concurrent
12 sentence for both of your charges, one of them being
13 pled down to trafficking second instead of trafficking
14 third; is that correct under your understanding?

15 A. Yes, sir.

16 Q. Okay.

17 A. Yes, sir.

18 Q. And part of that plea agreement was that your
19 sentences were to run concurrent; is that -- do you
20 understand that to be the case?

21 A. Yes, sir.

22 Q. And do you understand that concurrently means
23 that the two sentences would run together as opposed to
24 having to finish one before the next could start?

25 A. Yes, sir.

R. SIGHTLER -- CROSS

1 Q. Okay. And at sentencing, how many years did
2 you receive for each charge?

3 A. Um, 15, 15 and three years.

4 Q. Okay. So under your plea agreement,
5 regardless of what happened at the plea -- I'm just
6 asking about the years you actually got -- you received
7 15 years, 15 years and three, all running concurrent,
8 which means you would serve 15 years?

9 A. Fifteen years.

10 Q. Okay. Now, you're making -- you've made an
11 allegation in your PCR application that the officers --
12 the narcotic officers made a statement to the court and
13 asked for the maximum years?

14 A. Yes, sir.

15 Q. And under your plea agreement, that would have
16 required the court, if he had agreed with them, to give
17 you 30?

18 A. By me accepting that plea, I went with their
19 contract -- their little deal. And I felt like they
20 should honor their deal. They wasn't supposed say
21 nothing. The --

22 Q. That was not -- that's not the question I
23 asked you. My question was, the officer stood up and
24 asked the court to give you the maximum, which would
25 have been 30 years; correct?

R. SIGHTLER -- CROSS

1 A. Yes, sir.

2 Q. But the court did not give you 30 years, he
3 gave you 15; correct?

4 A. Yes, sir. He gave me --

5 Q. Okay.

6 A. He gave me --

7 Q. Just answer the question, you got 15, not 30;
8 correct?

9 A. Yes.

10 Q. So is it fair to say that the court did not
11 take the advice of the officer's recommendations to
12 him?

13 A. No, it isn't. The court --

14 Q. Did you get 30?

15 A. No, I got 30, but she -- she asked for five;
16 they asked for 30. The judge was fair and split it
17 down the middle. If they wouldn't have asked for 30, I
18 felt like I would have got -- well, what I was told I
19 was going to get was a ten year cap.

20 Q. You were guaranteed a certain number of years
21 by your attorney; is that your testimony?

22 A. She told me I was going to get a ten year cap.
23 And I already had a manufacturing second plea. I told
24 her I would take it -- never did. It never happened.
25 And that's a fact.

R. SIGHTLER -- CROSS

1 MR. MAYE: The court's indulgence.

2 THE COURT: Sure.

3 (Pause.)

4 BY MR. MAYE:

5 Q. Do you recall during your plea hearing whether
6 the Solicitor made any recommendations to the court?

7 A. No. She -- she just called them two up -- the
8 two narcotic agents --

9 COURT REPORTER: I'm sorry. She what?

10 A. She -- she called two narcotic agents up. I
11 -- it was Jonathan Waller -- I think that was his name,
12 the AG's office. I said "she" because that used to be
13 my Solicitor, Emily Howard.

14 Q. Mr. Sightler, going back to your allegation
15 regarding the statement from Ms. Hagins, it's your
16 testimony that you never saw that statement until your
17 PCR hearing?

18 A. Yes, sir.

19 Q. Okay. And you stated to Mr. Strom that you
20 had no knowledge as to when that statement was actually
21 made?

22 A. I don't know.

23 Q. Okay. Zero knowledge, no idea?

24 A. I just know it was written. It was -- Andrew
25 Farley, either he had sent it in the mail to me or he

R. SIGHTLER -- CROSS

1 handed it to me, that I don't know which one, but I
2 know he's the one that gave it to me, and it's right
3 here.

4 Q. All right. So your testimony would be that
5 your plea attorney in no way went over that statement;
6 that's your testimony?

7 A. If -- if it was wrote, it should have been in
8 my motion. I -- I -- that's all the stuff against me
9 -- or for me or whatever. All the stuff against me,
10 they gave it to me. All the stuff that was for me, I
11 didn't get 'til after the fact.

12 Q. At your PCR hearing, you said that you -- you
13 recall the PCR hearing that you had on the allegations
14 that we're trying to create a record for today;
15 correct? Do you recall?

16 A. Yes.

17 Q. That you recall the hearing?

18 A. Yes.

19 Q. Okay. And at that hearing you testified; is
20 that correct?

21 A. Yes.

22 Q. Okay. And in addition to you testifying, your
23 plea attorney testified; is that correct?

24 A. Yes, sir.

25 Q. Did anyone else testify to your recollection?

R. SIGHTLER -- CROSS

1 A. At the PCR hearing?

2 Q. At your PCR hearing?

3 A. Yes. Yes -- no, just me.

4 Q. Okay. Just you and your plea attorney. There
5 were no other witnesses brought up?

6 A. Other -- other than the AG's Office, the
7 attorney, the people brought in now --

8 Q. Okay. So your PCR did not bring anyone from
9 the Solicitor's Office or anyone who represents the
10 State other than -- well, let me rephrase that because
11 it's a terribly worded question. Your PCR counsel did
12 not bring anyone from the Solicitor's Office, who
13 convicted you, who could testify as to the contents of
14 their discovery file?

15 A. No, sir. Not -- not in -- no.

16 Q. So -- so if you didn't have a witness to
17 testify as to the contents of the discovery from the
18 State, it is your speculation that that statement was
19 in that file before your plea?

20 A. That --

21 Q. Do you have any proof otherwise?

22 A. That I don't know. I just know who handed it
23 to me.

24 Q. Okay.

25 A. Andrew Farley handed it to me.

R. SIGHTLER -- CROSS

1 Q. But you had no -- other than you speculating,
2 you have no proof that that statement was in the
3 State's discovery file before your plea?

4 A. Speculating? Well, I just know who handed it
5 to me. I ain't speculating. I don't know if it was --
6 he already had it and gave it to me. I don't know.

7 Q. Well, you either know that it was in their
8 file --

9 A. I don't know.

10 Q. Okay.

11 A. I just told you who handed it to me. I don't
12 -- I don't know, sir.

13 Q. Okay. Do you recall any communications with
14 your attorney regarding a statement from a lady named
15 Brittney Lindsay?

16 COURT REPORTER: The name again?

17 Q. Brittney Lindsay. L-i-n-d-s-a-y, I believe,
18 but I'm not entirely sure.

19 A. Lindsay --

20 Q. Did you have conversations with your attorney
21 about that? Any statements?

22 A. Well, -- about her having a statement?

23 Q. Yes, sir.

24 A. I don't -- does she have one? I don't -- I
25 don't know. I never got one.

R. SIGHTLER -- CROSS

1 Q. I -- that's my -- my question is, do you
2 recall any conversations with your attorney about --

3 A. No, sir.

4 Q. -- statements from Brittney?

5 A. No, sir.

6 Q. Jumping around a bit. Going back to your --
7 to your plea hearing, the officers testified. Did you
8 see them in the courtroom before they did?

9 A. I seen them.

10 Q. Okay. With their presence there, did you
11 expect that they were going to get on the stand?

12 A. Well, I didn't -- I didn't really know because
13 they always going in and doing stuff. So I don't -- I
14 don't know. I didn't -- I seen them. I seen one of
15 them I know, but I -- there was a couple of other
16 people in there with me, so I didn't really know what
17 they had going on.

18 Q. When they did testify, would you say that you
19 immediately felt that that was not proper to your
20 opinion?

21 A. Like I say, I don't know the law. I just -- I
22 just -- I was asked --

23 Q. I was just asking about your opinion.

24 A. No, I just knew I -- if I didn't take the plea
25 then, I was under the impression that I'm going to get

R. SIGHTLER -- CROSS

1 the time -- a lot of time. So me paying attention to
2 them was -- I'm just there. I was just listening, but
3 I was looking at the judge, shaking. I didn't know
4 they was going to come up and say nothing like that, or
5 recommend nothing.

6 Q. At any time during the pleading -- during the
7 plea, did you speak to your counsel about withdrawing
8 your plea, having heard the testimony of the officers?

9 A. Well, I mean, they talking --

10 Q. Yes -- yes or no. Did you ask your attorney
11 to withdraw your plea after hearing the testimony of
12 the officers?

13 A. No.

14 Q. You did not?

15 A. No, I was -- I made a deal with them. I
16 thought I had to honor it. I did honor it, they
17 didn't. No, I didn't --

18 Q. Thank you.

19 A. -- withdraw, no.

20 Q. Okay.

21 A. And may I say something --

22 Q. I'm on cross. I'm afraid you'll have to
23 respond to my questions.

24 A. All right. Sorry.

25 Q. That's okay.

R. SIGHTLER -- REDIRECT

1 MR. MAYE: Your Honor, I believe that's all I
2 have.

3 THE COURT: Redirect.

4 MR. STROM: Just one or two questions, Your Honor.

5 **REDIRECT EXAMINATION BY MR. STROM:**

6 Q. Mr. Sightler, what's your educational level?

7 A. The last grade I finished was 7th.

8 Q. Do you have a GED?

9 A. I -- I got one at SCDC.

10 Q. So this was after this guilty plea?

11 A. Yes, sir.

12 Q. In that guilty plea, following up on the
13 Solicitor asking regarding whether or not you can ask
14 your attorney -- and used the sort of legal term of
15 art, to stand down, do you know what "standing down"
16 means in the context of a guilty plea -- did you know
17 -- let me rephrase that question, did you know in 2013
18 -- excuse me -- 2011 what "stand down" in a guilty plea
19 meant? What the Solicitor just asked you?

20 A. No --

21 Q. All right. Would you have known --

22 A. I would either -- I would think that would be
23 quiet or -- or -- or --

24 Q. So your understanding of "stand down" in a
25 guilty plea, you staying quiet?

R. SIGHTLER -- REDIRECT

1 A. Stand down or sit down, or -- I mean, I don't
2 -- I don't -- I don't think I understand the question
3 really because nobody told me to stand down, you know.

4 Q. Well, sorry, I'll rephrase -- try to rephrase
5 one more time. And if you can't answer, you can't
6 answer. The Solicitor suggested or said to you why
7 didn't you ask your attorney to stand down your guilty
8 plea after the officers spoke -- do you know what that
9 phrase means?

10 A. Well, he used "withdraw" --

11 Q. Did you know you could withdraw your guilty
12 plea?

13 A. No, once I signed it, I thought that was --

14 Q. And you signed that before --

15 A. I signed it --

16 Q. -- before the judge sentenced you?

17 A. Yes, sir.

18 Q. Okay.

19 MR. STROM: No further questions, Your Honor.

20 THE COURT: All right. Thank you. Just for the
21 record, at the outset I said that the PCR hearing was
22 held September 23rd. That's actually the day the PCR
23 was filed. The hearing was held November 13, 2013.
24 All right. Thank you, sir. You may step down.

25 MR. STROM: Your Honor, our next witness would

S.. MAULDIN -- DIRECT

1 Sarah Mauldin.

2 THE COURT: At the time of the PCR hearing, she
3 was also known as Sarah Hahn?

4 MR. MAYE: Yes, sir.

5 MR. STROM: That will save me a question or too,
6 Your Honor.

7 THE COURT: There you go.

8 THE CLERK: Please raise your right hand.

9 SARAH MAULDIN, having been
10 first duly sworn, testified as follows:

11 THE CLERK: Thank you, you may have a seat. And
12 once you're seated, please state your full name and
13 spell your last name for the court's record.

14 THE WITNESS: My name is Sarah Mauldin. My last
15 name is spelled M-a-u-l-d-i-n.

16 THE CLERK: Thank you, ma'am.

17 **DIRECT EXAMINATION BY MR. STROM:**

18 Q. Thank you for being here this morning, Ms.
19 Mauldin. Where were you working back in 2010, 2011?

20 A. The Lexington County Public Defender's Office.

21 Q. And do you recall how you came to represent
22 Mr. Sightler?

23 A. His file was assigned to me.

24 Q. And had he had prior public defenders?

25 A. He was represented previously by Casey

S. MAULDIN -- DIRECT

1 Cornwell. And you asked me by email before this
2 hearing, I checked our database of files, and Casey and
3 I were the only two attorneys that were assigned to
4 this case of Mr. Sightler's.

5 Q. Formally -- formally assigned, correct, as far
6 as actually appointed as his attorney? He may have
7 received correspondences from other people in -- with
8 the -- other people in your office?

9 A. Well, he -- the two of us were his attorneys
10 on the case. I know at one point he wrote my boss, and
11 my boss responded to him.

12 Q. Uh-huh.

13 A. But Casey represented him first and then I
14 represented him. We were the only two attorneys that
15 had his case.

16 Q. Okay. And then just provide us some factual
17 background, just very briefly, about this case -- what
18 do you recall were the basis for Mr. Sightler's
19 manufacturing charge -- excuse me, the -- he had two
20 sets of drug charges and I now realize they're both
21 manufacturer -- manufacturing. The ones that stem from
22 June 13, 2010, the first set of charges, can you just
23 give us a brief factual synopsis of those charges?

24 A. It's been a long time, but what I remember is
25 that the police got a call about a shoplifting incident

S. MAULDIN -- DIRECT

1 at the CVS. They went over. The person inside the
2 store told them that some things had been taken from
3 the store. They gave the description of -- I believe
4 at least two of the people that were involved. What I
5 recollect from the police reports is that they were at
6 least two officers present. One went to one vehicle,
7 and the people in that car said that Mr. Sightler had
8 ridden there with him -- with them.

9 What I remember is that there was something that
10 was stolen from the CVS inside the car. I think it was
11 a speaker or speaker box inside the car. The police,
12 at some point, found other items related to
13 methamphetamine manufacturing inside that car. What I
14 remember is the -- another officer saw another vehicle
15 there. I think this was the gold Expedition.

16 And when he got on scene, he recalled seeing Mr.
17 Sightler leaning inside the car, talking to someone
18 inside --

19 Q. Just to clarify, leaning into the gold
20 Expedition?

21 A. That's what I remember, yeah. And that
22 officer assumed it was a drug transaction. He went
23 over and patted down Mr. Sightler. What I remember is
24 that he felt a knife in Mr. Sightler's pocket, and one
25 of them pulled a knife out. And with it came a

S. MAULDIN -- DIRECT

1 container that had some methamphetamine, or what the
2 officer believed could be methamphetamine inside.
3 There may have been more of what they suspected to be
4 meth in his other pocket. I don't remember what was
5 inside that vehicle, but I think there was some drug
6 related items inside that one, too.

7 Q. Okay. And so, specifically, your
8 understanding of the charges is just what's found on
9 Mr. Sightler or was it item -- was he also sort of
10 charged with items found in the two vehicles?

11 A. Well, they charged him with manufacturing. I
12 don't remember if the basis of the charge was only what
13 they found on his person.

14 Q. Uh-huh.

15 A. My guess would have been that it probably was
16 what was also found in the vehicle that the other
17 witnesses said he had driven there in. And I -- I
18 think there was a large quantity of pseudoephedrine
19 pills found in that other vehicle. And I -- I may be
20 wrong about that.

21 Q. Okay. Do you recall in your review of this
22 incident there being any potential fourth amendment
23 issues regarding the police search and their conduct?

24 A. Well, from -- from the police claiming that
25 they thought this was a drug transaction, and they

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1 suspected Mr. Sightler, from what I remember, that he
2 was one of the ones that -- that was inside the store,
3 given the description of him, they had a reason to
4 suspect him in the shoplifting and possibly a drug
5 transaction. I think a pat down would have been
6 reasonable at that point. And once they did, they
7 found a knife in that -- I didn't see any reasons
8 beyond that that would be a problem.

9 Q. So your -- your recollection is that there
10 were no essential fourth amendment suppression
11 arguments to be made out of the first incident?

12 A. I don't recall any, no.

13 Q. Turning to the second incident, which I
14 believe occurred in October of 2010, do you have a
15 recollection as to the facts of -- of those charges?

16 A. I do. They were three people in the car. It
17 was a traffic stop. I don't remember the reason for
18 the initial stop. What I recall is that Mr. Sightler
19 was the rear passenger, and that there were some -- I
20 guess cans of starter fluid on the floorboard near him.
21 And off the top of my head, I don't remember why the
22 police searched the car. I do know they found items
23 that they believed were being used to make meth in the
24 trunk of the vehicle. This was not his car and he was
25 a passenger.

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1 And everybody went to jail. And at some point
2 after that, one of the women in the car -- one of his
3 co-defendants told somebody else, who told the police,
4 that there was a lot more methamphetamine inside the
5 car, in the glove box area. The police went and found
6 methamphetamine behind some part of the glove box.

7 Q. So the police had an informant, did the
8 prisoner come to them while they were in pretrial
9 detention?

10 A. Right.

11 Q. Do you recall considering making a motion to
12 get the identity of that informant?

13 A. I don't think there was any question about the
14 informant. I think they told us who it was -- who the
15 -- well, the co-defendant told somebody else, who told
16 the police. I -- I did not make any kind of motion or
17 consider making any kind of motion to find out who the
18 person that gave that information directly to the
19 police was, no, I didn't.

20 Q. Do you recall -- and I'm skipping ahead a
21 little bit by virtual of this trying to be a
22 reconstruction hearing -- do you recall testifying
23 about these fourth amendment issues at the PCR hearing?

24 A. I don't. And the problem, I believe, for Mr.
25 Sightler would have been that he didn't own the car. I

S. MAULDIN -- DIRECT

1 don't know how he would necessarily have an interest in

2 --

3 Q. So your argument --

4 A. -- it was not his car.

5 Q. And I don't want to put words in your mouth,
6 your argument, if this had gone to trial, would be more
7 did he know about --

8 A. Right.

9 Q. -- the -- the drugs subsequently found in the
10 car?

11 A. Right.

12 Q. Okay. I would also like to turn your --
13 talking about co-defendants, do you remember a
14 co-defendant of Mr. Sightler's from the second incident
15 called Jennifer -- her name is Jennifer Hagins?

16 A. Yes.

17 Q. I believe her statement is still up on the
18 stand.

19 A. I have it. Thank you.

20 Q. Do you recall -- and, again, this is in the
21 context of a reconstruction hearing -- but do you
22 recall how you came to get that statement?

23 A. I do know this. The witness on the statement
24 is Dianna Harigan. She is one of the employees at the
25 Public Defender's Office. She was either a

S. MAULDIN -- DIRECT

1 receptionist or the inmate screener at the time, so
2 that -- the way that I believe this came to me, was
3 that this person came of our office and wrote a
4 statement, Ms. Harigan witnessed it, and gave it to me.
5 It would have been provided in discovery from the State
6 because it was not given to the State through the
7 police or anything like that. This person came
8 directly to our office.

9 Q. So in that statement, Ms. Hagins' -- if you
10 need a chance to review it, just please let me know if
11 you do so -- essentially takes ownership of the drugs
12 that were found in the vehicle during the second
13 incident?

14 A. Yes.

15 Q. Did you -- do you have any recollection that
16 you confronted the State with this evidence as used in
17 the guilty plea?

18 A. I -- I -- the case was initially assigned to
19 Emily Howard at the Lexington County Solicitor's
20 Office. At some point it was -- because of the
21 conflict with Mr. Sightler and Mr. Pinkard, the
22 prosecution of Mr. Sightler's case was transferred to
23 the Attorney General's Office. And I had an email
24 where I corresponded with Jonathan Waller at the
25 Attorney General's Office, and this is dated April

S. MAULDIN -- DIRECT

1 26th. In the email I wrote, "Jennifer Hagins came to
2 my office and wrote a statement about the October
3 incident in which she was charged as Mr. Sightler's
4 co-defendant. I'll be glad to fax you a copy of this
5 statement if you'll send me your fax number. According
6 to her statement, he didn't know what was in the car,
7 and that she was just giving him a ride".

8 He responded to my email and said that he had
9 looked at all of the information that I provided to
10 him, even taking all of that into consideration, the
11 offer is going to stay the same.

12 Q. When he says "the offer is going to stay the
13 same", is that -- what is your recollection of that
14 offer?

15 A. Before this hearing began, you asked me the
16 same question. And I found an older offer in the file,
17 and that indicates a plea offer for one of the charges.
18 I don't remember why the offer changed. I have no
19 recollection at this point why the offer got worse from
20 then.

21 Mr. Waller extended another offer to me on March
22 30th. And this is the offer under which Mr. Sightler
23 entered the guilty plea --

24 Q. Could I --

25 MR. STROM: And I don't mean to take it out of

S. MAULDIN -- DIRECT

1 order, Your Honor, but I'd like to talk about this
2 first offer real quick and then transition to the
3 second one. May I approach please?

4 THE COURT: Yes, sir.

5 (Pause.)

6 MR. STROM: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. STROM:

9 Q. Ms. Mauldin, is this -- and this would be
10 marked as Applicant's -- or for identification,
11 Applicant's Exhibit 2 -- I'm making it very difficult
12 for the court reporter.

13 (Applicant's Exhibit No. 2 marked.)

14 BY MR. STROM:

15 Q. Ms. Mauldin, do you recognize this marked as
16 Applicant's 2?

17 A. I do. This is a plea offer dated December 10,
18 2010, from Ms. Howard.

19 Q. And so that was when -- you talked about the
20 last offer from Ms. Howard, before it was transferred
21 to the Attorney General's Office, that's the offer
22 you're referring to?

23 A. That's right.

24 Q. And you said the second offer from the
25 Attorney General's Office was worse?

S. MAULDIN -- DIRECT

1 A. Right.

2 Q. What are your -- what is your recollection as
3 to the terms of that offer?

4 A. That's the offer that Mr. Sightler entered the
5 plea under and in this -- I'm reading from Mr. Waller's
6 letter to me, that it would be five to 30 years, and a
7 fine of not more than \$50,000 on manufacturing
8 methamphetamines second offense; and five to 30 years
9 and a fine of \$50,000 for trafficking second offense.
10 And that the judge would have complete discretion
11 because the State is not making any sentence
12 recommendation. The judge could go as low as five
13 years or as high as 30 years. It would be solely up to
14 the judge.

15 Q. Okay. And so that's the terms that he -- he
16 pled under?

17 A. That's right.

18 Q. Do you recall -- and I've got a copy of the
19 transcript if you need it -- the guilty plea colloquy
20 that was in front of Judge Cottingham on June 7, 2011?

21 A. I do.

22 MR. STROM: All right. Your Honor, I would like
23 to approach with the transcript.

24 THE COURT: Yes, sir.

25

S. MAULDIN -- DIRECT

1 BY MR. STROM:

2 Q. If you could turn to page 11 of the
3 transcript, and begin reading where the investigator
4 starts speaking.

5 MR. STROM: Your Honor, you -- we already have a
6 copy of the transcript for you. We're happy to make it
7 an exhibit if you would like it to be, but it's -- it's
8 a court record --

9 THE COURT: No need to.

10 MR. STROM: It will be in the packet as is.

11 BY MR. STROM:

12 Q. So your understanding going into the guilty
13 plea is the State isn't going to make a recommendation
14 at the sentencing?

15 A. That's right.

16 Q. Have you had a chance to review what the
17 police officer said at the guilty plea?

18 A. I have reviewed the transcript, yes.

19 Q. Did the police make a recommendation --

20 A. Exactly --

21 Q. -- in the -- in the sentencing -- do you
22 recall, one, for the purposes of reconstruction, do you
23 recall talking about this subject at the original PCR
24 hearing?

25 A. I don't remember the specifics.

S. MAULDIN -- DIRECT

1 Q. Okay. But it's in the Order of Dismissal to
2 the best of your recollection, it would likely be
3 something you would talk about?

4 A. Probably.

5 Q. Okay. So the police make a recommendation of
6 a maximum sentence?

7 A. Right.

8 Q. Did you think about pulling the Attorney
9 General aside and perhaps asking -- telling him, you
10 know, this doesn't conform with the agreement? I guess
11 as -- I'm sorry -- I should rephrase it. Did you
12 consider the police as bound by that agreement by the
13 Solicitor -- by the AG's agreement as both members of
14 an executive branch agency?

15 A. At the time, I don't -- I don't know that I
16 made that connection. But I do know it was a surprise
17 that the police officers were there. The Attorney
18 General -- I don't recall they told -- I don't recall
19 that he ever told me that there would be police
20 officers asking for more time.

21 I remember being surprised that day. Looking
22 back, I should have -- once I heard what they said at
23 the very latest, should have asked the judge for a
24 chance to stand down, and talk to Mr. Sightler about
25 whether he wanted to continue, to make sure that his

S. MAULDIN -- DIRECT

1 plea was freely and voluntarily made.

2 Q. And so you'll notice that the whole transcript
3 is only about 20 pages, so this is about half way
4 through the hearing. If you'll turn to pages 18 and
5 19, read Judge Cottingham's pre-sentence statement, if
6 you would take a minute to review that, and just let me
7 know when you're -- when you're finished. Maybe page
8 18 through 19.

9 A. I think I've seen what you're talking about.
10 What I remember was that the judge seemed to have
11 listened to what the police officer said and seemed to
12 be making his decision based on what they had said.

13 Q. And, in fact, on top of page 19, he even says,
14 I would like to commend the officers for -- or
15 something to that effect -- you have my copy of the
16 transcript.

17 A. That's right. He says, "I want to
18 congratulate the officers for their effort curing this
19 community of that terrible disease. I thank you for
20 that."

21 Q. And so without looking at it from a sort of
22 distorted vision of hindsight, it would seem on the
23 face, the judge gave considerable weight to the
24 sentencing recommendations that the police officers
25 made?

S. MAULDIN -- DIRECT

1 A. Yes.

2 Q. Then again, do you recall talking about --
3 well, I'm sorry -- I realize you said you don't have a
4 memory of the PCR hearing, but you did mention earlier
5 that looking back on it, you would have -- at a
6 minimum, made sure Mr. Sightler would have still wanted
7 to continue the plea?

8 A. That's right. I should have done that.

9 Q. And to that end, what would you have advised
10 him to do --- sorry, what would you -- what sort of
11 advisement would you have given him and said, we can
12 stand down the plea, or you just heard what they said,
13 do you still want to continue -- is that along the
14 lines, or would you have -- sorry, I'll just leave it
15 to you to answer. What would you have advised him --
16 what sort of rights advisement would you have given
17 him?

18 A. Well, --

19 Q. In hindsight?

20 A. I would have at least told him it's your
21 decision whether you want to proceed knowing this.
22 These officers are asking for time, you could get more
23 time on the sentence based on what they've said to the
24 judge. I would have left it to him. If he wanted to
25 continue with the plea, he could have. Obviously if he

S. MAULDIN -- DIRECT

1 wanted to go to trial, he could have if the judge had
2 granted him a motion to withdraw.

3 I know I referred to the Attorney General with
4 it then and asked him -- I really don't know how that
5 would go. I suppose --

6 Q. But you -- you didn't advise him of his right
7 to stop the plea --

8 A. That's --

9 Q. -- process?

10 A. That's absolutely right. I guess maybe the
11 only thing would have -- since the judge that we were
12 scheduled in front of had already heard what they had
13 to say, the only thing I can think of to do would be to
14 ask the Attorney General to schedule this in front of
15 another judge, and not put out state witnesses --
16 inform the police officers to testify about Mr.
17 Sightler.

18 Q. But again, you didn't, at the time, do any of
19 that?

20 A. No, I didn't.

21 Q. Okay. The final issue -- I know we touched on
22 it a little bit regarding how you came to represent Mr.
23 Sightler. But from your review of the PCR proceeding,
24 obviously he's alleged a conflict of interest. Do you
25 -- to the best of your knowledge, did you ever

S. MAULDIN -- DIRECT

1 represent Jennifer Hagins?

2 A. Not that I recall. If I have ever represented
3 her in the past, it would not have been either of these
4 two cases.

5 Q. How about Gregory Addy?

6 A. I don't recall that either.

7 Q. Rally -- Corrells -- Rally Corrells -- Rally
8 Corrells?

9 A. I don't remember representing him. Again, if
10 I had, it would not have been on this case.

11 Q. And I'll just read the remainder. If you
12 recognize any name, let me know. Crystal Michael, -- I
13 apologize, Your Honor, I can't read my own handwriting
14 as to these last co-defendants. Brittney Lanzerie
15 (ph)?

16 A. My answer is the same on those.

17 Q. Okay. And on the last one being Vincent
18 Pinkard?

19 A. The same. I'm not -- I don't recall ever
20 representing him.

21 Q. And your -- explain the process of the
22 conflict check that you had to place -- there's a
23 designated screener who would listen to the
24 co-defendants and then ensure that no attorney was
25 representing co-defendants -- what was the process in

S. MAULDIN -- DIRECT

1 place when you had someone representing -- who was also
2 a victim in an underlaying crime by someone who
3 qualified for representation by the PD's office?

4 A. Well, in our office, they're handled in the
5 same way. If a person is a victim in one crime, and a
6 defendant -- another person is a defendant in that
7 crime, we treat it the same way that we do as if
8 they're co-defendants. That means that they're -- the
9 attorney who assigns the cases, and doesn't represent
10 any conflict cases, would assign those to separate
11 attorneys in the office.

12 After that, those attorneys have paralegals who
13 work only for attorneys within their same sort of
14 conflict realm, so no paralegal is working on another
15 attorney's case and vice versa.

16 Q. Who are your two -- did you have any
17 supervising attorney at the time?

18 A. Yes. Our deputy public defender is Sally
19 Henry. Above her, the Chief Public Defender in
20 Lexington is Beth Fullwood. And the Circuit Public
21 Defendant is Rob Madsen.

22 Q. Do you recall if any of them were representing
23 any of the co-defendants?

24 A. None of them -- none of them handle any type
25 of cases or -- like a victim/defendant case.

S. MAULDIN -- CROSS

1 Q. Okay. And that answers my next question.

2 MR. STROM: May I just have the court's indulgence

3 --

4 THE COURT: Yes, sir.

5 MR. STROM: -- to just go through my check list. I
6 believe that's all the questions I have. Thank you.

7 THE COURT: Cross examination.

8 MR. MAYE: Yes, Your Honor. Thank you.

9 CROSS EXAMINATION BY MR. MAYE:

10 Q. It's Ms. Mauldin; is that correct?

11 A. That's right.

12 Q. Okay. Just making sure I'm pronouncing it
13 right. Going back to your recollections of the plea
14 hearing, is it your recollection that the only thing
15 you believe to be improper from the officer's testimony
16 was the actual recommendation of any kind of sentence?

17 A. I don't know that the Attorney General
18 informed me that any officers would be present and
19 testify. I guess that's problematic, too, but --
20 certainly the main thing was I didn't know that they
21 would ask for the maximum sentence.

22 Q. Okay. Let me approach it from a different
23 direction. The plea offer you got was -- and just
24 correct me if my recitation of it is wrong, is that he
25 was going to get two charges, one for trafficking

S. MAULDIN -- CROSS

1 second, which was downgraded, and the other for
2 manufacturing third I believe; is that correct on
3 yours?

4 A. Each of the charges would have been second
5 offense since he had prior charges --

6 Q. Okay.

7 A. -- that could --

8 Q. And -- and then the key issue to this being --
9 but there was to be no recommendation or negotiations
10 of sentence from the State?

11 A. That's right.

12 Q. Okay. Under those terms, does the Solicitor
13 have to give you any indication that the officer is
14 going to testify for the court as to the facts or
15 anything else?

16 A. I think they should.

17 Q. To being -- under the terms of the agreement,
18 that would be required?

19 A. I think a police officer is a state -- if the
20 Solicitor says or the Attorney General says the State
21 takes no position on this, I think if a police officer
22 is going to make a recommendation, it should have been
23 disclosed.

24 Q. But if the State's position is they're not
25 going to take a position on sentencing, is it improper

S. MAULDIN -- CROSS

1 for the officers to testify?

2 A. If they're testimony is to make the defendant
3 look worse so that he gets a worse sentence, I think
4 that's a problem. If the -- if the attorney has
5 understood the agreement to be that the State will take
6 no position on sentencing.

7 Q. How -- do you -- was the -- was the plea
8 agreement put in writing?

9 A. Yes.

10 Q. And in the writing, how well do you recall the
11 writing?

12 A. The Attorney General wrote to me, "since the
13 State is not making any sentence recommendation, the
14 Judge has complete discretion. The Judge could go as
15 low as five years or as high as 30 years. It will be
16 solely up to the judge."

17 Q. Okay. So under that, there is no reference to
18 the State actually putting forth the facts, the
19 criminal's history, it is strictly the State makes no
20 recommendation as to sentencing?

21 A. That's right.

22 Q. So under that term, is it improper for the
23 officers to stand up and provide a factual background
24 of their arrest and the individual's participation in
25 illegal activities --

S. MAULDIN -- CROSS

1 COURT REPORTER: I'm sorry? Illegal what?

2 Q. Illegal activities in the community? Is that
3 improper?

4 A. I don't know that that's a question that I can
5 answer. I can tell you from now on when I have a case
6 that is pending, my practice is to ask the Solicitor
7 whether they intend to present testimony from any
8 victims or any police officers.

9 Q. Okay. And at the hearing, you've already
10 covered that he could get anywhere from five to 30
11 under the plea; correct?

12 A. That's correct.

13 Q. And if -- without the plea, he would have been
14 able to get up to 60 because there's no guarantee of
15 concurrent sentencing; is that correct, without the
16 plea?

17 A. Well, he had other charges pending. I don't
18 know what the total time he faced would have been.

19 Q. Okay.

20 A. But, yes, he could have gotten more time if he
21 had not entered a guilty plea and was found guilty at
22 trial.

23 Q. Okay. And after the court heard the testimony
24 of the officers, would you agree that the officers said
25 they wanted to give him the max and the court did not

S. MAULDIN -- CROSS

1 give him the max?

2 A. That's true, but the judge seemed to base his
3 decision on what he heard from the police officers at
4 least in part.

5 Q. Did the -- did the court actually state, given
6 the facts, I want to give you the maximum; is that in
7 the transcript?

8 A. No. He doesn't say it like that.

9 Q. So there would be -- there has to be some
10 level of inference that we cannot be sure of?

11 A. When I read it, it sounds to me as if the
12 judge made the decision, in part, based on what the
13 officer said.

14 Q. All right. Let me ask you this: The
15 officer's recommendation was 30; correct?

16 A. That's right.

17 Q. The maximum. Did the court give 30?

18 A. No, he didn't.

19 Q. Okay. Is it also possible that the court
20 heard the facts of Mr. Sightler's involvement with the
21 community, his illegal activities, is there any
22 question that -- that guilt was going to be a difficult
23 standard to meet if you had gone to trial?

24 A. I believe that if he had gone to trial, he
25 would have been found guilty, yes.

S. MAULDIN -- CROSS

1 Q. Okay. Did -- let me backtrack a little bit --
2 in your communication with Mr. Sightler, was he ever
3 adamant about going to trial?

4 A. No. What I recall was that he wanted to plea.
5 He wrote me a number of letters and I remember he
6 wanted to plead.

7 Q. Okay. No -- no hedging on that. He was
8 pretty adamant that he wanted to plea -- was it to get
9 the smallest deal possible? The smallest amount --

10 A. That's what I remember, yes.

11 Q. Ms. Mauldin, you testified about Ms. Hagins
12 coming directly to your office to provide the
13 statements in question?

14 A. That's right.

15 Q. Do you recall when this happened?

16 A. I don't, and the statement itself is not
17 dated. The email that I testified about, notifying the
18 Attorney General of that, that was dated April 26th.
19 And I have one of my notes from talking with Mr.
20 Sightler, I have that on April 21st of 2010, among
21 other things, we talked about the co-defendant's
22 statement. So looking back, I don't know exactly what
23 that means. I would assume that meant what Ms. Hagins
24 provided to me, but that's all that I know in that
25 note. I can't say that for sure.

S. MAULDIN -- CROSS

1 Q. Do you have any independent recollection of
2 discussing either the -- the piece of paper or the
3 contents the statement with Mr. Sightler?

4 A. I don't.

5 Q. Do you have any independent recollection of
6 discussing statements from a defendant, Brittney
7 Lindsay?

8 A. No.

9 Q. Does that name ring a bell at all for you?

10 A. No, that -- there's a -- there was a
11 co-defendant with the last name Lanzerie (ph).

12 Q. Okay.

13 A. If I'm pronouncing this right.

14 MR. MAYE: Brief indulgence, Your Honor.

15 (Pause.)

16 BY MR. MAYE:

17 Q. Were you aware of any credibility issues with
18 Ms. Hagins if she was ever needed to testify?

19 A. She had a -- a prior record, then that would
20 be the first credibility issue that I would normally
21 look at. I don't recall her record to know whether she
22 had offenses that could be used as impeachment or not.
23 Beyond that, I don't recall any knowledge of anything
24 that would have affected her credibility.

25 Q. Do you recall at the PCR hearing, any

S. MAULDIN -- CROSS

1 production of witness testimony or any kind of evidence
2 as to the Solicitor having had this document and not
3 producing it?

4 A. No. And the only information I had about --
5 he had was that I had sent this to him sometime before
6 April 26th.

7 Q. And is your recollection in regards to this
8 statement from Ms. Hagins, was there anything else --
9 where is that -- in your recollection of Ms. Hagins'
10 statement, is there anything else you feel like you
11 might have been able to do as far as discussing it with
12 your client?

13 A. Not that I know of. Certainly if he went to
14 trial, I would review her statement and know what to
15 expect her testimony to be. But beyond that, I don't
16 know of anything.

17 Q. As far as your negotiations with the State in
18 trying to get a plea deal, how pliable were they; do
19 you recall?

20 A. Not very. In the same email that I've
21 referred to, in my email, I told the Solicitor that I
22 had -- or the Attorney General, that I had compared the
23 plea offers and sentences of Mr. Sightler's
24 co-defendants who had gone to court. I pointed out
25 that Ms. Hagins had three pending sets of drug charges

S. MAULDIN -- CROSS

1 and was allowed to plead to manufacturing meth first
2 offense, received probation, that Ms. Lanzerie was
3 allowed to plead only to manufacturing first offense.
4 She also received a probationary sentence. And I had
5 sent him the information from the Clerk of Court's
6 website.

7 I pointed out that Mr. Sightler had been a
8 victim of the assault and battery with intent to kill
9 case, and that he was willing to testify for the State
10 in that case, in which he was a victim. And I asked
11 him in light of those things to re-consider his offer.

12 And I had asked for him to consider letting Mr.
13 Sightler plead to two counts of manufacturing first
14 offense or to two counts of manufacturing second
15 offense. And I explained that my reason for that was
16 that those first and second can be suspended -- the
17 second had been changed under the new law, but the
18 trafficking sentences could not be suspended. And I
19 told him that I had informed my client that that was
20 very unlikely, but if he had a chance at probation,
21 that would induce him to plead guilty.

22 Q. In the discussion of plea offers with your
23 client, did you ever guarantee any certain number of
24 years or any certain sentence to him?

25 A. No, I did not.

S. MAULDIN -- CROSS

1 Q. Did you express the minimum number of years
2 and the maximum number of years he would have been
3 possibly receiving under the plea agreement?

4 A. I did.

5 Q. Did he understand that to your recollection?

6 A. Yes. And I have notes -- since he was facing
7 so much time, and had so many charges, I reviewed them
8 with him including, you know, that certain charges were
9 felonies. The ones that were violent, the ones that
10 were non-parolable, and the ones that were serious.
11 The ones that had minimum sentences, the effect of his
12 prior offenses for enhancement. The driver's license
13 for six months, DNA, I made pretty careful notes on
14 that because it was -- he was just facing so much time.

15 Q. Regarding the issue of the Applicant's
16 allegation that there was a suppression defense that
17 wasn't raised, it's your recollection in representing
18 him at the PCR hearing -- is there anything regarding
19 the suppression defense that you failed to do that
20 would have been a reasonable defense?

21 A. I'm not aware of anything.

22 Q. It was his car, correct, that was --

23 A. My recollection is that he was a passenger in
24 someone's car, and that the car belonged to one of the
25 two women that was in it.

S. MAULDIN -- CROSS

1 Q. Regarding the conflict of interest allegation
2 that's raised in the PCR application, is there any
3 doubt in your mind as to your ability to represent him
4 fully and faithfully despite the fact that you're --
5 the Public Defender's Office also had co-defendants on
6 the same case, and an assailant of his in a completely
7 separate case?

8 A. I can tell you that the Public Defender's
9 Office takes every effort to properly screen
10 co-defendants and to keep the files separate. At the
11 same time, it's the same difficulty you have in any
12 Public Defender's Office, I would imagine, our offices
13 are not locked. The files are not locked. We have
14 access to the same database. If someone wanted to make
15 an effort to read somebody else's file, it's possible
16 that they could do it. And that -- I am not aware that
17 anybody made any effort to try to get information on a
18 co-defendant file. Is that possible in any case,
19 maybe.

20 Q. As far as you providing representation for Mr.
21 Sightler, did you feel encumbered in any way based on
22 those conditions?

23 A. No.

24 Q. And in your opinion practicing, was there a
25 conflict of interest?

S. MAULDIN -- CROSS

1 A. Not according to the rules, no, sir.

2 Q. I guess if you felt encumbered, did you feel
3 uncomfortable in any way regarding this?

4 A. No. It's -- it's normal for our office to
5 represent co-defendants or even victims and defendants,
6 it's standard practice.

7 Q. Having represented Mr. Sightler, given the
8 evidence and given the charges that you've went over
9 with him, was there anything in the case that you
10 believe would have led him to go to trial?

11 A. Not that I recall, no.

12 MR. MAYE: The court's indulgence, Your Honor?

13 THE COURT: Yes.

14 MR. MAYE: Thank you.

15 BY MR. MAYE:

16 Q. How many times would you say that you've met
17 with Mr. Sightler representing him -- to the extent you
18 can recall?

19 A. I believe that I met with him six times at the
20 jail. He also had two preliminary hearings. Normally,
21 I'll talk to the client and tell them any new
22 information that's going on with the case. And he also
23 had a bond hearing and I would have talked to him then.
24 And then I would have talked to him before the plea
25 whenever the plea paperwork, and the indictments as

S. MAULDIN -- CROSS

1 well.

2 Q. So numerous meetings?

3 A. Right.

4 Q. Would you agree that the general theory of the
5 defense was control and dominion of the narcotics and
6 trying to chip away at that?

7 A. And knowledge, yes.

8 Q. And was the overall strategy trying to
9 mitigate his involvement?

10 A. Yes.

11 Q. Do you recall at the PCR hearing meeting with
12 Applicant either by phone or in person, but otherwise
13 discussing Ms. Hagins' statement for over an hour?

14 A. That's -- that's what I have in my notes from
15 -- it looks like it was on April 21st. I met with him
16 for more than an hour. And that said that we reviewed
17 the co-defendant's statement. I assume that means Ms.
18 Hagins' statement, but that's all this says, so I'm not
19 100 percent sure.

20 Q. Okay.

21 A. And on that day, my notes says "reviewed all
22 penalty and facts of the case".

23 Q. At the plea hearing, do you recall who
24 conveyed the terms of the plea to the court, if the
25 terms of the plea were conveyed at all?

S. MAULDIN -- CROSS

1 A. I don't normally. That would be part of the
2 Attorney General or the Solicitor's recommendation.

3 Q. Do you have any independent recollection of
4 them doing so?

5 A. No.

6 Q. Do you have any reason to believe the court
7 would not be aware of the terms of the plea?

8 A. No.

9 Q. Is that very, very common, almost all the
10 time, the court knows the plea?

11 A. Yeah, as part of the normal plea.

12 Q. Do you recall at a PCR hearing testifying that
13 you believed Officer Hook's statements to be immaterial
14 to the plea?

15 A. I don't remember that, no -- I think they were
16 significant, looking at the transcript. It seems to me
17 like the judge listened to what the officers had to
18 say, and seemed to take it to heart.

19 Q. Do you recall in plea negotiations, and with
20 conversations with your client, the fact that the State
21 was willing to offer a concurrency in sentencing as a
22 big factor leading to its acceptance?

23 A. I don't remember emphasizing one part of the
24 offer more than another. Just sort of -- you know,
25 this is the range that you're basically looking --

S. MAULDIN -- CROSS

1 conditions like the sentence being concurrent.

2 Q. Did your client, at the hearing, take issue
3 with the fact that the officers made any kind of
4 recommendation to the court? Did Mr. Sightler say
5 anything specifically to you at that time?

6 A. I don't remember whether he did or not. It's
7 -- it's not uncommon during a plea for a defendant to
8 hear something that a prosecutor or a victim says, and
9 to say, oh, that's not true. I don't agree with that,
10 or something like that. In Mr. Sightler's case, I
11 don't remember if he pulled aside and said anything
12 like that.

13 Q. So no recollection?

14 A. Right.

15 Q. The time -- do you recall the plea hearing,
16 the timing of the officer's statement, and whether the
17 judge had already provided the colloquy of questions
18 that a judge would normally ask of Mr. Sightler?

19 A. I don't remember what order it happened.

20 Q. All right. Do you recall any specific memory
21 as to whether the court asked Mr. Sightler if he needed
22 any more time with his attorney?

23 A. That's a question judges ordinarily ask. I
24 don't remember if the court specifically asked him in
25 his questions.

S. MAULDIN -- CROSS

1 Q. Would it have stood out to you if that hadn't
2 been asked?

3 A. I don't know that I would have noticed that.

4 MR. MAYE: The court's indulgence?

5 THE COURT: Yes, sir.

6 (Pause.)

7 BY MR. MAYE:

8 Q. Given your negotiations with the State up
9 until the point of plea, would you -- if you had
10 decided to take time to reconsider anything other than
11 just allowing the proceeding to go as it did, would you
12 have been guaranteed any other plea deals in the
13 future?

14 A. No. That's -- there's nothing in that order
15 that would require the State to keep the deal on the
16 table other than if I had pointed out to the Attorney
17 General that he made one representation that the State
18 would take no position, and then had the officers
19 testify at the hearing.

20 Q. So is it a possibility that had this plea not
21 gone through, the State could have said there are no
22 other plea offers and insisted on a trial?

23 A. Certainly.

24 Q. And just to reiterate, your client's
25 preference and insistence was to get a plea offer as

S. MAULDIN -- CROSS

1 best as possible?

2 A. That's what I recall of his goal.

3 MR. MAYE: Your Honor, at this time, I know we
4 discussed on the record our argument, we have the
5 affidavit of PCR counsel for the State, Walt Whitmire.
6 Is the court prepared to accept that affidavit at this
7 time?

8 MR. STROM: Your Honor, I have just a few
9 follow-up questions.

10 MR. MAYE: I apologize.

11 THE COURT: Sure.

12 MR. STROM: Just five or six and then we can move
13 into that.

14 THE COURT: We'll clean up --

15 MR. MAYE: Yeah, as a matter of procedure, I
16 didn't know if the court wanted me to do it while --

17 THE COURT: It's a matter -- are you finished
18 cross examining this witness?

19 MR. MAYE: Yes, Your Honor. I have no other
20 questions.

21 THE COURT: All right. Mr. Strom, just to point
22 out on the record, Exhibit 2 has not been admitted that
23 you questioned about earlier.

24 MR. STROM: Yes, Your Honor, if I may take a look
25 at it -- in light of how things have developed, may I

S. MAULDIN -- CROSS

1 approach, I don't believe we need to put it into the
2 record. I may -- and I can talk to Joe about this as
3 well -- attempt to move in the AG's plea offer. This
4 is the Solicitor's one. The AG plea offer that he
5 ultimately plead under would be the document that I
6 would seek to move in as a reference point, sort of
7 before the plea, if -- if there is no objection --

8 THE COURT: Is there any objection to that?

9 MR. MAYE: No, Your Honor.

10 THE COURT: All right. It would be admitted. And
11 that would be number 2 --

12 MR. STROM: That Applicant's 3.

13 THE COURT: Three. Okay. That's right.

14 MR. STROM: Marked and admitted.

15 THE COURT: All right.

16 MR. STROM: Thank you, Your Honor.

17 THE COURT: Very good. So number two will not be
18 admitted at this juncture unless you agree with counsel
19 independently of this hearing?

20 MR. STROM: That's correct, Your Honor. Thank
21 you.

22 THE COURT: Okay.

23 COURT REPORTER: I still need it because it's
24 ID'ed.

25 MR. STROM: Okay.

S. MAULDIN -- REDIRECT

1 (Applicant's Exhibit 3 marked.)

2 REDIRECT EXAMINATION BY MR. STROM:

3 Q. I just have a few quick questions, Ms.

4 Mauldin. So your opinion now -- or excuse me -- your
5 opinion is that the recommendation put forth by the
6 police was material to the guilty plea?

7 A. I think it had an affect on the judge's
8 decision, yes.

9 Q. Is it also your opinion that the police making
10 that recommendation constituted a breach of your plea
11 agreement with the State?

12 A. It's been a long time, but I remember being
13 surprised that the officers were there, and surprised
14 by what they said.

15 Q. But it certainly -- it -- I'm trying not to --
16 I'm trying to avoid a double negative here, but if it
17 was noted that you stated that the plea agreement was
18 not breached, that's not consistent with your
19 recollection of events both at the guilty plea hearing
20 and at the PCR hearing?

21 A. Well, I mean, I think that's a legal question.
22 I mean, the Attorney General told me that the --

23 Q. Well, --

24 A. -- State can go right into the recommendation
25 and then presented the testimony of the officers about

S. MAULDIN -- REDIRECT

1 Mr. Sightler.

2 Q. But in your opinions, you know, as a
3 practitioner, would you -- do you consider that a
4 breach of a plea agreement?

5 A. I don't know if I can answer that question.

6 Q. Okay.

7 A. I can tell you from now on, I make sure to ask
8 the prosecutor, you know, is there going to be a victim
9 present, is there going to be an officer saying --

10 Q. Is that as a result of this case --

11 A. Yes.

12 Q. -- in particular -- and then I believe you
13 testified to this earlier, but did Mr. Sightler or you
14 -- did you know the police were going to be there at
15 the guilty plea?

16 A. I don't remember at what point I found out
17 they would be there. I don't -- I don't have any
18 recollection of Mr. Waller telling me in advance of the
19 guilty plea. I don't remember if he told me when we
20 walked in. I don't -- I don't remember if the first I
21 realized that they were there to talk about Mr.
22 Sightler was when they actually stood up and talked.

23 Q. And then do you recall ever giving Mr.
24 Sightler the opportunity during the guilty plea hearing
25 to say stop, to withdraw the guilty plea?

1 A. I don't recall that, and I think that would
2 have stood out if I had done that.

3 Q. And so there's been some discussion as to sort
4 of what the "but for" reason for the guilty plea -- I
5 mean, what tips the scale for deciding to pursue -- to
6 go forward with the guilty plea? Your testimony is
7 that it's sort of an all of the above, the no
8 recommendation, the promise of concurrent time -- or
9 with the agreement to support concurrent time, there's
10 not any one "but for" factor?

11 A. I don't have any recollection that Mr.
12 Sightler told me, oh, because the State is doing this
13 or because he offers this, I don't remember that. And
14 in looking at the whole thing, he accepted the offer
15 and wanted to enter a guilty plea.

16 Q. Okay. But certainly the promise of concurrent
17 time wasn't the sole "but for" issue for accepting the
18 guilty plea as you were -- facing the recollection --

19 A. I can't say that it was.

20 Q. Okay. And then the final -- hopefully the
21 final question -- the -- the recommendation the police
22 made -- they talked about events that occurred, that
23 were totally independent, totally unrelated to the two
24 charges you were pleading guilty to, they provided a
25 whole lot of extra information; is that your

1 recollection?

2 A. Yes. And they characterized Mr. Sightler as
3 -- I guess you would say sort of a major player in drug
4 activity in Lexington County. I don't remember the
5 phrase they used, but they made it sound like he was a
6 prime target.

7 Q. A drug type of --

8 A. Yes.

9 Q. -- person. And in your opinion now, is that's
10 very material and that it had an impact on the
11 sentencing --

12 THE COURT: That's been covered.

13 MR. STROM: Thank you, Your Honor. No further
14 questions.

15 THE COURT: All right. All right. Thank you,
16 ma'am. You may step down. All right. For purposes of
17 the reconstruction hearing, Mr. Strom, first I want to
18 ask you, do you feel like the testimony that's been
19 elicited today, as well as the affidavit from Mr.
20 Whitmire, will adequately reconstruct the record to
21 allow an appellate court to look at this PCR denial on
22 appeal?

23 MR. STROM: I do, Your Honor. Frankly, I think
24 it's been very thorough and I appreciate you giving us
25 the time to sort of flush it all out.

1 THE COURT: All right. Very good. And the same
2 questions to the State?

3 MR. MAYE: I think we've been as thorough as we
4 can, Your Honor.

5 THE COURT: All right. Thank you. Do you think
6 it adequately covers the record for appeal purposes?

7 MR. MAYE: I believe the testimony of the
8 witnesses today covered --

9 THE COURT: Yes or no?

10 MR. MAYE: Yes, Your Honor.

11 THE COURT: Thank you. Now, there's been in my
12 chambers, and I brought out at the beginning of the
13 hearing, there's going to be potential supplement of
14 the record by the affidavit of the PCR counsel.

15 MR. STROM: Yes, sir.

16 THE COURT: Mr. Strom, would your position as to
17 the adequacy of this record change even if you're
18 unable to get PCR counsel's affidavit?

19 MR. STROM: I doubt it, Your Honor. I -- no, it
20 won't change.

21 THE COURT: The same --

22 MR. STROM: I --

23 THE COURT: -- question.

24 MR. STROM: I'm sorry. I don't even -- I don't
25 think at this point, unless the State wants his

1 affidavit, that we even need it.

2 MR. MAYE: I'm -- I would like to get an affidavit
3 into the record, if possible, since we've discussed
4 doing so, and since we have one from the State as well.

5 THE COURT: The question is not what you want.
6 The question is do you feel like the record is adequate
7 for review purposes without the affidavit of PCR
8 counsel?

9 MR. MAYE: My apologies, Your Honor, I thought we
10 were just discussing the merits --

11 THE COURT: Right --

12 MR. MAYE: -- of getting an affidavit.

13 THE COURT: We'll do that in a second.

14 MR. MAYE: I believe the record, as it stands,
15 would be enough without it.

16 THE COURT: Okay.

17 MR. MAYE: If the court is amenable to do it --

18 THE COURT: Right. But the parties have
19 stipulated that Mr. Strom or the State wants to have a
20 PCR affidavit, they can supplement the record with
21 that; is that correct, Mr. Strom?

22 MR. STROM: Yes, Your Honor.

23 THE COURT: Is that correct?

24 MR. MAYE: That's correct, Your Honor.

25 THE COURT: Also, the parties will, if desired,

1 determine whether or not the Appellate's Exhibit No. 2,
2 which was not admitted during the course of this
3 hearing, will be made a part of the record by
4 stipulation of both parties; is that correct?

5 MR. MAYE: Yes, sir..

6 MR. STROM: That's correct, Your Honor.

7 THE COURT: All right. Anything further from the
8 Applicant in this matter?

9 MR. STROM: Nothing further from Mr. Sightler.

10 THE COURT: From the State?

11 MR. MAYE: Your Honor, just to officially to get
12 Mr. Whitmire's affidavit into the record.

13 THE COURT: Right. Very good.

14 MR. MAYE: And -- and just for the purposes of
15 being on the record with the basis. Under China v.
16 Parrot, it's 162 SE 2nd 76, the court has found it is
17 proper to consider affidavits of counsel for purposes
18 of reconstruction.

19 THE COURT: Okay. Then it would my -- my intent
20 to report back to the Supreme Court that the parties
21 feel, and I feel that there's an adequate record to
22 make a review of this matter. Any objection to that
23 procedure from the Applicant?

24 MR. STROM: No, Your Honor.

25 THE COURT: From the defense -- from the State?

1 MR. MAYE: No, Your Honor.

2 THE COURT: Thank you, gentlemen. Thank you, Ms.
3 Mauldin, for being here. Thank you to everybody for
4 coming to Anderson. This hearing is concluded.

5 MR. MAYE: Yes, sir. Thank you, Your Honor.

6 MR. STROM: Thank you.

7 (Whereupon, the hearing adjourned.)

8

9 * * * END OF TRANSCRIPT * * *

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CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR ANDERSON COUNTY ON THE 8TH OF SEPTEMBER 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

ORIGINAL

02/05/2018

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER
COMMISSION EXPIRES 9.22.2024

REDACTED

VOLUNTARY STATEMENT OF VICTIM OR WITNESS

I, Jennifer D. Hagley, volunteer the following information of my own free will, for whatever purposes it may serve, to the Lexington County Public Defender's Office.

Reference: _____ State of South Carolina vs. _____
 Charge: _____
 Warrant Number(s): _____
 Date of Offense(s): _____

I am 37 years of age and I currently reside at Wadsworth Dr
Dayce S.C. 29033

My current telephone numbers are as follows: _____

My statement is as follows:

Brittany, Nozlong and myself Jennifer Hagley
picked Randall Sighler up from a hotel
on 302 to give him a ride ten minutes
later on 378 Brittany's car was pulled over
for improper use of a turn signal
on the car was searched on they
found ether a mason jar or other
ingred. as evidence of nath Randall E
Sighler had no idea these items were
in her trunk and back seat. He was just
getting a ride and got caught up in the
mix.

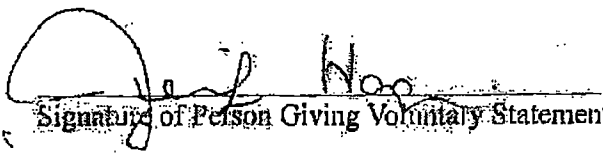
2017 SEP -8, PM 4:48
 COPIES OF FILES AND
 GENERAL SESSIONS

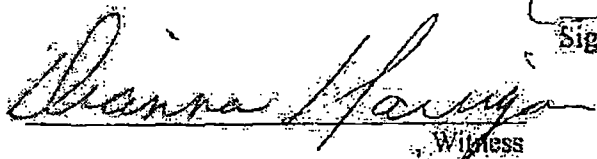
FILED CLERKS OFFICE
 ANDERSON SC

Signature of Person Giving Voluntary Statement



I have read each and every page of this statement consisting of _____ page(s), each of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

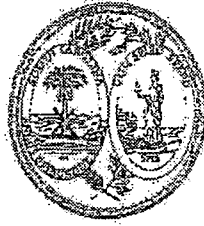

Signature of Person Giving Voluntary Statement


Witness

_____, Witness

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

COUNTIES
EDGEFIELD / LEXINGTON
McCORMICK / SALUDA
FAXES: (803) 785-8431 or (803) 785-8255



LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352

DONALD V. MYERS
Solicitor

PLEA OFFER SHEET

DATE: 12/10/10

Defendant: Donald Earl Smitler

Defense Attorney: Sarah Halim

Solicitor: Emily Howard

Pending Charges: ① Manufacturing Meth, 3rd offense → 10-30 years +/or up to \$50,000; "violent" offense;

"serious" offense; no suspension/probation; Dr. Suspension ② Possession of Meth, 3rd offense → up to 10 +/or up to \$12,500

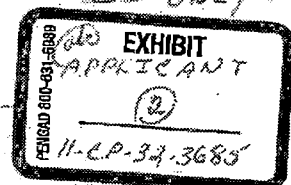
③ Trafficking Meth (10-20 gms) 3rd offense → 25-30 years + \$50,000; "violent" & "serious" offense; no probation/suspension

④ Possession of Ecstasy (>100 gms) 1-25 years +/or \$50,000; "violent" & "serious" offense; no probation

PLEA OFFER: Manufacturing Meth (2nd offense) → 5-30 years +/or up to \$50,000; "violent" offense;

Dr. Suspension; sentence is suspendable

Plea Offer Expiration Date: at 2nd appearance

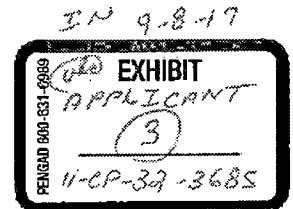




ALAN WILSON
ATTORNEY GENERAL

March 30, 2011

Sarah A. Hahn, Esquire
407 1/2 W. Main Street
Lexington, South Carolina 29072



Re: Randall Earl Sightler
Warrant: J-033776
J-033780
J-033784
79799F
91353FL
91354FL
J-034094
J-034095
J-034143
J-034146

Manufacturing Methamphetamine
PWID Methamphetamine
Possession of Pseudoephedrine (<100g)
Shoplifting
Simple Possession of Marijuana
Possession of Drug Paraphernalia
Possession of Methamphetamine (3rd)
Manufacturing Methamphetamine (3rd)
Possession of Pseudoephedrine <100g
Trafficking Methamphetamine 10-28g (3rd)

FILED-CLERK'S OFFICE
ANDERSON SC
2017 SEP 8 PM 12:40
COMMON PLEAS AND
GENERAL SESSIONS
21

Dear Ms Hahn:

I am writing to extend a formal offer in the above-referenced case. The State is willing to nolle prosequere the Shoplifting, Simple Possession of Marijuana, Possession of Drug Paraphernalia, the Possession of Pseudoephedrine, PWID Methamphetamine, Possession of Methamphetamine 3rd, Manufacturing 3rd (J-034095), and Possession of Pseudoephedrine <100g charges if Mr. Sightler will plead to Manufacturing Methamphetamine (2nd offense) and Trafficking Methamphetamine (2nd offense), with those sentences to run concurrently.

Under the proposed plea agreement, Mr. Sightler would be facing five (5) to thirty (30) years and/or a fine of not more than fifty thousand (\$50,000) dollars on the Manufacturing Methamphetamine 2nd offense charge and five (5) to thirty (30) years and a fine of fifty thousand (50,000) dollars on the Trafficking Methamphetamine 2nd offense charge. Since the State is not making any sentencing recommendation, the Judge has complete discretion. The Judge could go as low as five (5) years or as high as thirty (30) years. It will be solely up to the Judge.

Please convey our offer to your client and let me know his decision as soon as you are made aware of it. If your client chooses to accept my offer, I will forward you the State's plea agreement in writing.

This offer will be withdrawn if not accepted by 5:00 p.m. on Friday, April 29th, 2011. In that event, the State will not entertain further plea negotiations with your client.

If you have any further questions, please contact me at (803) 734-4164 at your earliest convenience. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan D. Waller', with a large, stylized initial 'J' and 'W'.

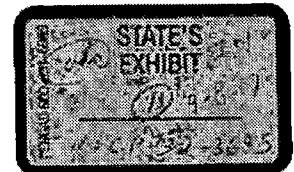
Jonathan D. Waller
Assistant Attorney General

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	C.A. No. 2011-CP-32-3865
	)	
Randall E. Sightler,	)	
S.C.D.C. No. 311918,	)	
	)	
Applicant,	)	AFFIDAVIT OF WALT WHITMIRE
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

PERSONALLY APPEARED before me Walt Whitmire, Esq., who being duly sworn, deposes and states:

1. I am currently employed by the 11th Circuit Public Defender's Office for the State of South Carolina.
2. In 2014, I was employed by the South Carolina Attorney General's Office, and was tasked with the representation of the State in the Post-Conviction Relief matter of Randall E. Sightler v. State of South Carolina, 2011-CP-32-3685.
3. An evidentiary hearing on this matter was convened before the Honorable Judge R. Lawton McIntosh wherein the testimony of Applicant Randall E. Sightler and his plea counsel Sarah Hahn (now Mauldin), Esq. was heard by the Court. In addition to litigating the matter, it would have been my practice to contemporaneously take several pages of extensive notes.
4. After the conclusion of the hearing, per the request of Judge McIntosh, I drafted a thorough proposed Order of Dismissal, inclusive with a detailed recitation of the facts and testimony produced at hearing. This section of the proposed Order of Dismissal was

JWW



entitled "Summary of Testimony." By 2014, it was my practice to draft a "Summary of Testimony" from each contested PCR hearing within the week of the hearing while the matter remained fresh in my memory. However, I primarily relied upon my notes to draft the "Summary of Testimony." It would have been my practice to complete the remainder of the proposed Order of Dismissal at a later date. I bifurcated the drafting process to ensure the "Summary of Testimony" section of each order was completed as soon as possible after the expiration of a term of PCR Court. This was done in order to ensure that the "Summary of Testimony" section of each proposed order was as accurate as possible.

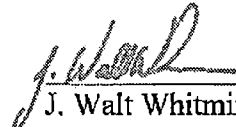
5. Per Judge McIntosh's expressed dictate to me from numerous prior terms of PCR Court in Anderson and Lexington counties, I would have provided a copy of the proposed order of dismissal to opposing counsel well in advance of submitting it to the Judge. Had opposing counsel contested any part of the proposed order, the matter would have been brought to Judge McIntosh's attention well before he entered the order. At the start of my legal career in 2012, I had the great fortune of learning, adopting, and employing numerous court room practices and etiquette learned from Judge McIntosh's dictates to me.
6. Judge McIntosh adopted, either in part or totality, my "Summary of Testimony." The PCR Court executed an Order of Dismissal of Mr. Sightler's Application for Post-Conviction Relief on October 2, 2014.
7. This Order of Dismissal was then filed with the Lexington County Clerk of Court on October 6, 2014.

8. At the time of its drafting, my recitation of the facts in the proposed Order of Dismissal would have been as accurate and through as possible accounting for each witness's testimony produced at the evidentiary hearing.
9. After having an opportunity to reflect upon the matter, review the Order, review the various appellate filings, and conference with my then former witness and now current office colleague Sarah Mauldin, I find no reason or basis which would prompt me to add to, alter, or remove any portion of the "Summary of Testimony".
10. The facts and testimony set forth in the October 2, 2014 Order of Dismissal are as accurate as possible.

FURTHER AFFIANT SAYETH NAUGHT.

Sworn to and subscribed before me)
 This 7th day of September, 2017.)


 NOTARY PUBLIC)
 County of Lexington,)
 State of South Carolina,)
 My commission expires: 3/25/2024)


 J. Walt Whitmire

OCT082014

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

Randall E. Sightler,
S.C.D.C. No. 311918,

C.A. No. 2011-CP-32-3865

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL3085
DETHA A. CARRISG
CLERK OF COURT
LEXINGTON

2014 OCT -6 P 2:39

FILED

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed September 23, 2011. Respondent made its Return on April 5, 2012. An evidentiary hearing into the matter was convened on at the Lexington County Courthouse on November 13, 2013. Applicant was present at the hearing and was represented by Andrew F. Farley, Esq. Respondent was represented by Walt Whitmire, Esq., of the South Carolina Attorney General's Office. At the hearing, Applicant and counsel testified. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted for trafficking methamphetamine, 10-28 grams third-offense (2011-GS-32-6009), and manufacturing methamphetamine, 10-28 grams second-offense (2011-GS-32-6010). He was represented by

Sarah Mauldin¹, Esq. On June 7, 2011, Applicant waived presentment and pled guilty as indicted on the manufacturing offense and pled to the lesser-included offense of trafficking, second-offense. The Honorable Edward B. Cottingham sentenced Applicant to a term of fifteen (15) years imprisonment on each offense. The sentences were to be served concurrently. Judge Cottingham in addition revoked Applicant's probation on a 2010 Possession of Methamphetamine conviction. Applicant did not appeal his sentence, conviction, or revocation.

At the PCR hearing, Applicant moved forward on the following allegations:

1. Ineffective assistance of counsel:
 - a. failure to investigate a suppression defense;
 - b. failure to timely investigate a witness statement;
 - c. failure to withdraw the plea at the hearing;
 - d. failure to substitute counsel based on an alleged conflict of interest.

SUMMARY OF TESTIMONY

Applicant alleged counsel was ineffective for failing to investigate his case. He testified he was not satisfied with counsel from the outset of the representation. He state he met with prior counsels, Attorney Mauldin and Attorney Cornwell, three times prior to counsel's involvement. He stated that counsel never fully reviewed the State's evidence with him. First, Applicant claimed counsel did not pursue possible suppression defenses regarding an alleged illegal inventory search from the October 18, 2010 offense. He testified the search was untimely because it occurred nearly a month after he had been arrested. He testified that he asked counsel to investigate what the police recovered in back of this particular vehicle because he was uncertain what was housed and recovered from it. Second, Applicant testified that counsel never apprised him of his co-defendant Jennifer Higgins speculatively exculpatory statement. Yet Applicant conceded his guilt. He stated that Higgins' statement was not included in solicitor's

¹ Formerly Sarah Hahn, Esq., at the time of the representation.

OCT082014

discovery disclosure. As a result counsel alleged deficient performance, Applicant claimed he regrettably rejected a prior more favorable guilty plea offer.

Applicant alleged counsel was ineffective for failing to make a motion to be relieved from the case as a result of an alleged conflict of interest. Applicant testified that the Eleventh Circuit Solicitor's Office transferred the case to the Attorney General's Office because they were prosecuting a case where Applicant was the victim of a shooting that stemmed from a separate incident. He surmised that the Public Defender's Office should have followed suit because they were representing his assailant while representing him. He testified that wrote to the Public Defender Madsen on April 24, 2011 to explain the problem. He also complained of counsel's performance in this letter.

Applicant alleged counsel was ineffective for failing to object to solicitor's breach of the plea agreement. He testified that terms of the plea agreement stipulated that the solicitor would not make a sentencing recommendation. He claimed that Investigator Hook breached the agreement when he addressed the Plea Judge during the aggravation portion of the sentencing phase of the plea hearing. He testified that Hook personally disliked him told the Plea Judge that Applicant was a well-known commodity in manufacturing and distribution of methamphetamine scene in Lexington County. He stated that when Hook asked the Plea Judge to impose the most punitive sentence available, counsel should have objected and moved to withdraw Applicant's guilty plea.

Counsel testified to her course of conduct during the representation. She met with Applicant numerous times and pursued a defense theory based upon control and dominion of the narcotics. Most of her discussions with Applicant revolved around determining strategy to mitigate his involvement in both offenses. She noted that Higgins voluntarily came to her office

and provided a statement; she subsequently met with Applicant to discuss the development and discussed the matter for over one hour. Although the statement had exculpatory value, counsel advised Applicant that she had concerns over how a potential jury would view Higgins' credibility. Furthermore, another occupant of the vehicle here, Britney Lindsey, gave a contrary statement that identified Applicant as the culprit. She discussed possible suppression defenses and was not aware of any oversights in her representation. Counsel reviewed Applicant's letter to the Eleventh Circuit Public Defender Madsen regarding the alleged conflict of interest and she disagreed with its merits. She stated that it was her opinion that her representation of Applicant did not constitute a conflict of interest. Counsel explained her Office's policy to prevent handle conflicts and protect a client's interests. Paralegals screen potential conflicts that are reviewed for a second time by the Lexington County Public Defender Beth Fullwood. Measures are taken to ensure an attorney is exposed to a co-defendant's case. Most actual conflicts of interest result to substitutions of outside counsel. Counsel explained that her representation was not adversely effected as a result of Applicant's status as a victim on a separate incident. Counsel noted that Applicant's concerns here did were fleeting.

Counsel explained the extent of her plea negotiations with the solicitor. At the outset of her representation, she noted prior offers that Applicant had rejected. Counsel made attempts to obtain a favorable offer and noted that the prosecutor was pliable in negotiations concerning the trafficking, third-offense, charge from the first incident but would not downgrade manufacturing, second-offense, charge from the subsequent incident. As a result, the prosecutor offered to plead Applicant to the lesser included offense of trafficking, second-offense, and straight-up on the manufacturing charge. Counsel referenced the written plea offer during her testimony and noted it included a clause that the offer was otherwise without recommendations or negotiations except

OCT082014

the joint recommendation for Applicant's sentences to be served concurrently. Counsel conveyed the offer to Applicant and advised him on the matter. Counsel explained that Hook's comments during at the plea hearing did not constitute a breach of the plea agreement. Applicant saw the officers in the court room prior to the plea and was aware that they intended on speaking. Their presence did not result in Applicant expressing a desire to stand down from entering the plea. Furthermore, Applicant did not give counsel any indication that he desired withdrawing from the plea of guilty after Hook addressed the Plea Judge. Counsel stated that even in hindsight, she would refrained from an objection or making motion to withdraw the plea in this case. She noted that even if the matter constituted a breach of the plea agreement, Hooks's statements were immaterial and did not frustrate the purpose of the agreement to jointly recommend concurrent service.

APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must

overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression this Court finds counsel's exemplary performance was exhibited by her preparations for the PCR hearing and professional conduct. This Court finds counsel's testimony to be more credible than Applicant's testimony. The Plea Judge followed the joint recommendation and sentenced Applicant to serve his terms of imprisonment concurrently. Despite the Plea Judge's disorganized colloquy, Applicant failed to produce any credible evidence that he was induced to accept the solicitor's offer because it included language that

OCT082014

functioned as a merger clause that the plea to posit that the conflict prosecutor would not make a sentencing recommendation. This Court also finds Applicant's conflict of interest allegation lacked merit.

A.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to investigate Higgins statement. This Court has stated previously that criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case. Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). This Court finds the record contradicts Applicant's allegation that counsel was deficient for not pursuing an allegedly viable Fourth Amendment Suppression defense. See State v. Missouri, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004) ("To claim protection under the Fourth Amendment of the U.S. Constitution, defendants must show that they have a legitimate expectation of privacy in the place searched."). Therefore, this allegation is summarily denied and dismissed.

B.

This Court finds Applicant's failed to meet his burden to prove counsel was ineffective for failing to timely evaluate Higgins' statement prior to his rejection of earlier plea offers. "The Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. That right applies to 'all 'critical' stages of the criminal proceedings." Missouri v. Frye, --- U.S. ---, 132 S.Ct. 1399, 1402 (2012). question is whether defense counsel has the duty to communicate the terms of a formal offer to accept a plea on terms and conditions that may result in a lesser sentence, a conviction on lesser charges, or

both. Id., ---- U.S. at ----, 132 S.Ct. at at 1408. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). "To show prejudice from ineffective assistance of counsel in a case involving a plea offer, petitioners must demonstrate a reasonable probability that (1) they would have accepted the earlier plea offer had they been afforded effective assistance of counsel, and (2) the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law." Merzbacher v. Shearin, 706 F.3d 356, 366 (4th Cir. 2013) cert. denied, 134 S. Ct. 71, 187 L. Ed. 2d 56 (U.S. 2013) reh'g denied, 134 S. Ct. 725, 187 L. Ed. 2d 580 (U.S. 2013) (internal quotations omitted).

This Court finds counsel's testimony that she promptly independently evaluated Higgins' statement then immediately discussed her impressions with Applicant. Furthermore, Applicant failed to overcome counsel's credible testimony on the matter and present credible evidence that the statement was in possession of the prosecuting attorney, and thereby discoverable, prior to counsel obtaining the statement. See Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR."). Instead, this Court finds this allegation is most likely a product of Applicant's wishful thinking in hindsight, a by-product of his displeasure with his ultimate prison sentence. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). Applicant's

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testimony on this matter was simply suspect. See Merzbacher at 366-67 ("But it is entirely clear that to demonstrate a reasonable probability that he would have accepted a plea, a petitioner's testimony that he would have done so must be credible."). Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant's allegation that counsel was ineffective for failing to withdraw Applicant's plea at the hearing as a result of an alleged breach of the agreement to be without merit. "[C]onduct of Jordan's counsel in not protecting [a defendant's] right to enforce the plea agreement with the Solicitor's office fell below prevailing professional norms." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 296 (2000). Counsel testified that the statement at issue made by officer during at plea agreement during the State's recitation of facts was inapposite to the plea agreement. She stated that plea agreement before the plea judge was not breached. This Court again finds counsel's testimony convincing and agrees with her assessment. Applicant has produced no credible evidence to rebut counsel's testimony. The record shows that the plea judge was more than adequately aware of the agreement and sentenced accordingly. Applicant was fully aware that the officer was present at the plea hearing. The record shows he took no issue with the matter when he had the opportunity to request counsel withdraw the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.").

Furthermore, this Court finds counsel's testimony credible that the negotiated agreement with the solicitor that both would recommend concurrent service was the 'but/for' reason

Applicant accepted the offer and entered the agreement. Compare Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) ([Defendant agreed to plead guilty because he believed the solicitor would neither oppose nor recommend probation.]). This Court finds counsel to be an experienced and widely respected within the circuit's criminal defense bar. See Stewart v. Secretary, Dept. of Corrections, 476 F.3d 1193, 1209 (11th Cir. 2007) (the experience of counsel strengthens the presumption of reasonable assistance.). In contrast, Applicant again has failed to meet his burden to rebut counsel's credible testimony. Therefore, this allegation is denied and dismissed.

D.

This Court finds Applicant's allegation that counsel was ineffective for not moving to withdraw her representation of Applicant as a result of an alleged conflict of interest to be without merit. "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984). "If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently." Id. This Court finds counsel's testimony regarding the protocol for preventing the leakage of information that would risk the creation of legitimate conflicts in factually similar cases to be proficient. There has been no credible showing of counsel's representation posed an actual conflict of interest. Furthermore, Applicant presented no testimony or evidence that even established a prima facie argument under Strickland's prejudice prong. See Cannon v. Mullin, 383 F.3d 1152, 1165 (10th Cir. 2004). Therefore, this allegation is denied and dismissed.

E.

Applicant raised a collateral issue concerning the computation of his incarcerative

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sentence. This Court finds this claim is against the Department of Corrections and concerns a matter outside of the purview of PCR. See Al-Shabazz v. State, 338 S.C. 354, 367-68, 527 S.E.2d 742, 749 (2000) ("A typical PCR claim of ineffective assistance of counsel falls into this category because, if the applicant proves his case, his conviction or sentence will be overturned. A claim regarding sentence-related credits or other condition of imprisonment does not fall into this category. A successful claim, while it may affect the duration of the sentence or the quality of life in prison, will not affect the validity of the underlying conviction or sentence."). However, in light of judicial efficiency, Respondent was directed to look into the matter. Pursuant to Crooks v. State, 326 S.C. 171, 485 S.E.2d 374 (1997), the Department of Corrections asserts that Applicant's sentence has been properly calculated. This Court directs Applicant to pursue other non-PCR administrative actions in addressing any further sentence calculation issues. Although this Court finds this claim per se cannot constitute prejudice in PCR, Applicant has nonetheless failed to meet his burden here.

F.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 2 day of October, 2014.


R. LAWTON MCINTOSH
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA)

County of Lexington)Randall Earl Sighler #311918)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

JM
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEF2014 OCT 15 P 1:00
BETH A. CARR
CLERK OF SUPERIOR COURT
LEXINGTON

FILED

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.

- Place of detention Broad River Correctional Institution
- Name and location of Court which imposed sentence Lexington, South Carolina Court of General Sessions
- Name(s) of co-defendant(s) (if any) Jennifer Hagins, Brittany Lanzetta, Greg Addy, Rally Quarls, Crystal Michaels, Tonya?
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - 2011-GS-32-6010
 - 2011-GS-32-6009

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(c) 10-GS-32-01202

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

- (a) ~~Effective Assistance of PCR Counsel Nov. 13, 2014~~
 (b) June 7, 2011 Probation Violation - 3 years, Traffic 2nd
 (c) 15 yrs, Manufacturing 2nd 15 yrs Concurrent

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty After 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. The PCR lawyer did not appeal
 ii. N/A
 iii. N/A

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

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

(c) the date of each such result:

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

(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) Andrew Farley did not appeal the PCR decisions
 (b) _____

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- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistant of PCR Council
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failed to Appeal the PCR
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. I filed a PCR Prior to this one which was denied
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Lexington, SC Lexington Clerk of Court
- ii. _____
- iii. _____
- iv. _____

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JM

(c) the disposition thereof:

- i. Denied PCR Application/Granted County
- ii. time 4 months and 3 charges dismissed
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. November 13, 2013
- ii. _____
- iii. _____
- iv. _____

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

- i. Never received an order from the court
- 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. NO
- ii. N/A
- iii. N/A

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

- i. None
- ii. N/A
- iii. N/A

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14 CP 3203766

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CLERK OF COURT
FEDERAL DISTRICT COURT
DISTRICT OF COLUMBIA

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133

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) No Cause until Now!
(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? Plea / Yes
(c) your sentencing? Yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? PCR Lawyer failed to APPEAL
(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. PLEA / Sarah Aahn, Casey Cornwell 407 1/2 West Main Street
Lexington, SC 29072
ii. PCR / Elisabeth O. Graham 6326 St. Andrews Rd
Columbia, SC 29212
iii. PCR / Andrew Fortzy 201 West Main St. Suite 201-C
Lexington, SC 29072
(b) the proceedings at which each such attorney represented you:
i. Plea Agreement / PCR Hearing
ii. PCR Hearing
iii. PCR Hearing

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2014 OCT 15 P 4:58
SETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC
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JM

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

I need my 4 months and the 3 charges off my sentence

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

NO

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, Randall Earl Sighter, 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.

Randall Sighter

SWORN to and subscribed before me this 6th day of October, 2014.

Leslie H. Frye (L.S.)
Notary Public

My Commission Expires: March 5, 2018

BETH A. CARRIST
CLERK OF COURT
LEXINGTON, SC

2014 OCT 15 P 4:00

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Lex. Co. C.C.P., G.S. & E.C.

ORIGINAL**JM**

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

I, Randall Earl Sighler, 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.

Randall Earl Sighler
Applicant

SWORN or affirmed to and subscribed before me this
6th day of October, 2014.

Susan H. Frye
Notary Public

My Commission Expires: _____

BETH A. CARRISQ
CLERK OF COURT
TEXAS

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Randall Earl Sightler	)	Case No. 2014-CP-32-3766
S.C.D.C. No. 311918	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed October 15, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. In June 2011, the Lexington County Grand Jury indicted Applicant for trafficking methamphetamine 10-28 grams – second offense (2011-GS-32-6009), manufacturing methamphetamine - second offense (2011-GS-32-6010), and violation of his conditions of probation (2010-GS-32-1202). Sarah Hahn, Esq., represented Applicant. On June 7, 2011, Applicant waived presentment of the indictments to the grand jury and pled guilty before the Honorable Edward B. Cottingham. Judge Cottingham revoked applicant's probation in full and sentenced applicant to a term of fifteen (15) years for trafficking methamphetamine; and to a term of fifteen (15) years for manufacturing methamphetamine. These were to be served concurrently. Applicant did not appeal his plea or sentence.

Applicant filed his first application for post-conviction relief (2011-CP-32-3685) on September 23, 2011, in which he raised the following grounds for relief:

1. Ineffective assistance of counsel

- a. "failure to investigate a suppression defense"
- b. "failure to timely investigate a witness statement"
- c. "failure to withdraw the plea at the hearing"
- d. "failure to substitute counsel based on an alleged conflict of interest"

Andrew Farley, Esq., represented Applicant. Respondent made its return on April 5, 2012. An evidentiary hearing into the matter was convened on at the Lexington County Courthouse on November 13, 2013. The Honorable R. Lawton McIntosh issued an order of dismissal on October 2, 2014. Applicant's current application stems from this dismissal.

II.

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

- 1. "Ineffective Assistance of PCR Counsel."
 - a. "failed to appeal the PCR"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Dillon County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior post-conviction relief action. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Applicant alleges he did not knowingly and voluntarily waive his right to appellate review of his prior PCR hearing. Respondent submits this allegation is without merit. "The right

to seek appellate review of the denial of PCR is expressly authorized by state law.” Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. § 17-27-100). “A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived.” Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted). However, a defendant may waive the right to an appeal by making a “knowing and intelligent decision not to pursue the appeal.” See Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010) (quoting Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004)). Furthermore, “[a]cts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). Even if the PCR court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine “whether he was prejudiced by his failure to obtain review of a meritorious issue.” Odom, 337 S.C. at 263, 523 S.E.2d at 756 (1999).

Respondent submits Applicant knowingly and voluntarily waived his right to appellate review of his PCR hearing. However, this allegation probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. 264, 305 S.E.2d 247.

IV.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return and Partial Motion to Dismiss, Respondent requests that a hearing be solely on the issue of whether the Applicant waived his right to appellate review of his prior post-conviction relief action. Respondent requests the Court summarily dismiss all remaining allegations in the application as successive and untimely

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2014-CP-32-3766
RANDALL EARL SIGHTER, #311918,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Ms. Aimee Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
PO Box 11961
Columbia, SC 29211

DATED this 22nd day of September, 2015.



 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) COURT OF COMMON PLEAS

Joshua Randall Early Sightler ,)
)
 Plaintiff,)
 v.) Case No. 14-CP-32-03766
)
 State of South Carolina ,)
)
 Defendant.)

TRANSCRIPT OF PCR HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held April 18, 2016, before The Honorable Perry H. Gravely in the Court of Common Pleas for Lexington County, South Carolina; attended by counsel as follows:

APPEARANCES:

David Allen, Esq.
 (Information Not Provided)
 ...Appearing for Applicant

Johnny James, Assistant AGREEMENT
 Johanna C. Valenzuela, Senior Assistant AG
 OFFICE OF ATTORNEY GENERAL
 P O Box 11549
 Columbia, South Carolina 29211
 Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29616
dgarrison@sccourts.org

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Before The Honorable Perry H. Gravely

2

INDEX

Testimony of Randall Sightler

Direct Examination	6
Cross Examination	10
Redirect Examination	12

Testimony of Andrew Farley

Direct Examination	13
Cross Examination	15
Redirect Examination	17

Arguments of Counsel	18
----------------------	----

Ruling of The Court	TUA
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INDEX OF EXHIBITS

- None Entered -

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Before The Honorable Perry H. Gravely

3

1 THE COURT: All right. Ms.
2 Valenzuela, I'll be glad to hear from you.

3 MS. VALENZEULA: Yes, Your Honor,
4 may it please the Court. Before you is
5 the case of Randall Earl Sightler versus
6 the State of South Carolina, case number
7 2014-CP-32-3766.

8 Mr. Sightler filed his application
9 for post-conviction relief on October 15th,
10 2014. He is presently confined in the
11 Department of Corrections.

12 In June of 2011 the Lexington County
13 Grand Jury indicted the Applicant for
14 trafficking meth, 10 to 28 grams, second
15 offense, under Indictment number 2011-GS-
16 32-6009.

17 Manufacturing meth, second offense,
18 indictment 2011-GS-32-6010.

19 And violation of his conditions of
20 probation, 2010-GS-32-1202.

21 The applicant was represented by
22 Sarah Hahn.

23 Then on June 7, 2011 the Applicant
24 waived presentment of his indictments to
25 the grand jury and pled before the

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Before The Honorable Perry H. Gravely

4

1 Honorable Edward Cottingham. Judge
2 Cottingham revoked the applicant's
3 probation in full and sentenced him to
4 fifteen years for trafficking meth and to
5 a term of fifteen years for manufacturing
6 meth. Those sentences were to be served
7 concurrently.

8 The Applicant elected not to appeal
9 his plea or his sentence.

10 The Applicant filed his first
11 application for post-conviction relief,
12 case number 2011-CP-32-3685, on September
13 23rd, 2011, in which he raised ineffective
14 assistance of counsel claims based on
15 failure to investigation a suppression
16 offense; failure to timely investigate a
17 witness statement; failure to withdraw the
18 plea of the hearing; and, failure to
19 substitute counsel based on the alleged
20 conflict of interest. He was represented
21 at that time in the PCR by Andrew Farley.

22 Respondent made our return on April
23 5th, 2012 and then an evidentiary hearing
24 was convened on November 13th, 2013 before
25 Judge McIntosh, who issued an order of

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Before The Honorable Perry H. Gravely

5

1 dismissal on October 2nd, 2014. The
2 current application stems from this
3 dismissal.

4 In the current application the
5 applicant alleges that he is -- that he's
6 bringing this PCR application because his
7 PCR counsel failed to appeal that post-
8 conviction relief denial by Judge
9 McIntosh. We filed our return to this PCR
10 on September 2nd, 2015. And the applicant
11 is currently represented in this matter by
12 Aimee Zmroczek. And both Aimee Zmroczek
13 and the applicant are present in the court
14 today.

15 THE COURT: All right. Ms.
16 Zmroczek.

17 MS. ZMROCZEK: Thank you.
18 Your Honor, and we understand that since
19 this is a second PCR, and I've tried to
20 explain to my client, it's very limited to
21 the issue of whether or not his PCR
22 counsel was ineffective and we don't get
23 to rehash the underlying PCR.

24 THE COURT: And you understand
25 that, Mr. Sightler, that we're just here

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Applicant - Direct Examination

6

1 whether you should have appealed it
2 or not? I realize there may be lots of
3 other issues that you want to bring up,
4 but it's just whether your attorney should
5 have or there's a basis for an appeal. So
6 that's all I'm going to limit it to.

7 APPLICANT SIGHTLER: Right.

8 THE COURT: All right.

9 MS. ZMROCZEK: Your Honor,
10 we'd call Mr. Sightler.

11 THE COURT: All right.

12 (WITNESS TAKES STAND)

13 RANDALL EARL SIGHTLER, having been
14 duly sworn to tell the truth, and nothing
15 but the truth, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. ZMROCZEK:

18 Q. Mr. Sightler, you originally
19 filed a PCR for your underlying drug
20 charges; correct?

21 A. Yes.

22 Q. And you had several issues that
23 you raised in that PCR; correct?

24 A. Yes, ma'am.

25 Q. And some of them dealt with the

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Applicant - Direct Examination

7

1 public defender's office having a conflict
2 because they kept too many of the co-
3 defendants' cases and they couldn't
4 properly work your case. Those were all
5 included in your issues?

6 A. Yes.

7 Q. And you discussed -- Mr. Farley
8 was your attorney for your PCR on those
9 issues; correct?

10 A. Yes, he was. But like it is
11 right now I've never spoken with him, went
12 over nothing. He just called me in the
13 morning and I didn't know what was going
14 on and talked to me ten minutes, told me
15 this and that.

16 MS. VALENZEULA: Your Honor, we
17 would object to relevance here.

18 APPLICANT SIGHTLER: I object
19 to ---

20 THE COURT: Hold on. Hold On.

21 MS. ZMROCZEK: Hang on a
22 minute.

23 THE COURT: When she objects, I
24 listen to her and then I'll hear from you.
25 I don't mean to cut you off, but that's

Randall Earl Sighler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Applicant - Direct Examination

8

1 the way we've got to work these rules.

2 Yes, ma'am?

3 MS. VALENZEULA: We would
4 object to relevance. The scope of this
5 hearing is limited to whether Andrew
6 Farley filed an appeal, was asked to file
7 an appeal of the PCR hearing.

8 THE COURT: All right. And
9 I'll give him a little bit of leeway on
10 that, but I'm limiting him if it goes too
11 far.

12 MS. ZMROCZEK: Thank you.
13 And I believe, Your Honor, his answers are
14 relevant as to the communication between
15 he and his PCR ---

16 THE COURT: All right.

17 MS. ZMROCZEK: Okay.

18 DIRECT EXAMINATION CONTINUED

19 BY MS. ZMROCZEK:

20 Q. So just very briefly. You never
21 had an opportunity to meet with Mr. Farley
22 to discuss your issues?

23 A. I met eight lawyers, four --
24 three or four solicitors, one attorney
25 general, and of all the lawyers I spoke

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Applicant - Direct Examination

9

1 with only one; and she ended up lying, but
2 that's probably got nothing to do with
3 what we going on now. So I didn't even
4 know what was going on today until she
5 just told me a minute ago.

6 And I asked Mr. Farley and he told my
7 mother that he was going to file an appeal
8 when he got back to the office. So I'm
9 not sure -- apparently, he didn't. So
10 that's one of the reasons why I didn't go
11 the first time I got called down because
12 he tried to throw me on the stand and I
13 ain't talked with him for like -- maybe
14 five minutes I talked with him. And I
15 didn't feel comfortable. So rescheduled
16 it, we come back and that's when --
17 (pause).

18 Q. And you had the hearing?

19 A. That's when Judge McIntosh, yes.

20 Q. In front of Judge McIntosh. And
21 then when Judge McIntosh ruled, his Order
22 is when you ask that the appeal be filed?

23 A. Yes, please. I'm not sure if it
24 was on -- like it is right now. It was
25 verbalized. I do know he respond back.

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Applicant - Cross Examination

10

1 So it's my word against his, I guess.
2 It's just like it was before, my word
3 against my other lawyer. They said it
4 wasn't credible, so I don't -- I don't
5 know about all this.

6 Q. But your word is -- and that's
7 okay. But what your word is is -- and
8 you said that you asked him to file the
9 appeal. That's what you asked him to do?

10 A. Yes.

11 Q. And it wasn't done?

12 A. I don't -- I don't -- I don't ---

13 Q. Which is how you ended up having
14 to file this other appeal?

15 A. I don't think it was. He told my
16 mother he was going to do it and told me.
17 And I -- that's what I thought this was to
18 -- but apparently not.

19 Q. Okay. Thank you. Please answer
20 any questions Ms. Valenzuela has.

21 THE COURT: Ms. Valenzuela?

22 MS. VALENZEULA: Thank you,
23 Your Honor.

24 CROSS-EXAMINATION

25 BY MS. VALENZUELA:

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Applicant - Cross Examination

11

1 Q. Good morning, Mr. Sightler.

2 A. Good morning.

3 Q. When did you ask your attorney to
4 file the appeal on the denial of your PCR?

5 A. That day, or that morning;
6 whatever it was.

7 Q. And did you follow that request
8 up in writing or was that only oral?

9 A. I've -- I have wrote -- I'm
10 pretty sure I wrote him too because it was
11 like a deadline on it. I don't know
12 nothing about the law. All I know is I
13 got commonsense and I know a little bit
14 about things. He told me he was going to
15 do it and I took it off his word that he
16 was going to do it and it didn't get done,
17 I guess.

18 Q. Okay. Mr. Sightler, do you have
19 any documentation to support that you
20 either asked for the PCR to be appealed or
21 that Mr. Farley indicated to you that he
22 would be filing an appeal?

23 A. His word.

24 Q. Do you have any documentation?

25 A. I don't have any documents, no.

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Applicant - Redirect Examination

12

1 My mother asked him. I didn't.

2 Q. And is your mother here?

3 A. I didn't know I was coming until
4 last night so -- (pause).

5 Q. Is that a "no", Mr. Sightler?

6 A. "No", "no."

7 Q. Thank you, Mr. Sightler.

8 MS. VALENZEULA: Nothing
9 further.

10 THE COURT: All right.

11 MS. ZMROCZEK: Just very
12 briefly, Your Honor.

13 THE COURT: Yes.

14 REDIRECT EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. If you had sent him a letter,
17 would you -- you wouldn't have kept a copy
18 of that; would you? You would have sent
19 it to your attorney?

20 A. I'm sure I've got it in my stuff
21 at the dorm.

22 Q. But you would have sent it to him
23 originally?

24 A. Yes.

25 Q. In addition to talking to him?

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Andrew Farley - Direct Examination

13

1 A. It wouldn't have been notarized
2 or nothing like that, but I'm pretty sure
3 I did.

4 Q. All right. Thank you. You can
5 have a seat.

6 THE COURT: Thank you, Mr.
7 Sightler.

8 (WITNESS STEPS DOWN)

9 MS. ZMROCZEK: That's the
10 evidence that we would present.

11 THE COURT: All right. Ms.
12 Valenzuela.

13 MS. VALENZEULA: Yes, Your
14 Honor. We'd call Andrew Farley to the
15 stand.

16 (WITNESS TAKES STAND)

17 ANDREW FARLEY, having been duly
18 sworn to tell the truth, and nothing but
19 the truth, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. VALENZUELA:

22 Q. Okay, Mr. Farley. Now, is it
23 your practice to discuss filing an appeal
24 of a PCR with your clients?

25 A. Yes, ma'am.

Randall Earl Sigtler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Andrew Farley - Direct Examination

14

1 Q. Okay. And at what point do you
2 usually discuss that?

3 A. We usually discuss that when the
4 case is heard, when the judge has made a
5 ruling either from the bench or if they
6 take it under advisement?

7 Q. And if the applicant here had
8 indicated that he wanted an appeal, what
9 would you have done?

10 A. Well, I would have appealed.

11 Q. And did he indicate to you that
12 he wanted to file an appeal?

13 A. I don't recall him asking for
14 appeal.

15 Q. Did he send you anything and do
16 you have anything in your file that
17 indicates that he sent you a written
18 request?

19 A. I don't. I don't remember
20 receiving any letter and I don't have any
21 letter in my file. And, again, I'm not
22 saying that he didn't ask for an appeal.
23 I'm just saying I don't recall one.
24 That's why I didn't file one.

25 Q. And then do you recall telling

Randall Earl Sigtler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Andrew Farley - Cross Examination

15

1 the applicant's mother that you would
2 file an appeal?

3 A. I don't recall that. I know it
4 was a while ago so I do not.

5 Q. Did you think that there was any
6 factual or legal basis to appeal?

7 A. I really didn't after the ruling,
8 no I did not.

9 Q. Okay. Nothing further. Please
10 answer anything Ms. Zmroczek has for you.

11 CROSS-EXAMINATION

12 BY MS. ZMROCZEK:

13 Q. Good afternoon. I understand
14 that you're saying you don't recall. But
15 so the answer is you don't know; yes or
16 no? Right?

17 A. I don't recall. I don't ---

18 Q. So it's possible?

19 A. It might be possible. I really
20 don't remember. And I didn't receive
21 anything in writing.

22 Q. Okay. Did your office flood?

23 A. We were kind of caught up in the
24 -- yeah, when the dam broke. Yeah. And I
25 had to move offices as well.

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Andrew Farley - Cross Examination

16

1 Q. So do you have his complete PCR
2 file from when you represented him?

3 A. I do. But I don't recall getting
4 the letter.

5 Q. Okay. You have his complete PCR
6 file with you?

7 A. I have the PCR file, yeah.

8 Q. Okay. Where you met with him and
9 made notes about what y'all discussed?

10 A. We met actually here in this
11 courthouse and I spoke to him for a while.
12 At that time he was uncomfortable, did not
13 want to proceed. I asked the court for a
14 continuance and we came back at a later
15 time and actually did the full PCR.

16 Q. So you came back. And you said
17 it's kind of -- it's practice to go ahead
18 and have the appeal discussions because of
19 the time limits; right?

20 A. We usually do -- you know,
21 usually at the end of a PCR I ask whether
22 they want an appeal or not. This was a
23 while ago. And just to be honest, I don't
24 really recall if Mr. Sightler said he
25 wanted an appeal or not. I don't recall.

Randall Earl Sigtler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Testimony of Andrew Farley - Redirect Examination

17

1 I'm sorry to say, no offense to Mr.
2 Sigtler, but I don't remember his mother
3 either.

4 Q. And have you had -- how many
5 clients have you had since Mr. Sigtler's
6 case, do you think?

7 A. I'm not even sure ---

8 Q. Hundreds?

9 A. Yes. And also many trials and
10 many, many, many pleas. I wouldn't even
11 know how to begin to answer that. I
12 really don't. I'm sorry.

13 Q. Okay. No, that's okay. So your
14 recollection may not be as clear as
15 actually what happened; correct?

16 A. That is possible.

17 Q. Okay. Thank you.

18 MS. ZMROCZEK: I have no
19 further questions.

20 MS. VALENZEULA: Your Honor,
21 brief redirect?

22 THE COURT: Yes.

23 REDIRECT EXAMINATION

24 BY MS. VALENZUELA:

25 Q. If an applicant had indicated to

Randall Earl Sigtler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Closing Arguments by Counsel

18

1 you that he wanted an appeal and how
2 you've conducted yourself with clients in
3 the past, what would you have done if you
4 had been asked to file an appeal?

5 A. I would have filed an appeal.

6 MS. VALENZEULA: Nothing
7 further, Your Honor.

8 THE COURT: All right. Thank
9 you.

10 WITNESS: Thank you, Your Honor.

11 (WITNESS STEPS DOWN)

12 THE COURT: All right.
13 Anything further?

14 MS. VALENZEULA: Your Honor, we
15 would move that the applicant has not
16 carried his burden in this case and that
17 this should be dismissed. That it's his
18 burden to carry. He has -- he's made
19 allegations of witnesses and evidence in
20 writing but conveniently, none of that was
21 brought before the Court today. And the
22 testimony before you -- regardless of
23 whether Mr. Farley cannot remember things
24 because he's had different clients, he has
25 indicated that if he had been asked to

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Closing Arguments by Counsel

19

1 file an appeal, he would have. And that
2 he has no recollection of being asked for
3 that, that he has his full file, and that
4 he's looked in it and there's no
5 correspondence that would indicate that he
6 was asked to file an appeal and that he
7 was not contacted by any other witnesses
8 asking him to do that on the applicant's
9 behalf.

10 MS. ZMROCZEK: And, Your
11 Honor, briefly. In *State v. Wade* -- I
12 mean, this is a very, very limited issue.
13 I think that, you know, in granting it all
14 the Court's saying is, you know, send it
15 to the appeals court. I mean, to me it's
16 commonsense. Mr. Sightler would not
17 continue to file PCR after PCR after PCR
18 if he were lying about asking for an
19 appeal. And, you know, on the stand his
20 testimony I thought was very credible and
21 honest where he even said, you know, to
22 him this is his case so he remembers
23 exactly what happened. And he said, you
24 know, 'I met with Mr. Farley the first
25 time. I didn't feel comfortable, you

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Closing Arguments by Counsel

20

1 know, asked for a continuance; had the
2 trial, asked for an appeal.' Mr. Farley,
3 you know, recalled meeting with him the
4 first time and not -- Mr. Sightler not
5 feeling comfortable and then going to, you
6 know, then going forward to the appeal.

7 I think that the granting of an
8 appellate review of his PCR simply because
9 his attorney may have forgotten, which in
10 the hundreds of cases and in his words,
11 you know, he couldn't even give a number
12 of the number of trials and things like
13 that. And it's possible that they slip
14 by. So I think in -- there's no harm in
15 granting this PCR from the appellate
16 review.

17 Obviously, what we have in front of
18 us is just the plea transcript. We don't
19 even have a copy of what of what happened
20 at the PCR transcripts, you know, or the
21 PCR hearing. So it's impossible for us to
22 make a ruling on whether or not there were
23 any appealable issues. Your Honor, though
24 that wasn't provided by the State. So I
25 feel like, especially under the case law

Randall Earl Sighler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Closing Arguments by Counsel

21

1 of State -- or *White v. State* or *State v.*
2 *White* -- excuse me -- that his application
3 to have his PCR reviewed by the appellate
4 court should be granted.

5 THE COURT: Thank you. And
6 you're referring to *State v. White*?

7 MS. ZMROCZEK: Yes.

8 MS. VALENZEULA: And Your
9 Honor, ---

10 THE COURT: Yes.

11 MS. VALENZEULA: Your Honor, we
12 would say that the correct case law to be
13 turning to is *Austin v. State*. *State v.*
14 *White* being a case that focuses on whether
15 the direct appeal rights were done. And
16 *Austin v. State* focuses on what the PCR
17 judge needs to affirmatively find. And
18 here, according to *Austin*, you would need
19 to find that the applicant requested and
20 was denied an opportunity to see appellate
21 review or that the right to appellate
22 review of a previous PCR order was not
23 knowingly and intelligently waived.

24 And then just a quick correction that
25 Mr. Farley, our witness, did testify that

Randall Earl Sigtler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Closing Arguments by Counsel

22

1 he did not see any appealable issues in
2 this case as well. So not only did he not
3 find any appealable issues, the burden has
4 not been met here to show that Andrew
5 Farley did not appeal when he had been
6 asked to appeal.

7 And he did state -- Mr. Farley did
8 state that he had gone over the appellate
9 rights because that's traditional -- or
10 that he traditionally goes over those
11 right after the order is issued.

12 THE COURT: I'm also looking at
13 the case of *Odom v. State*, which really
14 talks more about pro se but it goes into
15 the, kind of analysis of *Austin*.

16 How about the order from the -- I
17 don't think I have in my packet the order
18 from the PCR.

19 MS. ZMROCZEK: I don't have
20 that as well, Your Honor.

21 MS. VALENZEULA: I don't have
22 that but we could get that to both of you.
23 I don't have it with me. I don't know if
24 I have it here. We could print it out.

25 THE COURT: I think I need to

Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Ruling of The Court

23

1 be able to have that as well before I
2 can -- anything else? I'd like to look at
3 this law before I make a ruling and also
4 receive a copy of the order, since that's
5 really what his PCR is on that order. And
6 I didn't see it my packet. So I would
7 like to have that if you have that
8 available. So let me review case law.
9 And if y'all want to submit any additional
10 case law that you have. A letter, nothing
11 -- I don't want a whole brief. But if you
12 want to do a letter summarizing any legal
13 issue in the case, just maybe a one-page
14 letter.

15 MS. ZMROCZEK: Thank you,
16 Your Honor.

17 THE COURT: All right. And
18 I'll take it under advisement and look at
19 those Mr. Sightler, and I will let the
20 attorneys know shortly. Thank you.

21 MS. ZMROCZEK: Thank you.

22 (TRANSCRIPT CONCLUDED)

23

24

25

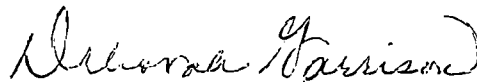
Randall Earl Sightler v State of South Carolina
Case No. 14-CP-32-03766
PCR Hearing of April 18, 2016
Certificate of Court Reporter

24

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the hearing
held in the within action heard on April 18,
2016, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

IN THE SECOND JUDICIAL CIRCUIT
 THE COURT OF COMMON PLEAS

Randall Earl Sightler #311918)

Docket No.: 2014-CP-32-03766

Petitioner,)

v.)

ORDER GRANTING PCR

State of South Carolina)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief timely filed October 15, 2014. Respondent made a Return on September 22, 2015. The Court convened an evidentiary hearing held on April 18, 2016, addressing the merits of Mr. Sightler's application for post-conviction relief. The State was represented by Johanna Valenzuela, Esq., Assistant Attorney General. Mr. Sightler was represented by Aimee J. Zmroczek Esq. After hearing testimony and arguments of both counsels, the Court grants post-conviction relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. On June 7, 2011, Applicant waived presentment of the indictments for trafficking methamphetamine 10-28 grams – second offense (2011-GS-32-6009), manufacturing methamphetamine – second offense (2011-GS-32-6010), and violation of his conditions of probation (2010-GS-32-1202). Sarah Hahn, Esq. represented Applicant. Judge Edward B. Cottingham revoked applicant's probation in full and sentenced applicant to a term of fifteen (15) years for trafficking methamphetamine; and to a term of fifteen (15) years for manufacturing methamphetamine. These were to be served concurrently.

FILED
 2016 AUG 2 A 11:01
 WITH A. CARRIG
 CLERK OF COURT
 LEXINGTON, SC

Applicant filed his first application for post-conviction relief (2011-CP-32-3685) on September 23, 2011, in which he raised the following grounds:

1. Ineffective assistance of counsel
 - a. "failure to investigate a suppression defense"
 - b. "failure to timely investigate a witness statement"
 - c. "failure to withdraw the plea at the hearing"
 - d. "failure to substitute counsel based on an alleged conflict of interest"

Andrew Farley, Esq. represented Applicant. Respondent made its return on April 5, 2012. An evidentiary hearing into the matter convened at the Lexington County Courthouse on November 13, 2013. The Honorable Lawton R. McIntosh issued an order of dismissal on October 2, 2014. Applicant's current application stemmed from that dismissal.

I.

At the present PCR hearing, Applicant proceeded on the allegations of ineffective assistance of counsel for PCR counsel's failure to appeal the PCR.

SUMMARY OF TESTIMONY

Applicant testified at the PCR hearing that he did not knowingly and voluntarily waive his right to appellate review of his prior PCR hearing. Applicant testified that he was not aware what was going on with his appeal but remembers asking his counsel to appeal as he was led out of the PCR hearing. Applicant testified that he was told that his attorney was going to file the appeal and assumed that he did.

Counsel testified to his course of conduct during the representation. The attorney stated it is generally his practice to automatically file an appeal. The attorney testified that he did not recall why he did not file one in this case, as he could not find anything in his file relating to an appeal, nor does he recall any discussion with the Applicant about an appeal.

APPLICABLE LAW

“The right to seek appellate review of the denial of a PCR is expressly authorized by state law.” *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. § 17-27-100). “A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived.” *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant’s previous application for post-conviction relief, the order from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-100 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented. The order in the underlying PCR states that the Applicant must file an Appeal within thirty (30) days. In his Application, he states that “never received an order from the Court.” Therefore, I have no basis for finding that the Applicant “knowingly and intelligently waived” his right to appellate review as required by *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999).

IT IS THEREFORE ORDERED:

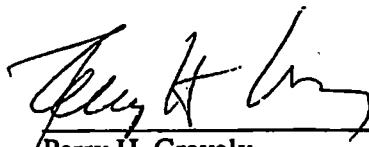
1. That the Applicant is granted a belated review of direct appeal issues pursuant to *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of

PH

Applicant's convictions. Counsel and the Applicant are directed to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.

2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED



Perry H. Gravely
Presiding Judge

July 28, 2016.
Pickens, South Carolina

FILED
2016 AUG 12 A 11:01
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 IN THE COURT OF COMMON PLEAS
 OF THE ELEVENTH JUDICIAL CIRCUIT

2014-CP-32-03766

Randall Earl Sightler,
 S.C.D.C. No. 311918,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

MOTION TO ALTER OR REPEAL

BETH A. HARRIGG
 CLERK OF COURT
 LEXINGTON SC

2016 AUG 24 P 1:29

FILED

Respondent, having received the Order of Dismissal filed by the Court on August 12, 2016, received on August 17, 2016, hereby timely moves this Honorable Court, pursuant to SCRCP 59(e) of the South Carolina Rules of Civil Procedure, requesting the Order be amended to reflect the appropriate relief in this case.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 15, 2014. Respondent made its return and motion to dismiss on or about September 22, 2015. An evidentiary hearing was held on April 18, 2016, at the Lexington County Courthouse. Applicant was present and represented by Aimee Zmroczek, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent. The Final Order denying Applicant's relief was filed on August 12, 2016.

ARGUMENT

At the evidentiary hearing, Applicant alleged PCR Counsel was ineffective for failing to appeal the October 2, 2014 PCR Order denying his September 23, 2011 PCR application (2011-CP-32-3685). However, the Order signed by the Court grants belated review of Applicant's

“**direct appeal** issues” and orders Applicant to file a Notice of Appeal to secure the “appropriate review of Applicant’s **convictions.**” (Order, pp. 3-4 (emphasis added)). Counsel and Applicant are directed to Davis v. State, 288 S.C. 290 (1986) and SCAR 227(g). Davis v. State addresses a trial or appellate counsel’s failure to file a direct appeal and not PCR’s counsel’s failure to file an appeal from the denial of a PCR, and Rule 227(g) no longer applies.

Respondent proposes the following replacement language, which addresses the relief Applicant requested and cites the correct authority and procedures that apply in this case.

Proposed Substitute Language

Accordingly, this Court grants Applicant a belated PCR appeal pursuant to Austin v. State, in which he may raise on appeal any issues that were raised and ruled upon in his prior application. In order to secure this review, however, the Applicant must appeal from this Order.

CONCLUSION

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

CONCLUSION

WHEREFORE, Respondent requests that the relief requested be granted and the Court's Order filed on August 12, 2016, be amended.

Respectfully submitted,

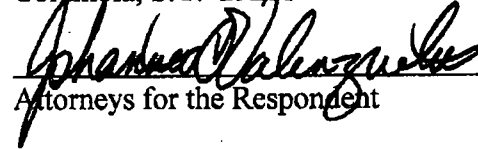
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

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

By:


Attorneys for the Respondent

Columbia, South Carolina
22 August, 2016

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

RANDALL EARL SIGHTLER, #311918)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2014-CP-32-3766

AFFIDAVIT OF SERVICE BY MAIL

2016 AUG 24 P 1:29
 FILED
 BETHA A. CARRIG
 CLERK OF COURT
 LEXINGTON, SC

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 **Motion to Alter or Amend and its attachments** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aimee Zmroczek, Esquire
 A.J.Z. Law Firm, LLC
 PO Box 11961
 Columbia, SC 29211

DATED this the 22nd day of August, 2016.

Brianna Arnone
 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

ORIGINAL

CASE NO.: 2014-CP-32-3766

Randall Earl Sightler, #311918

Plaintiff,

vs.

State of South Carolina

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED
 2016 AUG 24
 BETH A. CARROLL
 CLERK OF COURT
 LEXINGTON, SC

Plaintiff's Attorney:

Aimee Zmorczek, Bar No. _____

Address:

2003 Lincoln Street, Columbia, SC 29201

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Johanna Valenzuela, Bar No. 803-734-1113

Address:

PO Box 11549 Columbia, SC 29211-1549

Phone: 803-734-3737 Fax 803-734-1113

E-mail: _____ Other: _____

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

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO**SECTION II: Motion/Order Type**

- ☒ Written motion attached
☐ Form Motion/Order

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

Johanna Valenzuela
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant

August 22, 2016

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

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

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE SECOND JUDICIAL CIRCUIT
THE COURT OF COMMON PLEAS

Randall Earl Sightler #311918

2016 OCT 18 A 10:54

Docket No.: 2014-CP-32-03766

Petitioner,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

v.

AMENDED ORDER GRANTING PCR

State of South Carolina

Respondent.

Note: This Amended Order merely corrects Rule and Case citations referenced in the last 2 paragraphs with the remainder of the previous Order unchanged.

This matter comes before the Court by way of an Application for Post-Conviction Relief timely filed October 15, 2014. Respondent made a Return on September 22, 2015. The Court convened an evidentiary hearing held on April 18, 2016, addressing the merits of Mr. Sightler's application for post-conviction relief. The State was represented by Johanna Valenzuela, Esq., Assistant Attorney General. Mr. Sightler was represented by Aimee J. Zmroczek Esq. After hearing testimony and arguments of both counsels, the Court grants post-conviction relief and orders.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. On June 7, 2011, Applicant waived presentment of the indictments for trafficking methamphetamine 10-28 grams – second offense (2011-GS-32-6009), manufacturing methamphetamine – second offense (2011-GS-32-6010), and violation of his conditions of probation (2010-GS-32-1202). Sarah Hahn, Esq. represented Applicant. Judge Edward B. Cottingham revoked applicant's probation in full and

ORIGINAL

PHZ

sentenced applicant to a term of fifteen (15) years for trafficking methamphetamine; and to a term of fifteen (15) years for manufacturing methamphetamine. These were to be served concurrently.

Applicant filed his first application for post-conviction relief (2011-CP-32-3685) on September 23, 2011, in which he raised the following grounds:

1. Ineffective assistance of counsel
 - a. "failure to investigate a suppression defense"
 - b. "failure to timely investigate a witness statement"
 - c. "failure to withdraw the plea at the hearing"
 - d. "failure to substitute counsel based on an alleged conflict of interest"

Andrew Farley, Esq., represented Applicant. Respondent made its return on April 5, 2012. An evidentiary hearing into the matter convened at the Lexington County Courthouse on November 13, 2013. The Honorable Lawton R. McIntosh issued an order of dismissal on October 2, 2014. Applicant's current application stemmed from that dismissal.

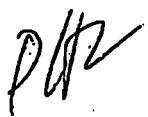
I.

At the present PCR hearing, Applicant proceeded on the following allegations of ineffective assistance of counsel:

1. Ineffective assistance of PCR counsel for failing to appeal the PCR.

SUMMARY OF TESTIMONY

Applicant testified at the PCR hearing that he did not knowingly and voluntarily waive his right to appellate review of his prior PCR hearing. Applicant testified that he was not aware what was going on with his hearing appeal but remembers asking as he was being led out of the PCR hearing. Applicant testified that he was told that his attorney was going to file the appeal and assumed that he did.



Counsel testified to his course of conduct during the representation. The attorney stated it is generally his practice to automatically file an appeal. The attorney testified that he did not recall why he did not file one in this case, as he could not find his file.

APPLICABLE LAW

"The right to seek appellate review of the denial of a PCR is expressly authorized by state law." *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. § 17-27-100). "A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived." *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

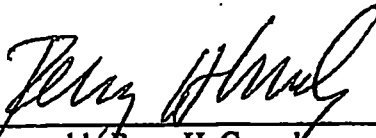
This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's previous application for post-conviction relief, the order from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-100 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented. The order in the underlying PCR states that the Applicant must file an Appeal within thirty (30) days. In his Application, he states that "never received an order from the Court." Therefore, I have no basis for finding that the Applicant "knowingly and intelligently waived" his right to appellate review as required by *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999).

Accordingly, this Court grants Applicant a belated PCR appeal pursuant to Austin v. State, in which he may raise on appeal any issues that were raised and ruled upon in his prior application. In order to secure this review, however, the Applicant must appeal from this Order.

CONCLUSION

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

AND IT IS SO ORDERED


 Honorable Perry H. Gravelly
 Presiding Judge

Oct 12, 2016.
Pickens, South Carolina

ORIGINAL

FILED
 2016 OCT 18 A 10:50
 BETH A. CAREGG
 CLERK OF COURT
 LEXINGTON, SC

WITNESSES

West Columbia Police Department

ARREST WARRANT NUMBER

J-033776

ACTION OF GRAND JURYForeperson of Grand Jury
Date:**VERDICT**

Foreperson of Petit Jury

Date:

Docket Number 2011-GS-32-6010The State of South Carolina
County of Lexington**COURT OF GENERAL SESSIONS**

JUNE 2011

THE STATE

vs.

Randall Earl Sighler
D.O.B.**DEFENDANT**

Indictment for

**MANUFACTURING
METHAMPHETAMINE - 2nd**SC Code: § 44-53-375 (b) (2)
CDR Code: 3199

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I, Randall Sighler
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. Pls. And G.S.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

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

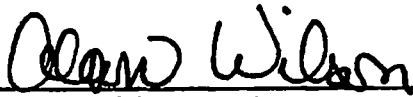
INDICTMENT

At a Court of General Sessions, convened on _____, 2011, the Grand Jurors of Lexington County present upon their oath:

MANUFACTURE METHAMPHETAMINE

That Randall Earl Sightler, did in Lexington County, on or about June 13, 2010, willfully and unlawfully manufacture, aid, abet, attempt, or conspire to manufacture a quantity of Methamphetamine, a schedule II controlled substance, he not being authorized by law to manufacture said substance, in violation §44-53-0375 (B)(2) of the 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.


ALAN WILSON (JDW)
SOUTH CAROLINA ATTORNEY GENERAL

06082011

WITNESSESWest Columbia Police Department**ARREST WARRANT NUMBER**

J-034146

ACTION OF GRAND JURYForeperson of Grand Jury
Date:**VERDICT**

Foreperson of Petit Jury

Date:

Docket Number 2011-GS-32-1000 9The State of South Carolina
County of Lexington**COURT OF GENERAL SESSIONS**

JUNE 2011

THE STATE

vs.

Randall Earl Sichter
D.O.B.**DEFENDANT**

Indictment for

**TRAFFICKING
METHAMPHETAMINE - 2nd**SC Code: § 44-53-375 (C)(1)(b)
CDR Code: 0451After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.Randall Earl Sichter
Defendant 6/27/11I, Randall Sichter
hereby appear in my own proper person
and plead guilty to the within indictment
or toRandall Earl Sichter
Defendant

Witness:

Carol Egan
C.C.C. Pls. And G.S.**A TRUE COPY**

Lex. Co. C.C.C.P., G.S. & F.C.

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

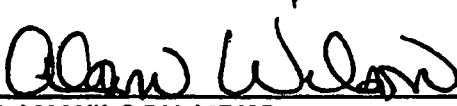
INDICTMENT

At a Court of General Sessions, convened on _____, 2011, the Grand Jurors of Lexington County present upon their oath:

MANUFACTURE METHAMPHETAMINE

That Randall Earl Sightler, did in Lexington County on or about October 18, 2010, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess (10) ten grams or more but less than (28) twenty-eight grams of (Crank), Methamphetamine, a schedule II controlled substance, in violation §44-53-0375 (C)(1)(b) of the 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.


 ALAN WILSON (JDW)
 SOUTH CAROLINA ATTORNEY GENERAL

11082011