

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

AUG 15 2018

—————  
Certiorari to Charleston County

S.C. SUPREME COURT

Honorable Jean H. Toal, Circuit Court Judge

—————  
DARIUS BARNWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002414

—————  
APPENDIX  
—————

VICTOR R. SEEGER  
Appellate Defender

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Attorney General

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ATTORNEYS FOR RESPONDENT

**INDEX**

INDEX ..... i

GUILTY PLEA HEARING TRANSCRIPT DATED OCTOBER 9, 2014 .....1

APPLICATION FOR POST-CONVICTION RELIEF :.....13

RETURN.....22

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 15,  
2016.....28

ORDER OF DISMISSAL.....87

INDICTMENTS .....94

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

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS  
2014-GS-10-01988-01992

STATE OF SOUTH CAROLINA  
VS.  
DARIUS BARNWELL

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)

TRANSCRIPT OF RECORD  
OCTOBER 9, 2014  
CHARLESTON, SC

B E F O R E :

THE HONORABLE ROGER M. YOUNG, SR.

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

KELLEY YOUNG, ESQUIRE  
Attorney for the State

AARON MAYER, ESQUIRE  
Attorney for the Defendant

Ruth L. Mott, RPR, CRR  
Official Court Reporter

1 THE COURT: All right. Are you Darius Barnwell.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay, Mr. Barnwell, let's see, looks like  
4 you've got, one, two, three, four, five indictments for  
5 trafficking cocaine, second offense, 5 to 30 years and a  
6 \$50,000 fine. I'm told you want to plead guilty to each of  
7 these indictments. Is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Now, let's go through a couple  
10 of things. First of all, did your lawyer talk to you about  
11 strike offenses?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: So you know that we have strike offenses in  
14 this state. You get enough strike offenses, you go to jail  
15 for the rest of your life; there's no possibility of ever  
16 getting out on parole.

17 Now, today you are pleading to five different offenses  
18 that occurred on five different days which, under a scenario,  
19 could get you life in prison. However, they're not asking  
20 for that today.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So you need to be on notice, though, that  
23 you now have the maximum number of strikes that you are ever  
24 going to get in this life. If you ever get another strike  
25 conviction, you will go to jail for the rest of your life

1 without the possibility of parole. Do you understand that?

2 THE DEFENDANT: Yes, I understand that, sir.

3 THE COURT: Now, you also have the right to a jury  
4 trial, and you give up your right to a jury trial when you  
5 plead guilty. If you want a trial, you stop me, and we'll  
6 arrange that for you. The State then has to present enough  
7 evidence to convince 12 jurors that you're guilty beyond a  
8 reasonable doubt. All 12 jurors have to agree that you're  
9 guilty in order to convict you, and if convicted, you have  
10 the right to appeal. You can challenge the State's evidence,  
11 put up evidence of your own, testify if you want, and if you  
12 don't want to testify, the Judge will tell the jury they're  
13 not to hold that against you while they are deliberating. Do  
14 you understand all those rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And understanding all those rights, you want  
17 to give them up and plead guilty today?

18 THE DEFENDANT: Yes, I want to plead guilty.

19 THE COURT: Are you pleading guilty to each of these  
20 charges because you're guilty of them?

21 THE DEFENDANT: Your Honor, I'm just trying to get this  
22 behind me. I got a family that love me. I'm just -- these  
23 charges from 2010. I moved on with my life.

24 THE COURT: You still have to answer up for them.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. So this is the way you start by  
2 putting them behind you is either you go to trial or you  
3 plead guilty. You've indicated so far that you want to plead  
4 guilty. If so, you need to listen to my questions and answer  
5 them. I'm not trying to change your mind. But I have a duty  
6 to make sure that you understand your rights and that you are  
7 waiving them with knowing what you're doing. Do you  
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So, I've told you what all your rights are.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You've indicated you want to give those  
13 rights up and plead guilty today; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you pleading guilty to these charges  
16 today because you're guilty of them?

17 THE DEFENDANT: Yes, sir.

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

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you need any more time with your lawyer?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you satisfied with his representation?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did anybody promise you anything or threaten

1 you in any way in order to get you to plead guilty today?

2 THE DEFENDANT: I mean, no, no, sir. No, sir.

3 THE COURT: How old are you?

4 THE DEFENDANT: I'm 30 years old, sir.

5 THE COURT: How far did you get in school?

6 THE DEFENDANT: Tenth grade.

7 THE COURT: Before you got arrested, did you have a job?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What did you do?

10 THE DEFENDANT: B&B ceramic tile, and I was working at  
11 Staffmark temp service.

12 THE COURT: Are you married?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you have children?

15 THE DEFENDANT: I have seven kids.

16 THE COURT: Seven?

17 THE DEFENDANT: Seven.

18 THE COURT: All right. Mr. Mayer, does this gentleman  
19 understand what he is doing, waiving his rights to a jury  
20 trial and pleading guilty today?

21 MR. MAYER: Yes, Judge, he does.

22 THE COURT: I find that his plea is freely, voluntarily  
23 and intelligently made. What would State like to tell me?

24 MS. YOUNG: Thank you, Your Honor, may it please the  
25 Court the five trafficking cocaine second charges stem from a

1 big ATF federal investigation known as Operation Choke Hold  
2 that took place over a period of about a month long time  
3 frame utilizing the same confidential informant to purchase  
4 trafficking weight quantities of cocaine from this defendant  
5 as well as others. Originally this defendant was the main  
6 target of the entire investigation as it was called operation  
7 Darius Barnwell originally. This defendant was developed as  
8 a target by ATF because he was known by the CI on the streets  
9 as Choppa D. They ended up putting that name in a database  
10 and it came back to the defendant. They showed the CI the  
11 DMV photo of the defendant, and that was Choppa D.

12 On each of these occasions the same ATF confidential  
13 informant would set up the buy with the defendant via  
14 telephone. He'd call him from the same number for these  
15 incidents. Those calls were recorded and done in the  
16 presence of ATF Agent Frank Preston. After each call the  
17 agent would then drive with the CI over to the defendant's  
18 residence, which was [REDACTED] in North  
19 Charleston. Each time the CI would be let into the  
20 residence. He would exchange the prerecorded funds for a  
21 trafficking weight amount of cocaine. He would then exit and  
22 enter Agent Preston's vehicle. All five incidents were audio  
23 recorded, and the fifth one was audio and video recorded.

24 The first trafficking cocaine charge was on July 12,  
25 2010. The weight was approximately 14.2 grams, and the CI

1 exchanged \$650 in currency of ATF funds. The second one was  
2 July 15th, 2010, which was three days after the first  
3 incident, again for 14 grams of cocaine, and \$650 were  
4 exchanged. The third occurred on July 22nd, 2010, seven days  
5 after the second transaction. It was 13.4 grams for \$650.

6 The fourth was on August 2nd, 2010, a few weeks later.  
7 This was actually for 28 grams, however, the defendant  
8 shorted the CI and only gave him 23.5 grams for \$1100. After  
9 realizing this, while in the presence of Agent Preston, the  
10 CI called the defendant from the same phone number. He  
11 acknowledged the shortage and agreed to help the CI obtain a  
12 firearm as a result. That conversation was recorded. The  
13 final trafficking incident occurred on August 27th, 2010, a  
14 few weeks after the previous transaction. That was for 28  
15 grams as well and exchanged \$1100. This was video and audio  
16 recorded.

17 Your Honor, his prior record's a 2002 trespassing, a  
18 2004 possession with intent to distribute cocaine, 2006  
19 disorderly conduct. As I mentioned, Your Honor, this  
20 defendant was the main target of the entire investigation for  
21 ATF. Frank Preston has continued to be involved with this  
22 case. He wanted to be here for the plea today but he  
23 couldn't because he was at mandatory training for ATF down in  
24 Florida.

25 In addition to these charges this defendant still has

1 two assault and battery with intent to kill charges pending  
2 as well as two assault with intent to kill charges and a gun  
3 charge where he opened fire into a minivan and struck two out  
4 of the four individuals in that vehicle. We'd ask the Court  
5 to take all of that information into consideration when  
6 fashioning the sentence.

7 THE COURT: All right. Mr. Mayer, what would you like  
8 to say?

9 MR. MAYER: Judge, may it please the Court, as a  
10 preliminary matter, I ask the Court not to consider the  
11 pending charges and the sentence that he may get on those  
12 other charges. As you already heard from Mr. Barnwell, he  
13 dropped out in the tenth grade. Additionally, he did not  
14 earn a GED. But, Judge, oddly enough, he's a success story  
15 in his own way. This operation that began as operation  
16 Darius Barnwell back in 2010 morphed into Operation Choke  
17 Hold when the federal government realized that he wasn't the  
18 kingpin there. Around the same time he had a good friend who  
19 was killed on the streets, and he had a come-to-Jesus moment.  
20 So he was out on the streets living his life from 2010, 2011,  
21 2012 and 2013, and these warrants weren't taken out on him  
22 until December 20th of 2013, Judge. So he had three years  
23 of, I'm going to call it preemptive probation, where he has  
24 already proven to the Court that he turned his life around  
25 during that time. And what he did was, after his friend

1 died, he got hooked up with his uncle who has the ceramic  
2 tile business, and his uncle taught him how to do ceramic  
3 tile for kitchens and baths, and on every job that his uncle  
4 got with his business he brought Darius in. Darius was a  
5 good worker. He wasn't busy full-time with his uncle, and  
6 that's why he did the temp staffing thing, Judge. He's got  
7 seven kids. He's trying to make ends meet, and he didn't  
8 know how. He didn't know how to do it until his uncle showed  
9 him how. And I would plead with the Court that that three  
10 years, when he was out not getting arrested, not cutting up,  
11 doing the right thing, I would ask the Court to weigh that  
12 heavily because here's a guy who, three years into being on  
13 the straight and narrow, got hit with some stuff from a whole  
14 prior life. And like you heard him say, he's here to address  
15 it. I just hope that it doesn't mess up the whole rest of  
16 his life, Judge. This is a big sentencing range. It could  
17 be something where he, you know, he's in for five and does a  
18 lengthy period of probation and is able to get back on his  
19 feet; or it could be something that just destroys him, and  
20 we're really pleading with the Court to go towards the 5,  
21 Judge.

22 He has successfully -- on the PWID from 2004, he was  
23 juvenile, he did a YOA shock for 90 days, and he successfully  
24 completed that YOA probation, so he's capable of successfully  
25 completing probation. He's never been to prison, Judge.

1 It's going to be -- you know, it's going to turn him  
2 upsidedown. But we just -- we ask the Court to make it a  
3 condition of his eventual probation that he earn his GED. We  
4 ask the Court to consider the kind of ad hoc probation that  
5 he's already served that three years of doing honest work  
6 because, you know, I think we all can change, Judge. I think  
7 it's just a terrible thing that he's got to face this now  
8 after I think he already has changed. I know that he might  
9 want to say a comment. I think one of his family members  
10 does too, Judge.

11 THE COURT: Who wants to say something? What's your  
12 name?

13 MS. BARNWELL: I'm Darius' mother, Sonya Barnwell. My  
14 son Darius, he never gave me any trouble, no problems. He  
15 dropped out of school tenth grade because he was in special  
16 class, and every time he go down that hallway the kids tease  
17 him. He was at Stall High School. That's the reason why he  
18 drop out and didn't go back. His first job when he was 15  
19 years old, and he's well respected and I have two other kids  
20 here too (indicating).

21 THE COURT: All right.

22 MS. BARNWELL: Thank you.

23 THE COURT: Thank you.

24 Mr. Barnwell, what would you like to say?

25 THE DEFENDANT: I'd like to say, Your Honor, I have

1 seven kids. I have a family that loves me. I'm willing to  
2 get everything the right path and do right by my family and  
3 put all this behind me, and I'm asking you be lenient on me,  
4 Your Honor, because I'm just -- I'm just tired. I'm ready to  
5 get all this behind me and do the right thing and look  
6 forward with my life. I just...

7 THE COURT: What was his prior record?

8 MS. YOUNG: A 2002 trespassing, 2004 possession with  
9 intent to distribute cocaine, 2006 disorderly conduct.

10 THE COURT: All right. Well, you know, sometimes we  
11 like to put our past behind us, and you got to, you know, but  
12 you got to also, you know, face the music when you get caught  
13 for what you were doing in the past, and that's what you're  
14 here for today. I'll take into account that you have, you  
15 know, sounds like, been doing pretty good the last few years;  
16 but you also prior to that was doing pretty bad, so I think  
17 an appropriate sentence is 10 years and a \$50,000 fine, they  
18 will run concurrent, and you'll get credit for the 266 days  
19 that you've served. Good luck.

20 MS. YOUNG: Thank you, Judge.

21 MR. MAYER: Thank you, Your Honor.

22 --- END OF TRANSCRIPT OF RECORD ---

23

24

25

1 CERTIFICATE OF REPORTER  
2 STATE OF SOUTH CAROLINA  
3 COUNTY OF CHARLESTON  
4

5 I, the undersigned Ruth L. Mott, Official Court Reporter  
6 for the State of South Carolina, do hereby certify that the  
7 foregoing is a true, accurate and complete transcript of  
8 record of all the proceedings had and evidence introduced in  
9 the matter of the above-captioned case, relative to appeal,  
10 in the 9th Judicial Circuit Court for Charleston County,  
11 South Carolina, on the 9th of October, 2014.

12 I further certify that I am neither related to nor  
13 counsel for any party to the cause pending or interested in  
14 the events thereof.

15 September 21, 2015

16  
17 *Ruth L. Mott*

18 Official Court Reporter  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA )

COUNTY OF )

CHARLESTON )

IN THE COURT OF COMMON PLEAS )

CIVIL ACTION COVERSHEET )

2015-CP-10-3792 )

Plaintiff(s) )

vs. )

Defendant(s) )

(Please Print)

Submitted By:

DARIUS BARNWELL

Address:

ALLENDALE CORRECTIONAL INST  
1057 REVOLUTIONARY TRAIL  
POST OFFICE BOX 1951  
FAIRFAX, SC 29827

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

FILED  
2015 JUL - 7 PM 4:15  
CLERK OF COURT

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |  |  |   |  |
|--|--|---|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20 -CP-</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>  | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Label (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Easements (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>  |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>  | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Driver's License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul>  | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Administrative Law Judge (980)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex/Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> </ul>   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> </ul>   |   |  |

Submitting Party Signature:

*Darius Barnwell*

Date:

06/25/15

FORM 5

STATE OF SOUTH CAROLINA )

County of )

CHARLESTON

DARIUS BARNWELL

DO# 316725

Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

2015-CP-10-3792  
IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
2015 JUL - 7 PM 4:15  
JULIE J. A. STRONG  
CLERK OF COURT

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 ALLendale CORRECTIONAL INSTITUTION 1057  
REVOLUTIONARY TRAIL POST OFFICE BOX 1151 FAIR FAX SC 29827
2. Name and location of Court which imposed sentence GENERAL SESSIONS  
COURT OF COMMON PLEAS | CHARLESTON COUNTY 100 BROAD ST. SUITE 106  
CHARLESTON SC 29401-2258
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014A1820500267 2013A1021002209, 2013A1021002208,  
2013A1021002207, 2013A1021002204, 2013A1021002206

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) PAGE 1 #4 A INDICTMENT NUMBERS, SENTENCE WAS IMPOSED
- (b) DR - 10-9-14
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

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

No

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

- (a) the name of each Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (c) the date of each such result:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

- (a) DEFENDANT'S ATTORNEY FAIL TO APPEAL THE CASE

(b) DEFENDANT DIDN'T UNDERSTOOD THE ARBITRARY SYSTEMICAL DENIAL OF  
(c) HIS CONSTITUTIONAL RIGHTS

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

(a) LACK OF EVIDENCE TO SUPPORT CONVICTION  
(b) INEFFECTIVE ASSISTANCE OF COUNSEL, BEFORE, DURING AND AFTER HEARING  
(c) UNEQUAL CONSTITUTIONAL ISSUES (RIGHTS VIOLATED)

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

(a) DEFENDANT COULDN'T BE POSITIVELY IDENTIFY ON THE VIDEO TAPES  
(b) COUNSEL FAIL TO FILE AN APPEAL AND CHALLENGE IMPORTANT QUESTIONS  
(c) EVIDENCE WAS UNCONSTITUTIONAL OF AN ALLEGED PRIOR BAD ACT TO SUPPORT A CONVICTION AGAINST THE DEFENDANT

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. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
iv. \_\_\_\_\_  
(b) the name and location of the Court in which each was filed:  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) LACK OF EVIDENCE TO SUPPORT CONVICTION - INEFFECTIVE COUNSEL
- (c) UNEQUAL CONSTITUTIONAL ISSUES - INEFFECTIVE COUNSEL

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
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. AARON MEYER  
2000 DAN RITTENBERG BLVD
- ii. SUITE 2011  
CHAR NC 29407
- iii. \_\_\_\_\_

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

- i. GENERAL DEDYOUN COURT
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

SENTENCED, CORRECTED, VACATED, SET ASIDE, TRIAL by jury  
WITH EFFECTIVE COUNSEL AND A BOND HEARING OR  
MOTION OF RECONSIDERATION — ALSO SEE ATTACHED PAGE 8

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA )  
 )  
County of \_\_\_\_\_ )

VERIFICATION

I, Darius Bacowell, 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.

Darius Bacowell

SWORN to and subscribed before me this 29  
day of June, 2015.

Virginia South (L.S.)  
Notary Public

My Commission Expires: 12-12-29

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

I, Darius Rowell, 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.

Darius Rowell  
Applicant

SWORN or affirmed to and subscribed before me this

29 day of June, 2015.

Virginia Smith  
Notary Public

My Commission Expires: 12-12-22

## ISSUES PRESENTED

The PETITIONER INVOKED THIS COURT EQUITABLE DISCRETION TO PLEASE DETERMINE THE CONSTITUTIONALITY OF HIS CURRENT CONVICTION AND TO PLEASE CORRECT A MANIFESTED INJUSTICE. THE PETITIONER ALLEGED IN ALL SUCH CASES, AS THE CASE-IN-CHIEF, THAT THIS COURT SHOULD INVOKE THE APPLICATION FOR POST-CONVICTION RELIEF, TO CORRECT SUCH A FUNDAMENTALLY FLAWED AND INJURIOUS CONVICTION. THE PETITIONER CONTENDS THAT STATE OF SOUTH CAROLINA HAS IMPEDDED HIS ABILITY TO PRESENT THE ISSUES WHICH HAD SUBSTANTIAL AND INJURIOUS EFFECTS, ON HIS TRIAL BY ARBITRARY SYSTEMATICAL DENIAL OF HIS CONSTITUTIONAL RIGHTS.

## INTRODUCTION

THIS CASE-IN-CHIEF, PRESENTS UNEQUIVICAL CONSTITUTIONAL ISSUES WHICH DO SUPPORT THE ISSUE OF RELIEF. THE STATE OF SOUTH CAROLINA CONVICTED PETITIONER UNCONSTITUTIONALLY BASED ON UNFAIR PREJUDICIAL INFORMATION AND EVIDENCE PRESENTED AT PETITIONER'S GENERAL SESSIONS COURT HEARING. THE CASE PRESENTED WAS ALL CIRCUMSTANTIAL AND THE STATE INTRODUCED EVIDENCE OF CRIMINAL PROPENSITY. THE INTRODUCTION OF THE PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL AND LACK OF EVIDENCE WAS UNCONSTITUTIONAL OF AN ALLEGED PRIOR BAD ACT, CARRIED AN AUTOMATIC INFERENCE WHICH IS IMPROPER BEFORE A JURY. MOREOVER, WHEN THIS TYPE OF EVIDENCE IS INTRODUCED, THE STATE CARRIED THE BURDEN OF PROVIDING A LIMITED INSTRUCTION.

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 )  
 Darius Barnwell, #316725, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

2015-CP-10-3792

**RETURN**

Respondent, making its Return to the application for post-conviction relief (PCR) filed July 7, 2015, 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 Charleston County Clerk of Court. The Applicant was indicted at the April 2014 term of the Charleston County Grand Jury for five (5) counts of trafficking cocaine (2014-GS-10-1988, -1989, -1990, -1991, -1992). The Applicant was represented by Aaron Mayer, Esquire. On October 9, 2014, the Applicant pled guilty as indicted. The Honorable Roger M. Young, Sr. sentenced Applicant to incarceration for ten (10) years for each charge to run concurrently. The Applicant did not appeal his conviction and sentence.

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

## II.

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

1. "Lack of evidence to support conviction"
  - a. Defendant couldn't be positively identified on videotapes"
2. "Ineffective Assistance of Counsel before, during and after hearing"
  - a. "Counsel failed to file an appeal and challenge important questions"
3. "Unequivocal(sic) constitutional issues (rights violated)"
  - a. "Evidence was unconstitutional of an alleged prior bad act to support a conviction against the defendant"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

## III.

For purposes of this Return, Respondent begins with Applicant's second allegation and interprets it to be an allegation of ineffective assistance of counsel. In a post-conviction relief action, 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 Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits 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.

The Respondent interprets Applicant's first and third claims as allegations that he was denied due process of law. The Applicant's allegation claims infringement of his rights under

certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Deputy Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

January 21, 2016.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 DARIUS BARNWELL, #316725 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

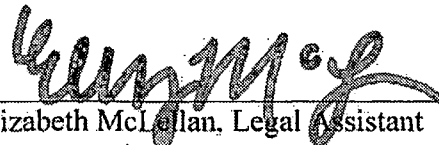
2015-CP-10-3792

AFFIDAVIT OF SERVICE BY MAIL

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

**Rodney D. Davis, Esq.**  
**Lowcountry Law Office**  
**4000 Faber Place Drive, Suite 300**  
**Charleston, SC 29405**

DATED this 21<sup>st</sup> day of January, 2016.

  
 Elizabeth McLellan, Legal Assistant  
 For Respondent



## E X A M I N A T I O N S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
AARON MAYER	17	28	--	--
DARIUS BARNWELL	34	47	53	--

1 (September 15, 2016.)

2 MR. DAVIS: Your Honor, thank you for that  
3 time. May it please the Court: Before we even call the  
4 case, my client, in speaking with Mr. Barnwell, on his  
5 behalf, Judge, he is requesting that I request a  
6 continuance so that he and I can discuss things in more  
7 detail. Towards that end, I want to be forthright with  
8 the Court.

9 I was appointed on this case July 27th of  
10 last year. We have corresponded. My initial letter to  
11 him is basically an introduction of me and a brief  
12 explanation of the PCR process. I include with that  
13 letter a copy of the Strickland case, and then we try to  
14 follow up, my paralegal and I, with dates when the return  
15 and transfer come in, that type of thing, but they are  
16 form letters, basically, Your Honor. He has written me  
17 letters, a multi-page letter, two letters that I have. I  
18 have those. I reviewed his application, the State's  
19 return, and his guilty plea transcript.

20 I went to visit with him in person October  
21 21st of last year. I traveled to Allendale then to visit  
22 with him. Since then, I've done research on it,  
23 investigated it, including talking with Mr. Mayer and  
24 reviewing his file, and there were no issues. I will be  
25 forthright that two things that are unusual with Mr.

1 Barnwell's case as to any variables I have this week:  
2 Unlike the other ones leading up to this week, within the  
3 past two weeks, I do finalize phone calls, dotting "i"s,  
4 crossing "t"s, trying to deal with any last minute  
5 issues, telling them when their court date is, warning  
6 clients about today, how it could be delayed, maybe  
7 tomorrow, those types of things.

8           Your Honor, Allendale is the only facility in  
9 the state that doesn't allow us just to arrange phone  
10 calls through them. They have a convoluted process, and  
11 they're the only institution that does. My paralegal is  
12 attempting to bypass that so I could treat Mr. Barnwell  
13 in the last two weeks like I have all the other clients  
14 that are on the docket that are going forward. We were  
15 not able to do that.

16           The other thing that I need to -- and  
17 Mr. Barnwell told me this today when I've had a chance to  
18 speak with him again. He has been moved from Allendale,  
19 so our attempts recently we were not told that he had  
20 been moved.

21           THE COURT: Where is he now?

22           MR. DAVIS: He's just told me -- not Wateree,  
23 but Trenton. So that is something that in the lead-up we  
24 did not catch to try to attempt to do, accept  
25 professional phone calls, they probably would have been

1 able to, so that part, you know, I want to be fair with  
2 the Court, I understand that -- I understand his concerns  
3 about our meeting and preparation time, and I want to  
4 convey those on his behalf.

5 I'm not sure if he'd like to be heard. I'm  
6 not sure what I could articulate; however, I think he was  
7 pretty clear in our sit-down meeting -- It's been months  
8 ago, but pretty clear that I followed through on his  
9 application. I wanted to see if there are any issues  
10 that I could find. As you know, I'm on the docket  
11 heavily this week. I have been for the past  
12 two-and-a-half years.

13 If I had never spoken to him, never read his  
14 letters and application, I very well might personally be  
15 asking for -- there was an issue yesterday on one I did.  
16 This is on behalf of my client. I told him that of  
17 course we would answer any questions you had, either one  
18 of us. If you are inclined not to grant it, then I will  
19 be prepared to go forward.

20 If you are inclined to grant it, of course,  
21 as you're aware, we talked yesterday, the next PCR court  
22 is October the 5th, and I would endeavor to meet with him  
23 at the new facility he's at now, travel there and meet  
24 with him and deal with any issues that he may have. Any  
25 alternatives, kind of thinking out of the box, Your

1 Honor, I don't know if it's even possible, but I did not  
2 talk to him about it. This case up, of course, when I  
3 was meeting with him just moments ago.

4 I have PCRs in Berkeley County tomorrow.  
5 I'll be there in the afternoon tomorrow. I don't know if  
6 that's sufficient time, but I would certainly make myself  
7 available to him. The day is getting late today, but if  
8 he remained at the county jail and I make myself  
9 available to him and attempts to be prepared and any  
10 concerns he might have for tomorrow afternoon, but on my  
11 client's behalf, I'm raising an issue he has about going  
12 forward today. He is uncomfortable going forward today,  
13 and we're prepared to answer any questions you have.

14 THE COURT: I understand. The main concern,  
15 Mr. Barnwell, I take it, is you need to talk more with  
16 Mr. Davis; is that right?

17 THE APPLICANT: Yes, Your Honor.

18 THE COURT: All right. Thank you, sir. We  
19 will carry this case over till tomorrow.

20 MR. JOHNSON: Your Honor, the one thing, our  
21 witness is going on vacation. He was supposed to go on  
22 vacation this morning after this case was heard. We've  
23 got a lot of cases. We've got nine cases tomorrow. The  
24 docket is pretty full. I would respectfully ask you deny  
25 any continuance, even until tomorrow.

1 THE COURT: Well, I want to give Mr. Barnwell  
2 the opportunity to talk to his client, but the lawyer's  
3 here. I think there was some thought by Mr. Davis that  
4 he might even put up the attorney. Is that the witness  
5 that's not going to be available tomorrow?

6 MS. SULPIZIO: Yes, Your Honor.

7 THE COURT: Will you all otherwise be  
8 available tomorrow to continue this?

9 MS. SULPIZIO: I'll be available, and we will  
10 be in Berkeley tomorrow, Your Honor.

11 THE COURT: And you all are going to be in  
12 Berkeley anyway.

13 Here's what I'm going to do: Let's begin  
14 this hearing, then we'll adjourn it, and we'll complete  
15 it tomorrow in Berkeley. That's the best I can do for  
16 you; otherwise, I'm not going to continue it, because I'm  
17 not going to go past this week with it.

18 MR. DAVIS: And so if I understand, with Mr.  
19 Mayer, the original attorney being here, we can take his  
20 testimony today.

21 THE COURT: That would be my thought, is  
22 let's take Mayer's testimony, and then we can give you a  
23 chance to meet with Mr. Barnwell and then continue the  
24 hearing in Berkeley.

25 MR. DAVIS: Judge, I just think he's

1 concerned that if we did that, you know, the State may  
2 not transport him here, but I indicated certainly Your  
3 Honor has authority to order --

4 THE COURT: You don't need to be concerned  
5 about that, Mr. Barnwell. I make whatever orders are  
6 necessary to be sure that you are properly transported to  
7 Berkeley and are there at the appropriate time tomorrow  
8 to have your matter heard.

9 MR. DAVIS: May we have just a moment, Your  
10 Honor.

11 We're prepared then to go forward today them.

12 THE COURT: Of course Mr. Barnwell  
13 understands he will not have to take the stand until  
14 tomorrow, after he's had the chance to discuss the matter  
15 further with you. All we're going to do at this time is  
16 take the testimony of Mr. Mayer, the lawyer in the  
17 matter. Everything else will be concluded tomorrow.

18 Do you understand?

19 MR. DAVIS: I think what he's indicating --  
20 and, again, I want him to stand, and if I'm wrong, he'll  
21 correct me on this. I think, given the two options you  
22 gave, that if we're asking for a complete continuance --

23 THE COURT: I'm not going to do that.

24 MR. DAVIS: Correct. So if we go forward  
25 with the hearing today, or bifurcate, I believe that he

1 would then indicate that rather than be transferred to  
2 Hill-Finklea, Berkeley detention center and all, he'd  
3 just as soon present his case today and then return back  
4 to SCDC.

5 THE COURT: All right. Very good. That can  
6 be done as well.

7 MR. DAVIS: Is that correct, Mr. Barnwell?

8 THE APPLICANT: Yes.

9 THE COURT: All right. Proceed.  
10 Mr. Johnson?

11 MS. SULPIZIO: May it please the Court: Your  
12 Honor, my name is Gabrielle Sulpizio. I'm a 3-L at  
13 Charleston School of Law, and I'm here being supervised  
14 by Mr. Rutledge Johnson. May I have your permission to  
15 proceed?

16 THE COURT: Very good. You may proceed.

17 MS. SULPIZIO: This is case Darius Barnwell  
18 versus the State of South Carolina. Mr. Barnwell was  
19 indicted at the April 2014 term of the Charleston County  
20 grand jury for five counts of trafficking cocaine. On  
21 October 19, 2014 he pled guilty as indicted and was  
22 sentenced by the Honorable Roger Young to incarceration  
23 of ten years for each charge to concurrently.

24 He did not appeal, and on July 7, 2015, he  
25 filed a timely PCR and the State filed its return on

1 January 21st, 2016. Today he is here represented by  
2 Mr. Rodney Davis.

3 THE COURT: All right. Mr. Davis, you may  
4 proceed.

5 MR. DAVIS: Your Honor, a couple things,  
6 housekeeping matters. First of all, Your Honor, one of  
7 the issues I want to put on the record we talked about,  
8 unfortunately, these are trafficking cases. My client,  
9 one of his concerns, as a lot of PCR clients on the front  
10 end are concerned about, is reducing the time.

11 We had talked about the Bowling case. I  
12 reviewed that with him. Unfortunately, that's going to  
13 apply to distribution, possession with intent to  
14 distribute, to knock it out of the 85 percent range.  
15 These are clearly trafficking, so we reviewed that, but I  
16 just want the record to reflect that we reviewed that.

17 Additionally, Your Honor, and here in a  
18 moment, of course, I'm going to ask that you go through  
19 risk and benefits with him. Towards that end, in  
20 reviewing his prior record from Mr. Mayer's file and in  
21 consulting with Mr. Barnwell, the rap sheet is not very  
22 specific. This is an unusual one, but it does seem clear  
23 that there is a cocaine conviction. It appears to be  
24 either distribution or possession with intent to  
25 distribute that resulted in a split adult sentence, a

1 probationary adult sentence.

2           There appears to be a separate cocaine  
3 conviction again in the nature of a distribution or  
4 possession with intent to distribute that resulted in a  
5 youthful offender sentence, a YOA, not to exceed six  
6 years. One appears to be in 2004; one appears to be in  
7 2008. The reason I'm raising those, Your Honor, is until  
8 I reviewed that, clearly the transcript and all the  
9 documentation I have had prior to reviewing Mr. Mayer's  
10 file, seemed to indicate that he pled as indicted, and I  
11 think that was accurate at the time, but I want to be  
12 overly cautious that not only have I discussed with my  
13 client that he has five traffickings, all of them serious  
14 so that any combination of three separate convictions  
15 could result in a life without parole sentence, but I  
16 also advised him is if those two prior convictions are  
17 accurate, he could, on return, if we're successful, he  
18 could be facing third offense traffickings, which was  
19 mandatory minimum 25 up to 30, and as the State has  
20 indicated, his sentence is ten on each to run  
21 concurrently.

22           Judge, in an abundance of caution, I'm  
23 raising those issues on the record, first of all, so that  
24 you can adequately question him about his willingness to  
25 go forward. Finally, Judge, I must -- I'm certainly here

1 to represent Mr. Barnwell and do everything I can for  
2 him. I must announce my concerns about that.

3           While none of us -- and I'm not in his shoes,  
4 no one would want to willingly serve a ten-year sentence  
5 when I know he's facing a possible 25 to 30 on each of  
6 the five if he's returned or on any three convictions  
7 would result in life. I have talked to him. He  
8 indicates he's willing to go forward. I'll certainly  
9 present the case to the best of my ability, but I do have  
10 concerns about being successful here, if we're successful  
11 here, he ultimately could be worse off than where he is  
12 now, so I want to make a record of that, and, Your Honor,  
13 at the appropriate time, if you would review that with  
14 him on the record, we would certainly appreciate that.

15           THE COURT: Very good. Mr. Barnwell, come  
16 around please, sir, and you'll be sworn and placed in the  
17 witness stand.

18           (Applicant duly sworn.)

19           THE COURT: All right, Mr. Davis. Would you  
20 like to examine first, or do you want me to examine him  
21 on the risks and benefits first?

22           MR. DAVIS: If you could do that first.

23           THE COURT: Very good. Good afternoon,  
24 Mr. Barnwell. I'm Jean Toal, and I'm the Circuit Court  
25 judge for this matter.

1                   Mr. Davis is expressing a concern, and,  
2 frankly, I'm concerned from reading this record. You  
3 have five indictments for five different trafficking of  
4 cocaine second offense. Are you understanding that?

5                   THE APPLICANT: Yes, Your Honor.

6                   THE COURT: And those indictments would  
7 expose you to 5 to 30 years on each with a \$50,000 fine.  
8 Did you understand that.

9                   THE APPLICANT: Yes, Your Honor.

10                  THE COURT: And if you were found guilty or  
11 pled guilty to all of those, you would have enough strike  
12 offenses to put you in jail for the rest of your life.

13                  Did you understand that?

14                  THE APPLICANT: Yes, Your Honor.

15                  THE COURT: And no possibility of ever  
16 getting out on parole?

17                  THE APPLICANT: Yes, Your Honor.

18                  THE COURT: Now, what Judge Young said to you  
19 when he considered your plea was: Today you're pleading  
20 to five different offenses that occurred on five  
21 different days, and under that scenario, you could get  
22 life in prison; however, they are not asking for that  
23 today.

24                  Did you understand that.

25                  THE APPLICANT: Yes, Your Honor.

1           THE COURT: And then the judge said: So you  
2 need to be on notice that though you are now having the  
3 maximum number of strikes that you're ever going to get  
4 in this life, if you ever get another strike conviction,  
5 you will go to jail for the rest of your life,  
6 mandatorily, without the possibility of parole.

7           Did you understand that?

8           THE APPLICANT: Yes, Your Honor.

9           THE COURT: All right. As your records  
10 reflect here, your current max-out date is 7/15/2022. Do  
11 you understand that?

12           THE APPLICANT: Yes, ma'am.

13           THE COURT: And if you were successful in  
14 getting a new trial, which is what you get if you're  
15 successful in your post-conviction relief, you would be  
16 exposed to a great deal more than what is listed as your  
17 max-out date.

18           Do you understand that?

19           THE APPLICANT: Yes, Your Honor.

20           THE COURT: And, finally, do you understand  
21 from the documents in this matter that there were  
22 videotapes and audiotapes and direct testimony or direct  
23 observation of your involvement in all five of these  
24 trafficking charges?

25           THE APPLICANT: Yes, Your Honor.

1           THE COURT: All right, sir. And if that  
2 evidence is not found to be improperly admitted -- if  
3 that evidence were found to be improperly admitted or if  
4 there was some other problem, you would face a retrial  
5 where that evidence would be capable of being put back  
6 in.

7           THE APPLICANT: Yes, Your Honor.

8           THE COURT: Do you still want to go forward  
9 with this post-conviction relief?

10          THE APPLICANT: Yes, Your Honor.

11          THE COURT: Why?

12          THE WITNESS: Because I feel like I didn't  
13 get like -- after I met my attorney, Aaron Mayer, that  
14 he -- like, he forced me to plea, and I wasn't  
15 comfortable, but at the same time I was scared that they  
16 keep trying to rush me to trial, keep rushing me to  
17 trial, rushing me to trial. After I get Mr. Mayer, they  
18 forced me to plea, and I didn't want to plea. But, like,  
19 my -- the evidence wasn't -- they really ain't got no  
20 evidence toward me. I'm not on no audio or no video, but  
21 they just gave me so much that I just plead.

22          THE COURT: All right, sir. You were in jail  
23 for 220 days or thereabouts before you pled, right?

24          THE APPLICANT: Yes, Your Honor.

25          THE COURT: And you got credit for that time

1 when you did plead?

2 THE APPLICANT: Yes, Your Honor.

3 THE COURT: All right.

4 Well, I understand the reservations your  
5 attorney has about your seeking this relief, simply  
6 because you got a pretty good deal, in his opinion, and,  
7 quite frankly, in my opinion as well, given the gravity  
8 of the charges.

9 But it's up to you, and I am certainly not  
10 going to try to force you in any way to withdraw your  
11 post-conviction relief petition. If you want to go  
12 forward, you may go forward.

13 THE APPLICANT: Yes, Your Honor.

14 THE COURT: And you want to go forward?

15 THE APPLICANT: Yes, Your Honor.

16 THE COURT: Very good. All right. Your  
17 witness, Mr. Davis.

18 MR. DAVIS: Well, Your Honor, I would call  
19 Mr. Mayer first, Your Honor.

20 THE COURT: If you would come down, you've  
21 been sworn. We'll hear from you later, but come down and  
22 let Mr. Mayer go first.

23 Thank you, Mr. Barnwell.

24 AARON MAYER,

25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. DAVIS:

4 Q. Mr. Mayer, good afternoon.

5 A. Hey.

6 Q. Let's start out with do you know when you were  
7 initially -- when you initially became Mr. Barnwell's  
8 attorney?

9 A. He consulted with me on June the 9th, 2014, and I  
10 believe it wasn't until July or later of 2014. Do you  
11 need the exact date?

12 Q. If you have it.

13 A. It was August 28th, 2014.

14 Q. And so that would have been when you actually  
15 were --

16 A. Retained.

17 Q. -- retained?

18 A. Yeah.

19 Q. Now, do you recall that at least one of  
20 Mr. Barnwell's charges was on a trial docket for a  
21 September 15th, 2014 term?

22 A. I don't have an independent recollection of that,  
23 but I do have in my notes from our June 9th consultation  
24 that I was told at the time that the trial was in July,  
25 and so it would make sense that they would keep putting

1 him on successive trial dockets until he was tried, yeah.

2 Q. And do you recall that Mr. Barnwell's guilty plea  
3 ended up being in front of the Honorable Roger Young, Sr.  
4 on October 9th, 2014?

5 A. From looking at the records, it's led me to  
6 believe that, yeah.

7 Q. All these are five separate charges and five  
8 separate incidents. You recall that it was one State  
9 operation by the ATF; is that accurate?

10 A. That is my recollection, yeah.

11 Q. Now, as to the five separate incidents, I believe  
12 there is one that occurred with the use of the  
13 confidential informant; is that your recollection?

14 A. And, again, my recollection is what I've refreshed  
15 from looking back over this file. I didn't have any  
16 independent memory of it without looking through the  
17 file, but yeah, that's my recollection.

18 Q. And on one of the five occasions, there was a  
19 video recording of whatever transpired by the  
20 confidential informant; is that your recollection?

21 A. That's what the file led me to believe, yeah.

22 Q. And the remaining four, there were audio only  
23 recordings of whatever transpired?

24 A. That's what the files would show.

25 Q. Now, as to any documentary discovery or Rule 5 you

1 would receive, do you recall whether you personally went  
2 and reviewed that with Mr. Barnwell or whether you would  
3 have mailed that packet to him, do you recall in this  
4 case, or what is your normal habit as to the paper part  
5 of discovery?

6 A. Well, when there are -- it was my habit at the  
7 time in 2014 to take the discovery in to the jail and to  
8 leave a copy with my clients. In cases like  
9 Mr. Barnwell's, where there was video or audio to review,  
10 it was my habit at the time to schedule a contact visit  
11 where there's not a bulletproof plate of glass between  
12 us, where we can sit down at the same table and take my  
13 laptop in there and review the evidence that would be  
14 potentially used against him.

15 Q. And that would have been available, like the  
16 multi-purpose room here, in the Charleston County Jail?

17 A. That is what I would typically do around that  
18 time, and I don't recall -- I don't want to say I did  
19 that with Mr. Barnwell, but that would have been my  
20 practice at the time to do that.

21 Q. So then with the recordings and the audios and the  
22 one video, do you recall how those were presented to  
23 Mr. Barnwell?

24 A. Either they would have been done with the contact  
25 visit like that, or if time was limited, as the record in

1 this case leads me to believe it may have been, I may  
2 have met with him with the bulletproof glass between us  
3 because it's just quicker to access a client that way,  
4 held up a laptop and turned up the volume and played it  
5 that way.

6 Q. And those would have been the professional booths  
7 in the first floor of the lobby area of the Charleston  
8 County Jail?

9 A. Yes, sir.

10 Q. Upon your review of the documents and recordings,  
11 is it fair to say your advice to Mr. Barnwell was to not  
12 go to trial and enter a guilty plea?

13 A. Yeah. I think that -- if memory serves, and, you  
14 know, reviewing the file today has refreshed my memory on  
15 some of this, but it's still -- I don't want to say with  
16 certainty on this particular case, but I do feel like I  
17 was the second or third lawyer on this, and I remember  
18 there was a lot of concern about these charges being  
19 brought years after the events occurred. I think it was  
20 very frustrating for the defendant and the defense  
21 attorneys, and so that's my recollection of kind of how  
22 this was going at the time.

23 Q. To that the of issue, do you recall the incident  
24 dates were roughly in the middle of the year 2010?

25 A. Yes.

1 Q. And you recall that Mr. Barnwell --

2 A. Wasn't charged until December of 2013.

3 Q. You certainly weren't the first attorney on the  
4 case, but you're the attorney that took it to its  
5 conclusion, correct?

6 A. Correct.

7 Q. One of the issues that you and Mr. Barnwell had  
8 was the delay in charging on these five incidents,  
9 correct?

10 A. Yeah.

11 Q. But given your review of the documents and the  
12 recordings, was it your advice to Mr. Barnwell to plead  
13 guilty and not go to trial on these charges?

14 A. Yes, and this was a case that was built by -- not  
15 by the State police, but by the federal police, and so  
16 compared to a normal, you know, buy or hand-to-hand  
17 transaction, in reviewing the evidence against  
18 Mr. Barnwell, I felt like this case was -- I felt like  
19 each particular case, each incident of sale, was a much  
20 tighter case and with fewer loose ends to potentially  
21 exploit -- as an example, for each of the sales they did  
22 with Mr. Barnwell, there was a confidential informant who  
23 instead of being sent from a third location, sent of his  
24 own volition to find the person selling and to make a  
25 deal.

1           For each of the sales from Mr. Barnwell, the  
2 confidential informant was actually driven by a federal  
3 agent to the location and observed as he walked in. He  
4 was observed when he came out. He was searched before;  
5 he was searched after, and that made it, in my opinion, a  
6 much tighter, you know, closer sort of bit of evidence  
7 where there would be much less wiggle room in front of a  
8 jury.

9           So, yeah, it was definitely my opinion that  
10 between the confidential informant and the federal agent  
11 testifying against him, combined with the audio and video  
12 that was made, you know, their accompanying explanation  
13 of what that document is, I just felt like the risk was  
14 substantial and likelihood of prevailing as a defense  
15 verdict would have been pretty much nil.

16         Q. Let's talk about the recordings for just a little  
17 bit. As to the -- well, first of all, a confidential  
18 informant was used on each of these incidents, correct?

19         A. Yes.

20         Q. What discussions, if any, did you have with  
21 Mr. Barnwell about how you might attempt to discredit  
22 that informant at trial if it went to trial?

23         A. And so this is the informant who, a couple of  
24 years after the work that he did on operation, you know,  
25 Darius Barnwell, you know, was later found by the FBI to

1 have taken some FBI marked funds and claimed that he had  
2 been robbed. I guess he was robbed, but only a portion  
3 of the funds were taken but he told the FBI the rest was  
4 taken, so he had credibility issues there.

5 And a lot of CIs have credibility issues, right,  
6 because they're trying to work off some sort of often  
7 pretty heinous criminal liability, but here, that was an  
8 issue -- that was certainly an issue that we talked  
9 about, was whether that CI would be credible and  
10 everything else.

11 And my expectation -- I don't have any discrete  
12 memory of it, but my expectation is at the time we would  
13 have talked about how closely he was watched by the  
14 federal agents, which, you know, again, it's just totally  
15 different than a State case, where a lot of CIs in the  
16 State cases get to drive for miles before they get to  
17 where the buy is going to be.

18 Q. Now switching over to the recording, let's deal  
19 with the video. In response to the Court's questioning  
20 just a bit ago, one of Mr. Barnwell's concerns I expect  
21 during his testimony deals with the fact that his  
22 allegation on the video portion of the incident, there is  
23 a video recording, that it is not clear that he is on  
24 that video.

25 What discussions did you have with

1 Mr. Barnwell about trying to handle that piece of  
2 evidence had he wished to go to trial?

3 A. I wish I could remember. You know, I don't want  
4 to -- I don't want to speak about what I think this video  
5 showed, if I'm conflating it with a different case where  
6 I saw a video on a buy because I've watched a lot of  
7 them, but, you know, it's -- the case that I'm  
8 remembering, which may or may not be this one, was that  
9 on that particular sale, the CI entered, like, an  
10 apartment or a residence, and other people in the  
11 residence called up to Darius who was upstairs who then  
12 has shown, you know, that the audio captured his voice  
13 and everything, but then is shown, you know, coming down  
14 the stairs and closing in on the CI, that is my memory of  
15 it. You know, I'm hesitant to say that this is this  
16 particular video, but that's what I remember the video  
17 being in this case, and if that is this case, then I  
18 remember a conversation about, you know: I don't think  
19 that's me.

20 Well, I can tell that's you, or something  
21 along those lines, where -- you know, that's my  
22 recollection of it, but, again, I don't know if that's  
23 this video or a different one.

24 Q. And I'll ask it like this, I guess: If there were  
25 different discussions or different analysis as to the

1 audios, could you explain that to the Court and how you  
2 might deal with them.

3 A. In terms of if Mr. Barnwell and I discussed how to  
4 attack the audio?

5 Q. Correct.

6 A. I really don't have any memory of that. I don't  
7 have any memory of discussing that with Mr. Barnwell.  
8 It's my expectation that we would have, but I don't know  
9 what we would have said.

10 Q. And you were very helpful in helping me  
11 prepare and look through your -- I don't remember the  
12 answer to this question, so forgive me. Unfortunately,  
13 in your file no longer are any of the recordings; is that  
14 right?

15 A. I believe that we archived them. This case had  
16 something like 13 CDs with it, and when we put a file  
17 into the archives, we take out the media, and we put the  
18 media in a separate place for filing purposes. I do  
19 believe the videos are probably with the stash of CDs  
20 that accumulated in our storage cabinet, but it wasn't  
21 right in the paper folder the way it was when we were  
22 dealing with the case.

23 Q. You were retained on August 28, 2014. You  
24 reviewed discovery, all the discovery, with Mr. Barnwell,  
25 in one way or another, you testified to, correct?

1           A. That would have been my practice, I'm sure. I am  
2 always very conscientious about making sure that my  
3 clients have an opportunity to see the police file and to  
4 give me their thoughts on it because they're the ones who  
5 have knowledge of the facts that surround those  
6 documents, and I found it to be the most helpful way to  
7 figure out what our potential angles are.

8           Q. And after doing that with him, it was your advice  
9 that he plead guilty on each of these charges, correct?

10          A. Yes, it was.

11          Q. Now, can you tell the Court about your discussions  
12 dealing with the fact that these are serious offenses,  
13 therefore strikes, discussions you would have with  
14 Mr. Barnwell?

15          A. We would have talked about that very matter. We  
16 would have talked about -- I believe at the time there  
17 was some confusion from the State and from the client's  
18 record as to whether he had one prior cocaine or two  
19 prior cocaine convictions, and we would have talked about  
20 the ramifications of that enhancement, the way those  
21 things enhanced.

22                 In terms of the strike offenses, you know, we  
23 would have talked about that. I feel like I had a  
24 conversation with Mr. Cooper, who was his prior attorney,  
25 where he also had had those conversations. I think those

1 conversations and considerations were very much in the  
2 fore in dealing with the evidence here.

3 Q. Similarly, can you tell the Court discussions you  
4 would have had about these being no parole or 85 percent  
5 offenses.

6 A. I don't know that we would have had a lot of  
7 conversation on those -- on that topic. I don't usually  
8 try and predict how SCDC is going to categorize somebody  
9 or run their time, unless somebody specifically asks me  
10 to calculate that or to try to figure that out, but I  
11 don't remember that being a piece of what our  
12 considerations were in this case.

13 Q. You would have discussed -- can you tell the Court  
14 the discussions you had with him about the sentencing  
15 range on each charge.

16 A. It would have been based on if, you know, if the  
17 State could prove there were two prior convictions or  
18 just one prior conviction, and we would have talked about  
19 the relevant ranges there, right? And I feel like we --  
20 I feel like there was a feeling that the State didn't  
21 know about one at the time or didn't feel confident about  
22 one at the time but knew about the other, so I think we  
23 would have talked about, you know, the likelihood of that  
24 coming up.

25 MR. DAVIS: Your Honor, if I could have just

1 a moment.

2 Thank you, Your Honor. Thank you, Mr. Mayer.

3 No further questions.

4 THE COURT: Counsel?

5 CROSS-EXAMINATION

6 BY MS. SULPIZIO:

7 Q. Good afternoon, Mr. Mayer.

8 A. Hey.

9 Q. Just a few more questions for you, if you don't  
10 mind. I know you previously testified about your  
11 interactions with Mr. Barnwell before, you know, when you  
12 were discussing trial strategies, and I know you talked  
13 about the guilty plea, but I wanted to go into a little  
14 more in detail about that. Could you tell me exactly how  
15 many times you met with Mr. Barnwell?

16 A. After being retained?

17 Q. After being retained.

18 A. You know, that's a good question. I really don't  
19 know.

20 Q. Would you say, you know, double digits?

21 A. No. It would not have been double digits because  
22 it was too short a time frame. I wouldn't expect that I  
23 would have met with him after being retained more than  
24 two or three times.

25 Q. Okay. And when you met with him, you discussed,

1 you know, all the evidence that the State was going to  
2 use against him.

3 A. Yes.

4 Q. And he appeared to understand that.

5 A. Yes.

6 Q. At that point, did he ever -- he was still  
7 insisting on going to trial at that point, when you first  
8 met with him and when you were first retained?

9 A. You know, I really don't think that's what the  
10 push was for. I don't recall that being the push.

11 Q. And at what point did he want you to start plea  
12 negotiations?

13 A. So I got involved in this case very, very late,  
14 later than -- I think it may be one of the later cases  
15 I've ever been involved in, and I don't know that we got  
16 a different plea deal than had been offered to his prior  
17 attorney. I don't know that we got a better plea deal or  
18 anything of that nature.

19 In looking back at the file, and, again, I want to  
20 emphasize I have very little independent recollection of  
21 this time or this case, but I feel like, in looking back  
22 at the file that I may have been hired by Mr. Barnwell to  
23 -- like a second opinion. That's my feeling here today.  
24 I don't know if that's the reality of the situation at  
25 the time, but I definitely felt like it was important to

1 review the evidence and to figure out if some prior  
2 recommendation of the plea was a reasonable one or the  
3 best thing for Mr. Barnwell, and when I got the file, I  
4 certainly analyzed it to figure out if a plea was going  
5 to be the best thing or if it was going to be the best  
6 thing for him to go to trial and all that sort of stuff.  
7 So I think that's sort of maybe the context in which I  
8 was retained.

9 Q. And, ultimately, it was whose decision to plead?

10 A. Well, it's never my decision to plead. I just  
11 recommend it if it makes sense to me, right? And so here  
12 I would have been recommending it. It would have been  
13 very scary for me to have my client potentially exposed  
14 to life without parole.

15 We had a great plea judge with Judge Young. I  
16 don't remember if we had much -- I don't remember if  
17 there were continuances involved or what all was  
18 involved, but I definitely felt at the time that given  
19 the circumstances of Mr. Barnwell's charges and the  
20 delay, especially between when those incidents occurred  
21 and when the charges were filed on him, I definitely felt  
22 like Judge Young would be a receptive judge for that  
23 issue. I'm not sure about the other part of the  
24 question.

25 Q. And Mr. Barnwell alleges that he could not

1 positively be identified in that video, and we briefly  
2 spoke on that today, but it is your common practice to  
3 discuss, you know, audio/video with your client and go  
4 through that procedure with them?

5 A. Yes, and, you know, in analyzing those videos, on  
6 the State videos, if the client is not clearly visible in  
7 the frame of the video and this sort of thing, I feel  
8 like there's some room to maneuver and this sort of stuff  
9 on it, that if the transaction is clearly captured, I  
10 feel like there's some room to maneuver on it.

11 Here, I don't recall if that was clearly captured  
12 on there. My feeling, sitting here today, I don't know  
13 if this was my feeling at the time, but my feeling,  
14 sitting here today, is that it probably wouldn't have  
15 been imperative to capture that, each frame by frame on  
16 there because there were five transactions that were  
17 closely supervised by federal agents, and I just didn't  
18 see -- I don't see now, and I probably didn't see then,  
19 many ways to portray that to a jury.

20 Q. So it would be truthful for me to say today that  
21 you believe there was a substantial amount of other  
22 evidence that would likely convict Mr. Barnwell?

23 A. Yes.

24 Q. Including what you said about the direct  
25 testimony?

1           A. The direct testimony of the federal agent, yeah.

2           Q. Okay. And as to Mr. Barnwell's issue for appeal,  
3 did Mr. Barnwell ever ask you to appeal?

4           A. I have no recollection of that. That was  
5 surprising me to, when he told me that, that that was an  
6 issue for him. You know, we planned to do a plea. It  
7 wasn't something that just came up at the spur of the  
8 moment to plea. I think I appealed only one plea ever,  
9 and part of the reason that I don't appeal it as a  
10 standard thing is because we go into the plea expecting  
11 that this is a plea. We're going to do this. This is  
12 what makes sense in your case, and unless I hear from  
13 somebody within the ten-day period after that, there's no  
14 appeal to be had.

15          Q. So he gave you no indication.

16          A. Correct.

17          Q. And do you believe -- did you ever force  
18 Mr. Barnwell to plead?

19          A. I didn't force him to plea. In discussions with  
20 him, I hope I wasn't overly forceful in describing my  
21 concerns about taking it to trial. I try not to be that  
22 way, but I certainly could have come off that way without  
23 knowing about it.

24          Q. And I just want to backtrack for one moment.  
25 During your discussions, you mentioned that you did have

1 a conversation about him serving 85 percent of his  
2 sentence, but that's not required, that you have that  
3 conversation with him.

4 A. I don't think it's required. If I had -- if I  
5 felt like I had a good handle on how SCDC always  
6 calculates people's time, I would enter those  
7 conversations more freely, but I often, and especially in  
8 2014, I felt like SCDC's calculations were a little bit  
9 unpredictable, so that's why, unless somebody  
10 specifically asks me to kind of forecast their sentence  
11 and ultimate release date, I didn't wade into that.

12 Q. So just one more time, inevitably it was whose  
13 decision to plea?

14 A. It would have been Mr. Barnwell's.

15 MS. SULPIZIO: Thank you, Mr. Mayer.

16 THE COURT: All right. Mr. Davis, any reply?

17 MR. DAVIS: No, Your Honor. Thank you.

18 THE COURT: You may come down, Mr. Mayer.

19 MR. DAVIS: The applicant calls Mr. Barnwell  
20 to the stand.

21 THE COURT: Thank you, Mr. Barnwell. As your  
22 counsel begins to question you, remember that you're  
23 still under oath.

24 THE APPLICANT: Yes, Your Honor.

25 THE COURT: Thank you.

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DARIUS BARNWELL,  
having been previously duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Mr. Barnwell, let's start out first with a little background on you. How far -- well, first of all, how old are you?

A. I'm 32 years old.

Q. Speak up for me so the judge and I can hear you.

A. Thirty-two.

Q. And how far did you go in school?

A. Tenth grade.

Q. And that was Stall High School?

A. Stall High School.

Q. Now, can you tell the judge, are you working on some classes now?

A. No. I was working in some classes at Allendale, working in academic classes, but they moved me to a level one camp.

Q. So back in Allendale you were taking some GED classes, though?

A. GED classes.

Q. Now, in school, at Stall, were you in some learning disabled classes?

1 A. Yes, sir.

2 Q. Tell the judge a little bit about that.

3 A. It's just some classes I've been in, disability,  
4 always getting teased, so I dropped out of class so that  
5 would stop me from going back to school.

6 Q. What classes were you getting special education  
7 in?

8 A. All my classes.

9 Q. All of your classes?

10 A. Yes.

11 Q. That was in the tenth grade before you dropped  
12 out?

13 A. Yes, sir.

14 Q. Would that have been in the ninth grade as well?

15 A. Yes, sir.

16 Q. And how about the grades prior to that?

17 A. From middle school on up.

18 Q. So at this point, you're working on your GED, but  
19 you don't have your diploma or your GED?

20 A. I did not have it.

21 Q. You heard a little bit of testimony earlier. Mr.  
22 Mayer was not your original attorney after your arrest,  
23 was he?

24 A. He was the second.

25 Q. But he's the one that worked with you until the

1 completion of your case?

2 A. Yes, sir.

3 Q. And he's the one we got complaints about.

4 A. Yes, sir.

5 Q. Can you tell the judge how many times that you met  
6 with Mr. Mayer before you went to court on October the  
7 9th, 2014 to enter the guilty plea. How many times did  
8 you all meet?

9 A. I can't recall. I think it was, like, one or two  
10 times.

11 Q. And during those meetings, how long would they  
12 have lasted?

13 A. I can't recall.

14 Q. Would it have been hours or minutes, do you think?

15 A. Probably minutes.

16 Q. Okay. So less than an hour each time?

17 A. Less than an hour, yes, sir.

18 Q. Now, during these couple of meetings, would he  
19 have given you a copy of the paperwork, the discovery in  
20 your case, or did he simply look over it with you and he  
21 held onto it?

22 A. I think he gave me copies of it, if I'm not  
23 mistaken. I think I got copies from -- I think I have  
24 copies from it, if I'm not mistaken. I think I have  
25 copies from the last --

1 Q. From Mr. Cooper, the public defender, first?

2 A. Yes, sir.

3 Q. Let's focus on Mr. Mayer. Would he have given you  
4 a copy additionally or do you think he just went through  
5 what you already had?

6 A. I think -- what he already had, I think.

7 Q. All right. There's some other evidence, some  
8 videos and audios. As to Mr. Mayer, did he review the  
9 video with you while he was your attorney?

10 A. I think so.

11 Q. Okay. How many times would he have reviewed that  
12 with you?

13 A. I don't recall. I think it was the last attorney,  
14 but I think it was one time I saw.

15 Q. Okay. Now, you're aware that in addition to the  
16 one video, there were four audios. As to Mr. Mayer, did  
17 he share those audio recordings with you?

18 A. I think he one time.

19 Q. That was my next question: How many times would  
20 he have reviewed the four audios with you?

21 A. I only saw that one time; one, one or two of them.

22 Q. Are we talking about audio recordings or the  
23 video?

24 A. The video.

25 Q. So you saw the video once. How many times would

1 you have listened to the audios with Mr. Mayer?

2 A. I don't think no time.

3 Q. So if there was a review of it, it would have been  
4 with the prior attorney?

5 A. I think so, yeah.

6 Q. What discussions, if any -- if you can tell the  
7 judge, what discussions, if any, did Mr. Mayer have with  
8 you about going to trial on any of these charges?

9 A. I can't remember. I can't remember.

10 Q. Was there any discussion about a strategy on  
11 dealing with any of these cases if they went to trial?

12 A. I mean -- I can't remember.

13 Q. Okay. Do you remember Mr. Mayer talking to you  
14 about the fact that you could have five separate trials  
15 since these were five separate dates? Do you remember  
16 discussions about that?

17 A. I think I recall that, yes.

18 Q. Do you remember any discussions with Mr. Mayer  
19 about how you might face a sentence of life because of  
20 these charges? Do you remember any discussions about  
21 that?

22 A. Yes, sir.

23 Q. Can you tell the judge what you remember about  
24 that discussion, or those discussions?

25 A. He was telling me -- I mean, the case he was

1 showing me on the DVD or whatever, he was telling me  
2 there was a 50/50 chance I could win, and there was a  
3 50/50 chance I could beat it or whatever, but that's all  
4 I could remember.

5 Q. And that would have been talking about if you went  
6 to trial, it could go either way?

7 A. Yes, sir.

8 Q. Did he talk about what the State would have to do  
9 before you would be facing a life sentence? Do you  
10 remember any discussion about that?

11 A. No, sir.

12 Q. Do you remember any discussion with Mr. Mayer  
13 about what you were facing on each of the five charges?  
14 Did he talk to you about what the punishment could be on  
15 each of the five?

16 A. I think he did. I think he was telling me 25  
17 years or something like that, or I could get either,  
18 either or.

19 Q. Okay. Do you remember any discussion with Mr.  
20 Mayer about if you were convicted of any one of these  
21 that they were no parole offenses? Do you remember him  
22 using that term?

23 A. Yes, sir.

24 Q. Okay. Do you remember him discussing with you  
25 what that meant, what no parole meant?

1 A. Yeah.

2 Q. What does it mean? Can you tell the judge what  
3 you remember?

4 A. Life without parole mean no parole, life without  
5 parole.

6 Q. Do you remember any discussion about having to  
7 serve 85 percent of the sentence? Do you remember any  
8 discussion with Mr. Mayer about that type of time, 85  
9 percent? Do you remember any discussion about that?

10 A. No.

11 Q. Okay. I want to focus on Mr. Mayer, but let's go  
12 back for just one second to Mr. Cooper. Had you been put  
13 on a trial docket while Mr. Cooper was your attorney?

14 A. Yes, sir.

15 Q. But you switched attorneys, correct?

16 A. Yes, sir.

17 Q. You and your family or friends, whatever, hired  
18 Mr. Mayer, right?

19 A. Yes, sir.

20 Q. Do you remember after you hired Mr. Mayer being on  
21 the trial docket again?

22 A. Yes, sir.

23 Q. Do you recall that that was going to be or could  
24 have been September 15th of 2014? Do you remember that  
25 being a trial date?

1 A. Yes, sir.

2 Q. Do you recall why it didn't go to trial in  
3 September of 2014?

4 A. Because he wasn't -- what, with Mr. Cooper?

5 Q. Well, you tell me. Do you recall hiring Mr. Mayer  
6 in August of '14?

7 A. Uh-huh.

8 Q. So the next month, in September, if you were on  
9 the trial docket, do you recall why it got moved?

10 A. I don't know. I guess they wasn't ready for me.  
11 They keep telling me they wasn't getting me ready for  
12 trial or anything. He just told me I was on the trial  
13 docket. Nobody was coming to see me. Every time he  
14 talked to me, it was either over the screen or whatever,  
15 so I wasn't talking to nobody, like, coming -- nobody was  
16 coming down and talking to me.

17 Q. You pled to these five charges straight up,  
18 correct?

19 A. Yes, sir.

20 Q. State never made you an offer on these charges?

21 A. No offer.

22 Q. You just said that there wasn't really discussions  
23 about going to trial, it was all about pleading guilty,  
24 is that fair, with your attorneys? In discussions with  
25 your attorneys, they weren't talking about trial; is that

1 right?

2 A. They wasn't talking about trial. It was, like,  
3 trying to get me to, like, plead to these cases, to these  
4 charges, but they had me on the trial docket, and they  
5 wasn't ready for me.

6 Q. Did you believe that Mr. Mayer was ready for trial  
7 on any one of these five if you had wanted a trial?

8 A. I don't think so. I don't think that he  
9 investigated the case enough to know the case.

10 Q. Was there any discussion with Mr. Mayer about if  
11 you went to trial how he might try to question the  
12 confidential informant?

13 A. Yes, sir.

14 Q. He talked about that?

15 A. Yes, sir.

16 Q. Do you remember his discussions with you about how  
17 he would deal with the confidential informant? Can you  
18 tell the judge?

19 A. I don't recall. How he would deal with them? I  
20 don't remember. I don't know.

21 Q. Other than the defense it wasn't me, other than  
22 that defense, did you all have any discussions about how  
23 a trial would play out, how that process would occur?

24 A. Yes, basically telling me about the life without  
25 parole and, you know, things that come along with it.

1       Q. Was there any discussion about how a jury would be  
2 picked?

3       A. No.

4       Q. Any discussion about your right to testify or not  
5 testify?

6       A. Yeah.

7       Q. Okay. Any discussion about the State's witnesses  
8 and how he might question them?

9       A. Yeah, but -- I don't recall. I remember him  
10 talking about it, but I don't remember everything.

11       Q. All right. We know there has been discussion of a  
12 little bit of your prior record. Had you ever gone to  
13 trial on a case before?

14       A. No.

15       Q. What was Mr. Mayer's advice to you about going to  
16 trial on any of these charges?

17       A. His advice was if I would -- if I was found  
18 guilty, I could get more time than what I'm pleading to,  
19 whatever, or I could -- you know, I could win the trial.  
20 I could win or I could lose.

21       Q. So, ultimately, did he think you ought to have a  
22 trial or did he think you ought to plead guilty?

23       A. He thought I ought to plead guilty.

24       Q. Can you tell the judge -- you had complained about  
25 Mr. Mayer not filing an appeal. Can you tell the judge

1 what you did to try to get him to do that?

2 A. I don't recall him saying that.

3 Q. Let's just be clear: Do you recall either telling  
4 him or writing him and asking for that or not?

5 A. No, sir.

6 Q. Okay. I'm just going to run through things,  
7 review them again for the judge, okay?

8 A. Uh-huh.

9 Q. Under Mr. Mayer's advice, you pled guilty to all  
10 five charges, right?

11 A. Uh-huh.

12 Q. If Mr. Mayer had met with you more than a couple  
13 of times, would you have pled guilty to these charges or  
14 would you have wanted to go to trial?

15 A. I would have wanted to go to trial.

16 Q. If Mr. Mayer had discussed with you his trial  
17 strategy on how he might deal with the State's witnesses  
18 and the evidence, if he had discussed that with you,  
19 would you have pled guilty or would you have gone to  
20 trial?

21 A. Gone to trial.

22 Q. If Mr. Mayer had discussed with you the fact that  
23 whatever sentence you got on any of these, if they were  
24 no parole offenses, you'd have to serve 85 percent, could  
25 not get out before you served 85 percent. If he had

1 discussed that with you, would you have pled guilty or  
2 would you have gone to trial?

3 A. Go to trial.

4 Q. If Mr. Mayer, who's your final attorney, had  
5 actually reviewed the video with you, if he had reviewed  
6 that video with you and discussed how it might be dealt  
7 with at trial, instead of not having done that, would you  
8 have pled guilty or gone to trial?

9 A. Go to trial.

10 Q. I think you already told the Court this, but with  
11 either attorney, did the State make any offer in this  
12 case to you?

13 A. My plea was 5 to 30 years.

14 Q. That's what you're facing on each one of them?  
15 That's your recollection, correct?

16 A. Uh-huh.

17 Q. So the State didn't offer to dismiss any of these  
18 charges?

19 A. Huh-uh.

20 Q. Or reduce any charges?

21 A. No, sir.

22 Q. Flip it for a second. At the time you decided to  
23 plead guilty rather than go to trial -- we've heard your  
24 complaints about Mr. Mayer, about his advice to plead  
25 guilty. Let me ask it the other way: If your case had

1 been set soon after the guilty plea date for trial, did  
2 you feel that Mr. Mayer was prepared to go forward on a  
3 trial and defend you on any one of these five?

4 A. No, sir.

5 Q. Did he ever suggest to you that he was ready to go  
6 to trial on any of these?

7 A. I don't recall, but I don't think he was ready.

8 Q. Mr. Barnwell, I'm going to ask you directly: Is  
9 it accurate that you have a cocaine conviction in which  
10 you received a YOA sentence? Is that right?

11 A. Yes, sir.

12 Q. Can you speak up for me.

13 A. Yes, sir.

14 Q. Thank you. Separate from that, you also have  
15 another conviction where you've got an adult probation  
16 sentence; is that right?

17 A. Yes, sir.

18 Q. And were both of those -- your guilty plea was in  
19 2014. Were both of those more recent than 2004? Were  
20 they, like, 2005, 2008, 2010?

21 A. No. 2004 --

22 Q. 2006?

23 A. 2006.

24 Q. Did Mr. Mayer ever discuss with you that because  
25 of those prior convictions that these five could actually

1 have been third offenses? Did he ever discuss that with  
2 you?

3 A. No. He said it would be the second. They didn't  
4 say nothing about the 2004 case.

5 Q. If he had discussed that with you, if you had  
6 understood that, if he had discussed that with you, would  
7 that have affected your decision about going to trial or  
8 pleading guilty?

9 A. No. I would have still went to trial.

10 MR. DAVIS: Mr. Barnwell, thank you very  
11 much. Those are all the questions I have.

12 THE COURT: Counsel?

13 MS. SULPIZIO: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. SULPIZIO:

16 Q. Mr. Barnwell, you have some priors, and you  
17 testified that you've never been to trial on them, so you  
18 pled guilty to some of them in the past, correct?

19 MR. DAVIS: Objection, Your Honor.  
20 Relevance.

21 THE COURT: I will allow it. You may  
22 proceed. Overruled.

23 BY MS. SULPIZIO:

24 Q. So you're aware of how the plea system works,  
25 right?

1 A. Yes, ma'am.

2 Q. And what is your sentence you're currently serving  
3 for these five counts of trafficking?

4 A. Ten years.

5 Q. And that's ten years on every count, correct, and  
6 they're running concurrent?

7 A. I think so.

8 Q. And isn't it true that the charges you were facing  
9 had a maximum sentence of 150 years?

10 A. I think so. I don't recall.

11 MS. SULPIZIO: Your Honor, may I approach the  
12 witness?

13 THE COURT: Yes.

14 BY MS. SULPIZIO:

15 Q. Mr. Barnwell, this is the statute for trafficking  
16 cocaine, and it shows you --

17 THE COURT: Counsel, let me help you out  
18 here.

19 MS. SULPIZIO: Okay.

20 THE COURT: I don't know that I could read  
21 that statute you're about to hand him with that small  
22 print. Don't put him at a disadvantage. If you want to  
23 ask him about a statute, you read it to him and ask him  
24 what you want to ask him about. Okay? Thank you.

25 BY MS. SULPIZIO:

1           Q. Mr. Barnwell, the statute you were charged under  
2 states that you could be punished for a second offense, a  
3 term of imprisonment of not less than 5 years, no more  
4 than 30 years.

5           A. Uh-huh.

6           Q. So, again, my question was, you could receive 150  
7 years for the charges you were facing, correct?

8           A. That's what it says, yeah.

9           Q. Thank you. And if you are successful here today,  
10 you realize that you will be facing trial after trial  
11 after trial after trial on these five counts?

12                   MR. DAVIS: Objection. Again, Your Honor,  
13 relevance.

14                   THE COURT: Counsel, I think this has been  
15 covered pretty well. The five years part is just  
16 repetitive.

17                   MS. SULPIZIO: Okay, Your Honor. I'm sorry.

18 BY MS. SULPIZIO:

19           Q. And Mr. Mayer helped get you this plea deal,  
20 correct?

21           A. No. The plea deal was put on the table. I was  
22 trying to get a better deal by hiring him.

23           Q. But it was Mr. Mayer's conversations with the  
24 State that allowed this plea deal to arise; isn't that  
25 correct?

1           A. It wasn't a plea deal. It was 5 to 30. I plead 5  
2 to 30. I plead 5 to 30, so I plea on out and I got 10  
3 years.

4           Q. Okay. And Judge Young fully explained to you all  
5 of your constitutional rights when you were before him,  
6 didn't he?

7           A. Yes, ma'am.

8           Q. Including your right to trial, correct?

9           A. Yes, ma'am.

10          Q. And your right to appeal, correct?

11          A. Yes, ma'am.

12          Q. Put up defenses, correct?

13          A. Yes, ma'am.

14          Q. And to call and confront witnesses, correct?

15          A. I don't recall, but I think so.

16                    MS. SULPIZIO: Your Honor, I'd like to direct  
17 the Court to page three of the transcript.

18                    THE COURT: I've been over that with  
19 Mr. Barnwell as well. I think he agrees that Judge Young  
20 explained to him the range of sentences, his right to  
21 call witnesses in the trial, his right to testify or not  
22 testify as he saw fit.

23                    The judge explained all those things to you,  
24 did he not, Mr. Barnwell?

25                    THE WITNESS: Yes, ma'am.

1 THE COURT: All right.

2 BY MS. SULPIZIO:

3 Q. And, Mr. Barnwell, you answered that you  
4 understood all those rights?

5 A. Yes, ma'am.

6 Q. And you replied that day that you were pleading  
7 guilty, meaning that you waived all those rights; isn't  
8 that correct?

9 A. That is right.

10 Q. So nobody forced or threatened you to plead  
11 guilty, right?

12 A. I was forced downstairs, yeah, to plead. The man  
13 keep begging me to plead guilty when I really didn't want  
14 to plead guilty.

15 Q. Mr. Barnwell, how come when Judge Young asked you  
16 if you wanted to stop and have a trial you didn't object  
17 or say anything to him, you simply said no; isn't that  
18 correct?

19 A. I can't recall.

20 MS. SULPIZIO: Your Honor, I would like to  
21 direct the Court's attention to page three, lines five  
22 and six of the transcript, and I'm just going to read  
23 aloud.

24 THE COURT: That's fine.

25 BY MS. SULPIZIO:

1           Q. Mr. Barnwell, Judge Young says to you:

2                     If you want a trial, you stop me, and we will  
3 arrange one for you.

4                     And on line 15, you reply: Yes, sir.

5                     Again, if you wanted a trial, why didn't you  
6 stop Judge Young when he asked you if you would like a  
7 trial?

8           A. I can't recall. I don't remember.

9                     THE COURT: I'll read what Mr. Barnwell said.

10                    Mr. Barnwell said: Your Honor, I'm just  
11 trying to get these behind me. I got a family that love  
12 me, and I'm just trying to get these charges and move on  
13 with my life.

14                    THE WITNESS: That's my correct words.

15                    THE COURT: Okay. I think you've got him on  
16 the record.

17                    MS. SULPIZIO: Thank you, Your Honor.

18 BY MS. SULPIZIO:

19           Q. Mr. Barnwell, you testified just a moment ago that  
20 you watched the video with Mr. Mayer, correct?

21           A. It either was him or Mr. Cooper. I don't  
22 remember. It was either one of them. If I'm not  
23 mistaken, I watched it with either of them twice, at  
24 least once.

25           Q. So you watched it with Mr. Mayer?

1           A. I think I watched it with him.

2           Q. Thank you, Mr. Barnwell. And you stated you were  
3 satisfied with the lawyer's representation, didn't you?  
4 You stated that, correct?

5           A. In the courtroom? Yeah, I think I did say that.

6           Q. So you were satisfied with Mr. Mayer's  
7 representation when you were in front of Judge Young, and  
8 now you're not, correct?

9           A. Correct.

10          Q. So how come, again, you didn't stop Judge Young to  
11 explain to him that you were not satisfied at that time?

12          A. I don't know. He just keep -- I don't know. He  
13 keep telling me that I wouldn't get over a certain time,  
14 and he keep forcing me to plea, or, You won't go over  
15 this, and just do it. And I was -- like, I mean, I just  
16 went with what he said, so I just went to plead.

17          Q. Yet, Mr. Barnwell, you still pled freely and  
18 voluntarily and admitted your fault in these charges,  
19 correct?

20          A. Correct.

21                   MS. SULPIZIO: Thank you. I rely on the  
22 transcript, Your Honor.

23                   THE COURT: Thank you. Mr. Davis?

24                   MR. DAVIS: Just a couple questions.

25                                   REDIRECT EXAMINATION

1 BY MR. DAVIS:

2 Q. Mr. Barnwell, you made a comment earlier about you  
3 were -- I think you said forced downstairs?

4 A. Uh-huh.

5 Q. To be clear on that for the Court, you're talking  
6 about down in the basement where you and Mr. Mayer would  
7 have talked before coming into the courtroom; is that  
8 correct?

9 A. Yes, sir.

10 Q. So when you say you were forced, what was he  
11 telling you to do when you were meeting in lockup?

12 A. Just keep telling me, Just come on, you can plea  
13 or -- I can't remember. He keep telling me if I plead, I  
14 wouldn't get over a certain amount of time, and he just  
15 keep telling me, You can do it, you can do it. Just sign  
16 the papers. At the same time I was scared, but I still  
17 did it.

18 Q. In questioning by the State, they asked about the  
19 questions where at the time of the plea you said you  
20 understood everything. At the time of the plea, you said  
21 you were satisfied with Mr. Mayer, correct?

22 A. Yes, sir.

23 Q. You just testified you were scared. What did you  
24 understand would happen if you didn't get through that  
25 plea? What was going to happen to you?

1           A. I mean, I feel like I would have had a better  
2 trial. I feel like I would have went through better with  
3 a trial.

4           Q. What was Mr. Mayer telling you if you didn't  
5 finish up that plea was going to happen?

6           A. I don't know. He was just -- he ain't tell me  
7 nothing. He just wanted me to plea.

8                   MR. DAVIS: Thank you, Mr. Barnwell. No  
9 other questions.

10                   THE COURT: Thank you, Mr. Barnwell. You may  
11 come down.

12                   MR. DAVIS: That's the Applicant's  
13 presentation, Your Honor.

14                   THE COURT: Very good.

15                   MS. SULPIZIO: The State has no witnesses,  
16 Your Honor.

17                   THE COURT: It's the judgment of the Court  
18 that the application for post conviction is denied.

19                   The evidence is very, very overwhelming in  
20 the colloquy that was had with Mr. Barnwell at the time  
21 of his entering the plea, the plea and advantages of that  
22 plea were fully explained to him, and while there was no  
23 negotiated sentence of time, there was a negotiation with  
24 the State that resulted in this matter not being treated  
25 as a strike offense and having these five matters

1 separated in such a way that he exposed himself to a life  
2 sentence scenario with these five sentences, and that was  
3 an obvious advantage to Mr. Barnwell.

4 His max-out date is listed as 2022, which  
5 takes into account 85 percent service of sentence, it  
6 would appear, from the records of the South Carolina  
7 Department of Corrections. That is a sentence of  
8 frustration to Mr. Barnwell, and I understand that. I  
9 still don't understand myself why it took so long to  
10 bring this matter to trial, and apparently they at first  
11 looked at Mr. Barnwell as the kingpin of this thing, and  
12 it turned out that wasn't the case and others ended up  
13 being deal with, and Mr. Barnwell languished.

14 And, Mr. Barnwell, my heart goes out to you.  
15 You have a good family. They love you. They can't wait  
16 to see you out in the free world again, but you're still  
17 a young man. Of course I can say that with all the gray  
18 hair I got on my head, but I feel confident, based on  
19 your articulation here today, that you have taken  
20 advantage of the opportunities you had and that you will  
21 make a successful life with your family that is behind  
22 you and is going to stick with you.

23 So I feel like my hands are tied in terms of  
24 what I can do, given this record, and, frankly, given the  
25 alternatives, what you actually got as a sentence, but I

1 certainly understand your frustration about this matter,  
2 that it took so long for it to be resolved, and because  
3 you were not able to make bail, you sat incarcerated.

4           You certainly got credit for it, but,  
5 nevertheless, I want you to know that I certainly  
6 understand why you are very ambivalent yourself about  
7 whether this is a great deal or not such a good deal for  
8 you. So I wish you the best of luck.

9           Mr. Johnson, you and your co-counsel, I am  
10 signing an order here now indicating the action of the  
11 Court and that you should submit an order within ten  
12 days. Of course you will exchange it with Mr. Davis  
13 beforehand to see if it accurately reflects what has gone  
14 on here today.

15                   Thank you very much.

16   - - -

17                   (Whereupon, the proceedings were concluded.)

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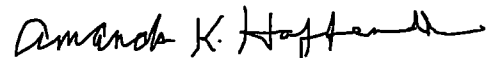
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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 15th of September 2016.

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

March 9, 2018



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Circuit Court Reporter

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FORM 4

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

JUDGMENT IN A CIVIL CASE

2015  
CASE NO. 2014-CP-10-3792

State of South Carolina

Darius Barnwell

FILED

2017 OCT 16 AM 11:20

PLAINTIFF(S)

JULIE J. ARMSTRONG  
CLERK OF COURT

DEFENDANT(S)

Submitted by: Megan Harrigan Jameson, SADAG 2

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

Order of Dismissal

*Scott Hoole* 2758  
ORDER INFORMATION  
Charleston, SC  
Sept 29, 2016

This order  ends  does not end the case.  
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.  
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

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FILED

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

2017 OCT 16

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Darius Barnwell, #316725

JULIE J. ARMSTRONG  
CLERK OF COURT

2014-CP-10-3792

2015

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 7, 2015. Respondent made its Return on January 21, 2016. An evidentiary hearing into the matter was convened on September 15, 2016 at the Charleston County Courthouse. Rodney Davis, Esquire represented Applicant Gabrielle Sulpizio, a third year Charleston School of Law Student, supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

#1  
[Handwritten signature]

At the hearing, Applicant testified on his own behalf. Aaron Mayer, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2014 term of the Charleston County Grand Jury for five (5) counts of trafficking cocaine (2009-GS-10-1988, -1989, -1990, -1991, -1992). The Applicant was represented by Aaron Mayer, Esquire.

On October 9, 2014, the Applicant plead guilty as indicted. The Applicant was sentenced by the Honorable Rodger M. Young, Sr. to incarceration for a period of ten (10) years for each count of trafficking cocaine. The sentences were to be served concurrently. The Applicant did not appeal his conviction or sentence.

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

1. Lack of evidence to support a conviction
  - a. Defendant couldn't be positively identified on videotapes
2. Ineffective Assistance of Counsel before, during, and after hearing
  - a. Counsel failed to file an appeal and challenge important questions
3. Unequivocal(sic) constitutional issues (rights violated)
  - a. Evidence was unconstitutional of an alleged prior bad act to support a conviction against the defendant.

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea

*#2*  
*SBT*  
counsel.

#### SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he hired Mr. Aaron Mayer, Esquire as his second attorney, after his case had already been put on the trial docket. Applicant testified that he met with Counsel and he thinks Counsel reviewed the video with him, but he did not recall hearing any audio recordings. Further, Applicant stated that if he did review audio it probably was with his previous attorney. Applicant also testified he could not remember if there were any discussions about trial or trial strategy. However, Applicant did recall Counsel explaining that if he went to trial he would be facing five (5) separate trials because there were five (5) separate incidents. Applicant stated Counsel informed him about the possible sentence

range and that he was facing life without parole. Applicant also recalled speaking with Counsel about what the state would have to do to prove its case.

Applicant then testified that his case was put on the trial docket again in September and that he didn't think Counsel was ready for trial because he felt Counsel didn't investigate his case sufficiently. Applicant testified that he remembered talking with Counsel about the confidential informant (CI), but did not recall how Counsel would have dealt with him during trial. Applicant also testified he spoke with Counsel about his right to testify and that he would be waiving this right if he pled guilty. Applicant further testified the State did not offer any deals, but he remembered being advised by Counsel to plead guilty. Applicant testified he maybe wanted to go to trial.

23  
On cross-examination, Applicant admitted that he knew how guilty pleas work. Applicant testified that he was sentenced to ten (10) years and understood he was facing a maximum of one hundred and fifty (150) years and would be forced to face trial after trial if he was successful at his PCR hearing. Applicant admitted that Counsel informed him of his constitutional rights and that he would waive these rights if he pled guilty. In addition, Applicant admitted he watched the video once with Counsel. However, Applicant said he just went along with Counsel's advice when pleading guilty.

On re-direct examination, Applicant testified that he was scared and was forced to plead guilty.

Counsel testified that he was consulted on June 9, 2014 and then retained to represent Applicant on August 28, 2014. Counsel also stated that he was retained rather late in the case and was the second or third lawyer on the case. Counsel remembered this case consisted of five separate incidents, but overall was one sting operation by the Bureau of Alcohol Tobacco and

Firearms (ATF) that included a CI. Counsel testified that he remembered four audio recordings and one video recording relating to this matter. Counsel testified he remembered taking a copy of the discovery materials to the Applicant and leaving it with him. Counsel also stated that during his meetings with the Applicant he reviewed the audio/video evidence on his laptop. Counsel stated that after reviewing all the evidence, and the fact that Applicant was facing life without parole, it was his recommendation to that Applicant plead guilty.

Counsel mentioned the issues relating to the delay in charging the Applicant. Specifically, Counsel mentioned the fact that the incidents occurred in 2010 and Applicant was not charged until 2013. However, Counsel stated he still advised Applicant to plead guilty.

Counsel explained that this was a tough case to win given all the evidence the State had against the Applicant. Specifically, Counsel explained that since the CI drove with the federal agent and observed all five (5) incidents it made the case was "much tighter." Counsel even noted that although the federal agent had some credibility issues there was still substantial evidence against the Applicant.

On cross examination, Counsel again stated he met with the Applicant a few times, "maybe two to three", at the jail to discuss the charges, relevant sentence ranges, and evidence the state had against him. Counsel testified that Applicant understood their discussions. Counsel further testified that Applicant did not ask for an appeal and he never heard from Applicant about an appeal. Counsel concluded his testimony by stating he didn't force Applicant to plead guilty and that he is not required to discuss with Applicant that he must serve 85% of his sentence.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to

observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

### Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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. With respect to guilty plea counsel, the Applicant

must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

The Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all the charges and sentences the charges carried. Specifically, Counsel testified he discussed the discovery materials with Applicant and it was his practice to review the audio and video evidence with Applicant. Applicant later testified that he did in fact review the video with Counsel. This Court finds Applicant made the decision to plead guilty on his own accord with the help of counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

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

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes that Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

#### CONCLUSION

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

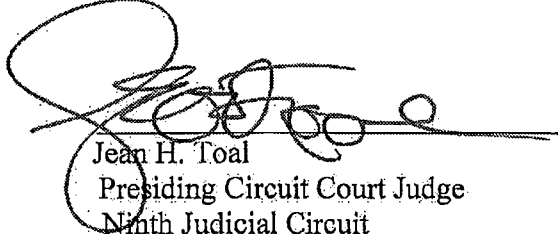
established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notified the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED!**

  
 Jean H. Toal  
 Presiding Circuit Court Judge  
 Ninth Judicial Circuit

#7  
 Sept 29, 2016  
 Charleston, South Carolina

2758

2014-CP-10-3792

CDD20140100005

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2010028962

ARREST WARRANT NUMBER

2013A1021002209

DATE OF ARREST

January 16, 2014

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury  
Date: *[Signature]*

APR 10 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1001992

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2014

THE STATE

vs.

DARIUS D BARNWELL

DOB: 1984

B/M

Indictment for

Trafficking Cocaine



CDD20140100005

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2010028962

ARREST WARRANT NUMBER

2013A1021002208

DATE OF ARREST

January 16, 2014

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury  
Date: *[Signature]*

APR 08 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1001991

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2014

THE STATE

vs.

DARIUS D BARNWELL

DOB: 1984

B/M

Indictment for

Trafficking Cocaine



CDD20140100005

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2010028962

ARREST WARRANT NUMBER

2013A1021002207

DATE OF ARREST

January 16, 2014

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury  
Date: 

APR 08 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1001990

The State of South Carolina

County of Charleston


COURT OF GENERAL SESSIONS

April Term 2014

THE STATE

vs.

DARIUS D BARNWELL

DOB: 1984 

B/M

Indictment for

Trafficking Cocaine

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

INDICTMENT

At a Court of General Sessions, convened on April 7, 2014 the Grand Jurors of Charleston County present upon their oath:

**Trafficking Cocaine**

That in Charleston County, South Carolina, on or about July 22, 2010, the Defendant, DARIUS D BARNWELL, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of 10 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

  
\_\_\_\_\_  
CULVER KIDD  
ASSISTANT SOLICITOR

CDD20140100005

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2010028962

ARREST WARRANT NUMBER

2013A1021002206

DATE OF ARREST

January 16, 2014

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury Date: APR 0 2014

VERDICT

Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2014GS1001989

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2014

THE STATE

vs.

DARIUS D BARNWELL

DOB: 1984

B/M

Indictment for

Trafficking Cocaine

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON    )

## INDICTMENT

At a Court of General Sessions, convened on April 7, 2014 the Grand Jurors of Charleston County present upon their oath:

**Trafficking Cocaine**

That in Charleston County, South Carolina, on or about August 2, 2010, the Defendant, DARIUS D BARNWELL, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of 10 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

  
\_\_\_\_\_  
CULVER KIDD  
ASSISTANT SOLICITOR

CDD20140100005

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2010028962

ARREST WARRANT NUMBER


2013A1021002204

DATE OF ARREST

January 16, 2014

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury  
Date: 

APR 08 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1001988

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2014

THE STATE

vs.

DARIUS D BARNWELL

DOB: 1984-

B/M

Indictment for

Trafficking Cocaine

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

INDICTMENT

At a Court of General Sessions, convened on April 7, 2014 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about August 27, 2010, the Defendant, DARIUS D BARNWELL, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of 28 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

  
\_\_\_\_\_  
CULVER KIDD  
ASSISTANT SOLICITOR