

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Michael G. Nettles, Circuit Court Judge

JERMAINE L. COBBS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002629

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY 2012-GS-08-1722
 2012-GS-08-1724
 2012-GS-08-1787

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
) December 20, 2012
JERMAINE COBBS,)
) Charleston, South Carolina
) Defendant.)

B E F O R E:

The Markley R. Dennis, Jr., Judge.

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

Bryan Alfaro, Assistant Solicitor
Attorney for the State

William Thrower, Esquire
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (December 20, 2012.)

2 THE COURT: You are Jermaine Cobbs?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Cobbs, I have two indictments
5 present with your lawyer. Has he explained these charges
6 to you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And the possibility of punishment
9 for each one?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Apparently he's negotiated a
12 sentence for you as well; is that correct, which you're
13 asking me to impose.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What are the terms of the
16 negotiated sentence, Solicitor?

17 MR. ALFARO: Well, Your Honor, he should be
18 pleading to three indictments, actually.

19 THE COURT: Okay. I beg your pardon.

20 MR. ALFARO: Indictment 2010-GS-08-1722 is
21 trafficking cocaine, 200 to 400. He's pleading to the
22 lesser included of trafficking cocaine 28 to 100 for a
23 negotiated 18 -- first offense, for a negotiated 18-year
24 sentence.

25 THE COURT: And that carries -- what's th

1 range on that?

2 MR. ALFARO: That carries 17 to 25 years.

3 THE COURT: You agree with that?

4 MR. THROWER: Unfortunately, yes, sir.

5 MR. ALFARO: And the other indictment,
6 2010-1724 is for distribution of cocaine first. We're
7 recommending time served on that one, since, obviously,
8 the trafficking is going to be the controlling
9 indictment, and there's an additional 2012-1787 which is
10 trafficking cocaine, 10 to 28 grams. He's pleading to
11 the lesser included possession with intent to distribute
12 cocaine second offense. That carries five to thirty, so
13 we're asking for a concurrent 18 on that as well.

14 THE COURT: Okay. Is that your
15 understanding, Mr. Cobbs?

16 THE DEFENDANT: Yes.

17 THE COURT: Understanding, Mr. Cobbs, if I
18 accept the negotiated sentence on 2010-1722, which is
19 trafficking and you're pleading to the lesser included
20 offense of 28 to 100 grams because you were indicted for
21 200 to 400 grams; do you understand that? Do you
22 understand I would impose an 18-year sentence? How do
23 you plead?

24 THE DEFENDANT: Guilty.

25 THE COURT: Indictment 2012-1787 was an

1 indictment charging you with the offense of trafficking
2 cocaine and you're pleading to a lesser included offense
3 of possession with intent to distribute cocaine, second
4 offense; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand that while
7 that normally could carry a potential 30-year sentence, I
8 could possibly impose an 18-year sentence and run it
9 concurrent. How do you plead?

10 THE DEFENDANT: Guilty.

11 THE COURT: Indictment 2010-1724 charges you
12 with distribution of cocaine, first offense, and that
13 would be the negotiated time served; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And how much time have you
16 served?

17 THE DEFENDANT: 27 months.

18 MR. THROWER: Between the house arrest with
19 the monitor and jail, he's got 27 months.

20 THE COURT: Okay. And how do you plead on
21 that one?

22 THE DEFENDANT: Guilty.

23 THE COURT: Totally satisfied with your
24 lawyer?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Thrower, have you had the
2 opportunity to investigate this matter fully on your
3 client's behalf, sir?

4 MR. THROWER: Yes, sir, spent a great deal of
5 time on it.

6 THE COURT: You've shared with him the
7 results of his investigation?

8 MR. THROWER: Yes, sir, I have.

9 THE COURT: He indicated a desire to enter a
10 plea but has requested, of course, that you attempt to
11 negotiate the best arrangements you could for him?

12 MR. THROWER: Correct.

13 THE COURT: The record now reflects the
14 results of your efforts in that regard?

15 MR. THROWER: I believe it does, yes.

16 THE COURT: Do you believe the negotiated
17 sentence to be in your client's best interest?

18 THE DEFENDANT: Absolutely.

19 THE COURT: Based on your investigation, do
20 you concur with his decision to enter the guilty pleas in
21 each case?

22 MR. THROWER: I do.

23 THE COURT: He's been advised of the
24 consequences of my accepting the negotiated sentence?

25 MR. THROWER: Yes, sir.

1 THE COURT: And the rights that he would be
2 relinquishing?

3 MR. THROWER: Correct.

4 THE COURT: In your opinion, he fully
5 understands and appreciates both?

6 MR. THROWER: Yes, sir, he does.

7 THE COURT: Mr. Cobbs, is that true, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Then you understand and realize
10 if I accept your plea, you give up your right to have a
11 jury trial, the right to confront the witnesses against
12 you, and the right to remain silent?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anyone threatened you in any
15 way to get you to plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anyone promised you anything
18 to get you to plead guilty?

19 THE DEFENDANT: No, sir.

20 THE COURT: Other than the promises, of
21 course, contained in the negotiation sentence.

22 Tell me the facts, please, Solicitor.

23 MR. ALFARO: Thank you, Your Honor.

24 Regarding the distribution charge, 2010-1724, on August
25 4, 2010 Berkeley County sheriff deputies used

1 confidential informant to purchase cocaine from the
2 defendant's business at 103 Highway 78 in the Summerville
3 area of Berkeley County. That's Motor Sports Hobbies,
4 defendant's business. At that time the defendant sold a
5 confidential informant 14.1 grams of cocaine.

6 Subsequent to that, sheriff's deputies on
7 August 6th secured a search warrant for defendant's
8 business. During the course of execution of the search
9 warrant, defendant was Mirandized. He told deputies
10 where the cocaine was located in and around the business
11 and also at his home.

12 Another search warrant was obtained for
13 defendant's residence. During the course of those two
14 search warrants, deputies found 19.6 grams of cocaine in
15 12 separate baggies at the defendant's business, and at
16 the defendant's residence, they found 310.4 grams of
17 cocaine in four baggies spread throughout the house.

18 Regarding the possession with intent to
19 distribute second, 2012-1787, on June 14th, 2012,
20 sheriff's deputies executed another search warrant of the
21 defendant's residence after a previous controlled buy.
22 Defendant had a baggy of cocaine on his person, as well
23 as an additional 3 bags of cocaine were found in
24 defendant's home. Total SLED weight tested cocaine was
25 20 grams.

1 His prior record is a 1997 DUI, 1998
2 shoplifting, and a 1999 possession of cocaine. Also, for
3 purposes of the record, as far as the negotiation, there
4 are ten additional charges that are being dismissed as
5 part of this negotiation. This plea will wrap up all of
6 his pending Berkeley County charges.

7 THE COURT: Very well. Are those facts
8 correct, Mr. Cobbs?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you truthfully responded to
11 all my questions, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you fully understood my
14 questions and given me complete answers?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you today under the influence
17 of any alcohol or any medication?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you been treated in past for
20 any emotional problems, any mental illness?

21 THE DEFENDANT: No, sir.

22 THE COURT: And you've had sufficient time to
23 talk with your lawyer and consider the negotiated
24 sentence?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And is it is your desire that I
2 accept and impose that sentence?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You understand and realize that I
5 will be relying on your responses here today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I believe the plea to be freely,
8 voluntarily, and intelligently made. I find there is a
9 sufficient factual basis to support the plea, and I find
10 that Mr. Cobbs has had the benefit of very competent
11 counsel and he's indicated he's totally satisfied with
12 his representation, so I will accept the plea and I'll be
13 happy to hear from you as to why I should impose the
14 negotiated sentence, Mr. Thrower.

15 MR. THROWER: Mr. Cobbs is 39 years old. As
16 you heard, the only record he has is possession of
17 cocaine. He is looking at the possibility of some severe
18 consecutive sentences if he doesn't accept responsibility
19 for it.

20 I've worked extensively with Mr. Alfaro. Mr.
21 Cobbs has not only accepted responsibility for everything
22 he's done, he's not contesting the forfeitures. He's
23 letting -- a great deal of his personal property was
24 seized, and he's agreed to forfeit that, and he was --
25 and I don't know, his second arrest in 2012 was just --

1 you know, I don't know. He got in a horrible jam in
2 2010, financially, was trying to get out of it, was
3 starting to get out of it, and then, of course, he
4 faltered again.

5 But to look at it overall, 38 years old and
6 this is really the first significant trouble he's ever
7 been in, I think it's a good way for him to kind of put
8 this to rest without taking the chance of spending the
9 rest of his life in jail. Again, he's accepted
10 responsibility. He's walking in here taking 18 years,
11 and he's not contesting any of the forfeitures, so all
12 we're asking is that you please impose the sentence and
13 give him credit for time he's already done.

14 His father is in the courtroom. First of
15 all, there was the shock over this, and now they're still
16 going to support him and do whatever they can to help
17 him.

18 THE COURT: Mr. Cobbs, anything you wish to
19 add, sir?

20 THE DEFENDANT: I mean, I made a mistake. I
21 had a business, and things was kind of tough for me,
22 supporting my family and myself, and I just made a
23 mistake. I'm sorry.

24 THE COURT: You understand, and your lawyer
25 has discussed it with you, the fact that the trafficking

1 and the possession with intent to distribute cocaine
2 second are violent offenses. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand they are
5 serious offenses and what that means, that term? They're
6 strikes; do you understand? You understand that both of
7 those are non-parolable offenses? You'll serve 85
8 percent of the 18-year minimum; do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And there is a two-year community
11 supervision program that you have to successfully
12 complete if you're released after 85 percent; do you
13 understand that? And that you could be returned up to a
14 year at a time until you satisfy the balance of your
15 sentence; do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If you violate that community
18 supervision, do you realize that, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I'll accept the negotiated
21 sentence. Thank you.

22 It is the sentence of the Court on indictment
23 2012-1777 and 2010-1722, it's 18 years on each of those.
24 They are concurrent, and you're given 27 months of credit
25 time that you've served.

1 Sentence of the Court on 2010-1724 is 27
2 months, and I give you credit for 27 months time served
3 on that sentence, and it likewise, of course, is
4 confirmed. Good luck to you, sir.

5 MR. THROWER: Thank you very much.

6 - - -

7 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE OF SOUTH CAROLINA

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MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

V.

JERMAINE COBB,

Defendant.

MOTION FOR RECONSIDERATION OF
SENTENCE

2012GS081787, 2012GS0801722
2010GS0801727

YOU WILL PLEASE TAKE NOTICE that the above-captioned Defendant, by and through the undersigned attorney, moves this Honorable Court for a reconsideration of the sentence of 18 years imposed on the defendant on December 20, 2012 by the Honorable Markley Dennis.

The within motion will be made upon the grounds that the sentence imposed is unnecessarily severe under the circumstances, and upon such other and further grounds as may be hereinafter presented.

Respectfully submitted,

William J. Thrower
William J. Thrower, Esquire
Attorney for the Defendant
6 Carriage Lane, Suite A
Charleston, SC 29407

Charleston, South Carolina
December 21, 2012

W. J. Thrower
501

W. J. Thrower

FORM 5

STATE OF SOUTH CAROLINA)
)
County of BERKELEY)
)
Jermaine L. Cobbs, #353719)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)
)
)

IN THE COURT OF COMMON PLEAS

2016-CP-08-593

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Berkeley County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012-GS-08-01787
(b) 2010-GS-08-01722

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MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY

(c) 2010-GS-08-01724

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

(a) December 20, 2012; Eighteen (18) Years

(b) December 20, 2012; Eighteen (18) Years

(c) December 20, 2012; Twenty-Seven (27) Years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(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. NA

ii.

iii.

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

i. NA

ii.

iii.

(c) the date of each such result:

i. NA

ii.

iii.

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

i. NA

ii.

iii.

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

(a) Pleading guilty prevented Plaintiff from Appealing the conviction

(b)

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment response to Number 11a
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? 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? Yes
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. Motion for reconsideration of Sentence.
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Berkeley County Court of General Sessions
- ii. _____
- iii. _____
- iv. _____

Response to 11a

Plaintiff's first attorney was Mike Bosnak. Plaintiff fired Attorney Bosnak due to a disagreement over legal strategy. After firing Attorney Bosnak, Plaintiff hired Attorney Steve David. Soon after hiring Attorney Davis, Plaintiff fired him in order to hire William Thrower, Esquire. Plaintiff hired Attorney Thrower pursuant to an inmate's reference. Attorney Thrower informed Plaintiff that he could negotiate a plea deal where Plaintiff would plead to only one (1) charge and be sentenced to approximately seven (7) years in the penitentiary with credit for time served. Furthermore, Attorney Thrower informed Plaintiff that at that time Plaintiff would be required to wear an ankle monitor which would be included in the time-served calculation. During a meeting, Attorney Thrower told Plaintiff the he would only be required to serve sixty-five percent (65%) of his sentence. At the plea hearing much to his surprise, Plaintiff pled to three (3) charges, not to the one (1) charge Attorney Thrower initially suggested. Plaintiff was sentenced to eighteen (18) years for two (2) charges and twenty-seven (27) months for the final charge; to be served concurrently and credited with time served. However, the time Plaintiff wore the ankle monitor was not included in the time served calculations. Additionally, Plaintiff was informed at the sentencing that he would be required to serve at least eight-five percent (85%) of his sentence, as opposed to the sixty-five percent (65%) promised by Attorney Thrower. Finally, Attorney Thrower's legal strategy was to depend on his contacts, networking and pull within the legal community. During his representation of Plaintiff, Attorney Thrower never discussed with Plaintiff the evidence of the case and potential strategies to be used during his defense. Much of the meetings consisted of attorney Thrower explaining to Plaintiff how close Attorney Thrower was with the Solicitor and Judge and how he could use those friendships to get Plaintiff a better deal. In fact, Attorney Thrower only met with and/or contacted Plaintiff three (3) times in preparation of this case. Attorney Thrower relied only on his contacts, and made no attempts to examine the evidence of the case.

- (c) the disposition thereof:
- i. Judge denied motion
 - ii.
 - iii.
 - iv.
- (d) the date of each such disposition:
- i. May 6, 2015
 - ii.
 - iii.
 - iv.
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NA
 - 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. NA
 - ii.
 - iii.
- (b) the proceedings in which each ground was raised:
- i. NA
 - ii.
 - iii.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
Jermaine L. Cobbs, #353719,	)	Case No.: 2016-CP-08-0593
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction ("PCR") filed on March 9, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted at the October 2010 term of the Berkeley County Grand Jury for trafficking cocaine, 200-400 grams, first offense (2010-GS-08-1722), and distribution of cocaine, first offense (2010-GS-08-1724). Applicant was subsequently indicted in September 2012 for trafficking cocaine, 10-28 grams (2012-GS-08-1787). William Thrower, Esquire, represented Applicant. Brian Alfaro, Esquire, represented the State. On December 20, 2012, Applicant pleaded guilty before the Honorable R. Markley Dennis, Jr. to the lesser included offenses of trafficking cocaine, 28-100 grams, first offense, and possession with intent to distribute cocaine, second offense, and as indicted to distribution of cocaine, first offense. Pursuant to a negotiated sentence, Judge Dennis sentenced Applicant to imprisonment for concurrent terms of eighteen years each for trafficking cocaine and possession with intent to

distribute cocaine, and to time-served for distribution of cocaine.

Applicant filed a motion to reconsider on March 19, 2013. During the pendency of the motion to reconsider, Applicant filed an application for post-conviction relief (2013-CP-08-2751). Judge Dennis issued an order dismissing that application without prejudice on April 15, 2015. Judge Dennis thereafter denied the motion to reconsider on July 16, 2015. Applicant did not appeal his guilty plea or sentence.

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

II.

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

1. "Ineffective Assistance of Counsel," in that:
 - a. Plea counsel informed Applicant he could "negotiate a plea deal where [Applicant] would plead to only one charge and be sentenced to approximately seven years . . . with credit for time served.
 - b. Counsel informed Applicant that at that time Applicant "would be required to wear an ankle monitor which would be included in the time-served calculation."
 - c. Counsel told Applicant he would only be required to serve 65% of his sentence.
 - d. Applicant pleaded to three charges instead of one.
 - e. The time Applicant wore the ankle monitor was not included in the time-served calculations. Applicant was informed at the sentencing that he would be required to serve at least 85% of his sentence, as opposed to the 65% promised by plea counsel

- f. Plea counsel never discussed with Applicant the evidence of the case and potential strategies to be used during his defense.
- g. Plea counsel only met with or contacted Applicant three times in preparation of this case.
- h. Plea counsel relied only on his contacts, and made no attempts to examine the evidence of the case.”

III.

Applicant asserts he received ineffective assistance of counsel. Respondent submits this allegation is without merit, but requests an evidentiary hearing to fully resolve the issue. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington. 466 U.S. 668. See also Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). “The two-part test adopted in Strickland also applies to challenges to guilty pleas based on ineffective assistance of counsel.” Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011). Pursuant to this test, the applicant “must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice.” Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014).

To prove deficiency, the applicant must show that counsel’s performance “fell below an objective standard of reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is

whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

To satisfy the prejudice requirement with respect to guilty plea counsel, Applicant “must show that there is a reasonable probability that, but for counsel’s deficient performance, “he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52 (1985); Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Respondent submits that Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that are not conclusively refuted by the record. Therefore, 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.

Each and every allegation not expressly admitted, qualified, or explained herein is denied.

[conclusion and signature block on following page]

V.

WHEREFORE, the Respondent requests that an evidentiary hearing be held for the purpose of determining whether Applicant received ineffective assistance of counsel.

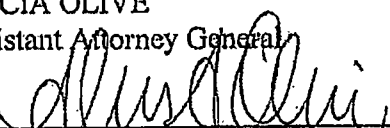
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

ALICIA OLIVE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

March 29, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2016-CP-08-0593
JERMAINE COBBS, #353719,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Eduardo K. Curry, Esquire
The Curry Law Firm, LLC
PO Box 42270
North Charleston, SC 29423

DATED this 29th day of March, 2017.


Brianna Arnone, Legal Assistant
For Respondent

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF BERKEELEY

JERMAINE COBBS, #353719

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2011-CP-08-593

Amended

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence BERKELEY COUNTY COURT
OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-08-01787
 - (b) 2010-GS-08-01722
 - (c) 2010-GS-08-01724
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) DECEMBER 20, 2012; EIGHTEEN (18) YEARS

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MARY P. BISHOP
CLERK OF COURT
BERKELEY COUNTY

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- (b) DECEMBER 20, 2012; EIGHTEEN (18) YEARS
- (c) DECEMBER 20, 2012; EIGHTEEN (18) YEARS
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) PLEADING GUILTY PREVENTED PLAINTIFF FROM APPEALING THE CONVICTION.
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANT OF COUNSEL
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT TO NUMBER 11A
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? 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? YES
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. MOTION TO RECONSIDERATION OF SENTENCE
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. BERKELEY COUNTY COURT OF GENERAL SESSIONS
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. JUDGE DENIED MOTION.

RESPONSE TO 11A

Attorney Thrower informed Plaintiff that he could negotiate a plea deal where Plaintiff would plead to only one(1) charge and be sentenced to approximately seven (7) years in the penitentiary with credit for time served. Furthermore, Attorney Thrower informed Plaintiff that at that time, Plaintiff would be required to wear an ankle monitor which would be included in the time served calculation. During a meeting, Attorney Thrower told Plaintiff that he would only be required to serve sixty-five percent (65%) of his sentence. At the plea hearing much to his surprise, Plaintiff pled to three charges (3), not to the one (1) charge Attorney Thrower initially suggested. Plaintiff was sentenced to eighteen years (18) for two (2) charges and twenty-seven (27) months for the final charge; to be served concurrently and credited with time served. Additionally, Plaintiff was informed at the sentencing that he would be required to serve at least eighty-five percent (85%) of his sentence, as opposed to the sixty-five percent (65%) promised by Attorney Thrower.

Attorney Thrower only met with and/or contacted the Plaintiff three (3) times in preparation of this case. Attorney Thrower made no attempts to examine the evidence of the case.

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. MAY 6, 2015

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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. N/A

ii. _____

iii. _____

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

i. N/A

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) _____

(b) _____

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
 - (b) your trial, if any? N/A
 - (c) your sentencing? YES
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES
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. WILLIAM J. THROWER, ESQUIRE: 6 CARRIAGE LANE, STE. A, CHARLESTON, SC 29407
 - ii. STEVE DAVIS, ESQUIRE: P.O. BOX 1168, MONCK'S CORNER, SC 29461
 - iii. MIKE BOSNAK, ESQUIRE: 749 JOHNNIE DODDS BLVD., STE. C, MT. PLEASANT, SC 29464
 - (b) the proceedings at which each such attorney represented you:
 - i. THE GUILTY PLEA, SENTENCING, AND POST-JUDGMENT MOTION
 - ii. NEGOTIATIONS
 - iii. ARRAINGMENT AND NEGOTIATIONS
19. State clearly the relief you seek in filing this application:
- PLAINTIFF SEEKS THE OVERTURNING OF HIS CONVICTION OR, IN THE ALTERNATIVE, A REDUCTION OF HIS SENTENCE.
20. Are you now under sentence from any other court that you have not challenged?
- NO

STATE OF SOUTH CAROLINA

County of BERKELEY

2017-CP-08-593
VERIFICATION

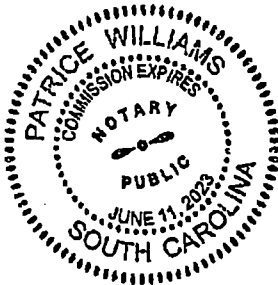
I, JERMAINE COBBS, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that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

Jermain T Cobbs

SWORN to and subscribed before me this 1st
day of November, 2017.

Patrice Williams (L.S.)
Notary Public

My Commission Expires: 6/11/23



MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

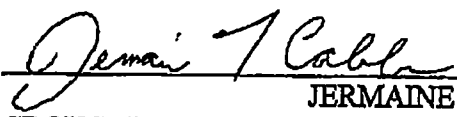
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FILED

2017-CP-08-593

CONCLUSION

For the following reasons, the Applicant's conviction should be reverse and a new trial should be granted.



JERMAINE L. COBBS
MACDOUGALL CORRECTIONAL INSTITUTION
1516 OLD GILLIARD ROAD
RIDGEVILLE, S.C. 29472

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2017 NOV -2 PM 4:31

FILED

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BERKELEY NINTH JUDICIAL CIRCUIT
2016-CP-08-0593

JERMAINE COBBS,
APPLICANT,
VS.

THE STATE OF SOUTH
CAROLINA,
RESPONDENT.

)
)
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)

TRANSCRIPT OF
RECORD

DECEMBER 4, 2017
MONCKS CORNER, SC

B E F O R E:

HONORABLE MICHAEL NETTLES

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

JULIE COLEMAN, ESQUIRE
Attorney for the Respondent

EDUARDO CURRY, ESQUIRE
Attorney for the Applicant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

I N D E X

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POST-CONVICTION RELIEF HEARING 3

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Gentry Jamison 43

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BY MS. COLEMAN 66

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APPLICANT'S EXHIBIT MARKED ADMITTED

1-transcript 11

2-motion for

reconsideration 20 21

1 (The following proceedings were held
2 December 4, 2017, Berkeley County, South Carolina,
3 @ 3:35 p.m.)

4 MS. COLEMAN: This is Jermaine Cobbs
5 versus the State of South Carolina, docket number
6 2016-CP-08-0593. Applicant is presently confined
7 in the South Carolina Department of Corrections
8 pursuant to orders of commitment of the Berkeley
9 County Clerk of Court.

10 The applicant was indicted at the
11 October 2010 term of the Berkeley County grand jury
12 for trafficking in cocaine 200 to 400 grams first
13 offense and distribution of cocaine first offense.
14 Applicant was subsequently indicted in September
15 2012 for trafficking cocaine 10 to 28 grams.
16 William Thrower, Esq. represented the applicant on
17 the charge. Brian Alfaro prosecuted the case. On
18 December 20th, 2012, applicant pled guilty before
19 the Honorable R. Markley Dennis, Jr. to the lesser
20 included offenses of tracking cocaine 28 to 100
21 grams first offense and possession with intent to
22 distribute cocaine second offense and as indicted
23 to distribution of cocaine first offense.

24 Pursuant to a negotiated sentence Judge
25 Dennis sentenced applicant to imprisonment for

1 concurrent terms of 18 years each for trafficking
2 cocaine and possession with intent to distribute
3 cocaine and to time served for distribution of
4 cocaine. Applicant filed a motion to reconsider on
5 March 19th, 2013. During the pendency of the
6 motion to reconsider applicant filed an application
7 for post-conviction relief.

8 Judge Dennis issued an order dismissing
9 that application without prejudice on April 15th,
10 2015, until his motion to reconsider was resolved.
11 Judge Dennis thereafter denied the motion to
12 reconsider on July 16th, 2015, and applicant did
13 not appeal his guilty plea or sentence.

14 Applicant filed a timely second
15 application for post-conviction relief on
16 March 9th, 2016, alleging that he was being held in
17 custody unlawfully based on several allegations of
18 ineffective assistance of counsel. The State filed
19 its return on March 29th, 2017, and applicant filed
20 an amended application on November 2nd, 2017, which
21 you should have in your judge's packet. He is
22 present today represented by Mr. Eduardo Curry.

23 THE COURT: Mr. Curry, good to see you.
24 I will hear from you as far as if you can enumerate
25 for the record the grounds for your application for

1 relief.

2 MR. CURRY: Yes, Your Honor. If it
3 please the Court, I'm here representing Mr. Cobbs.
4 Judge, on the original we had filed the
5 particularities on the return and then we had some
6 -- my client actually had some amended ones that he
7 wanted to actually make so I can read -- I think
8 you have in the record what he originally raised.
9 I can read them out to you, Judge. Your Honor --

10 THE COURT: Have you had an opportunity
11 to go over his original application? And what I
12 want to hear from you, that's the reason I am
13 asking you what grounds do you intend on pursuing
14 here today?

15 MR. CURRY: Ineffectiveness, the ground
16 with regard to the information regarding the
17 sentencing range, the information with regard to
18 whether or not he in some way told the client and
19 his parents inaccurate information regarding the
20 sentence range to induce him to plea, whether or
21 not the attorney actually did proper investigation
22 with regard to the tipster, credibility of the
23 witnesses investigation, how often the defense
24 attorney saw Mr. Cobbs with regard to seeing him,
25 the finding of the reconsideration, what were the

1 grounds with it, they were nebulous and that was a
2 motion that was made. So those are the particular
3 areas that we were going to address, Your Honor,
4 succinctly.

5 I saw Mr. Cobbs last week to make sure
6 that those were his areas and I have got them
7 written down as those six that he wanted to cover
8 in addition to what he raised in his original PCR
9 that was addressed in the return by the State.

10 THE COURT: You may proceed.

11 MR. CURRY: Thank you very much, Your
12 Honor. I would call to the stand Mr. Jermaine
13 Cobbs.

14 THE COURT: Is Mr. Davis still here?

15 MS. COLEMAN: Yes.

16 THE COURT: Tell him he needs to remain
17 around to testify in the subsequent hearing.

18 MS. COLEMAN: He has another case on
19 the docket today as well.

20 THE COURT: I think we are going to
21 address that after this hearing.

22 MR. CURRY: Judge, I am at your
23 discretion. Do you want me to wait until you --

24 THE COURT: No. We are in good shape.
25 I was wanting to insure Mr. Davis was here to

1 testify concerning that other matter.

2 MR. CURRY: Yes, Your Honor.

3 THE COURT: But we will focus on this
4 case. We know what the grounds are. You are
5 recognized. Call your first witness.

6 MR. CURRY: Thank you, Your Honor.
7 Please the Court, call Mr. Jermaine Cobbs.

8 THE COURT: Mr. Cobbs, please come
9 forward.

10 JERMAINE COBBS

11 having been duly sworn, testifies as follows:

12 THE CLERK: Please state your full name
13 for the record and spell your last name.

14 THE WITNESS: Jermaine Cobbs,
15 C-O-B-B-S.

16 MR. CURRY: Also before we get started
17 can we make a motion to address all the issues?

18 THE COURT: Yes.

19 DIRECT EXAMINATION

20 BY MR. CURRY:

21 Q. Mr. Cobbs, where are you presently
22 residing?

23 A. MacDougall.

24 Q. What are you there for?

25 A. What am I there for? My charges,

1 trafficking in cocaine.

2 Q. All right. And did you plead guilty to
3 those charges?

4 A. Yes, sir.

5 Q. What date did you plead guilty?

6 A. December the 20th. I think. Been so
7 long. The 20th.

8 Q. What year?

9 A. 2012.

10 Q. At that time were you represented by
11 counsel?

12 A. Yes.

13 Q. And who was that counsel?

14 A. Mr. William Thrower.

15 Q. And is Mr. William Thrower in the
16 courtroom?

17 A. Yes.

18 Q. Can you point him out for me?

19 A. I think that's him right there.

20 Q. Let the record reflect he has
21 identified Mr. Thrower. How did you learn about
22 Mr. Thrower or retain him?

23 A. Through someone that was at the jail
24 with me, an inmate that was in county jail with me.

25 Q. And when did you retain Mr. Thrower or

1 who retained him?

2 A. My parents.

3 Q. What are their names?

4 A. Blondell and Gentry Jamison.

5 Q. Are they in the courtroom?

6 A. Yes.

7 Q. When was your first time that you met
8 Mr. Thrower, Attorney Thrower?

9 A. I don't recall the date, but I met him
10 one time to see if he can help me in my case. He
11 told me yes. The second time he came to see me he
12 asked me about do I have my bank accounts, you
13 know, out there, you know, that's open. Also do a
14 power of attorney which he never did because you
15 did that. Okay. And also he talk about something
16 he know the solicitor and the judge and he could
17 see about getting me like a seven-year plea deal.

18 Q. All right. So you met him how many
19 times from your recollection?

20 A. Three times.

21 Q. All right. And on the third time what
22 happened?

23 A. Third time he came to see me he was
24 like, you know, you are going to court. He came to
25 see me on a Sunday so he was like you know you

1 going to court next Thursday. I was like so what
2 we got, you know? He was like well, they want you
3 to plea to 18 years. I was like 18 years? He was
4 like yeah. I said what happened to seven? You say
5 you were going to talk to your -- the solicitor and
6 the judge because you play golf with them and stuff
7 like that. He was like no, they want you to do
8 18 years, but you only have to do a quarter of that
9 which is four and-a-half years which you already
10 got 27 months credit to you.

11 So with that being said you only have
12 to do 18 months, so I was like or take a chance and
13 spend the rest of your life in prison. So I
14 thought about 18 months or the rest of my life in
15 prison what would be the best option here, you
16 know. So I was like -- thought I was pleading to
17 18 months at the end of the day.

18 Q. And so in the trafficking, what was the
19 drug weight as you know that you were facing?

20 A. I can't recall that right now.

21 Q. Let's get down to it because I'm
22 getting right down to it. You had some issue with
23 regard to whether or not you understood what the
24 trafficking weight was going to be and the amount
25 of criminal exposure with regard to your case; is

1 that correct?

2 A. Can you repeat that?

3 Q. Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 MR. CURRY: Your Honor, may I continue
6 to approach?

7 THE COURT: Yes.

8 (APPLICANT EXH. 1, transcript, was
9 marked for identification.)

10 BY MR. CURRY:

11 Q. Hand to you what's previously been
12 marked applicant's Exhibit No. 1 for identification
13 purposes only. Do you recognize that?

14 A. Plea transcript.

15 Q. It's a plea transcript. Is that your
16 plea transcript?

17 A. I got a copy too. That's identical to
18 the one I ordered.

19 MS. COLEMAN: This should already be a
20 part of the record.

21 MR. CURRY: Judge, I was going to make
22 that motion that be admitted as defense exhibit.

23 THE COURT: The transcript is part of
24 the record.

25 BY MR. CURRY:

1 Q. I want you to go to page 2 and I guess
2 would be line 20 to 25. Do you have that? Are you
3 there yet?

4 A. Yes.

5 Q. I am going to read this to you, start
6 at line 20, Mr. Alfaro, indictment 2010-GS-08-1722
7 as trafficking in cocaine 200 to 400. He's
8 pleading to the lesser included of trafficking in
9 cocaine 28 to 100 for a negotiated 18 -- first
10 offense for negotiated 18-year sentence. That's
11 down to 24; is that correct?

12 A. Correct.

13 Q. Now, you had a problem with that, did
14 you not?

15 A. Yes.

16 Q. What was your problem that you had with
17 that, Mr. Cobbs?

18 A. Because the fact that I was pleading to
19 a lesser included offense, 28 to 100 because in
20 reality 200 to 400 grams carry a mandatory 25 and
21 not life. So that's why I was told that -- I never
22 knew the maximum sentence for the 200 to 400 grams
23 which I was indicted under. I never did know until
24 I did my investigation while I was incarcerated.

25 Q. What did you learn that you had

1 actually been facing in your liability?

2 A. As I learned the lesser included
3 offense is 20 to 100, doesn't carry 17 to 25. It
4 carries 7 to 25. Had I known that from counsel I
5 would have insisted on going to trial.

6 Q. Why would you have insisted on going to
7 trial?

8 A. Because the fact there was a
9 possibility upon conviction I would have been
10 facing either zero or mandatory 25.

11 Q. You have given testimony previously
12 that attorney --

13 A. You know, that I knew about, you know,
14 after my investigation, my own investigation that I
15 was going to be facing mandatory 25.

16 Q. So it was your belief that you were
17 given the wrong information that induced you to
18 plead, correct?

19 A. Yes.

20 Q. And based on that what are you asking
21 the Court to do?

22 A. Either remand or reverse for a new
23 trial or vacate my sentence.

24 Q. Let's move to the next one. You said
25 that Attorney Thrower told you you were facing a

1 minimum seven years; is that correct?

2 A. No, he never told me what nothing was.
3 He just came in there and told me I would be
4 pleading to -- he said seven years when he first
5 met me the second time. But when he came back the
6 third time he said that I would be doing 18 years.
7 So he never did tell me the minimum or maximum
8 number. He just came in with a number and say
9 either take this or go to trial or go to trial and
10 take a chance on getting a life sentence.

11 Q. All right. Let's go to page 3 line 1
12 through 4. Page 3 says, "Mr. Alfaro; It carries 17
13 to 25 years. The Court: You agree with that? Mr.
14 Thrower: Unfortunately yes, sir."

15 So you're saying that based on where
16 you were you were given the wrong information, even
17 your lawyer didn't know what you were facing; is
18 that correct?

19 A. That's correct.

20 Q. Okay.

21 A. He never objected to it.

22 Q. Let's go to page 10 line 5 through 9.

23 Still with me?

24 A. Yes.

25 Q. Are you there yet?

1 A. Yes.

2 Q. It says, "But to look at it overall
3 38 years old and this is really the first
4 significant trouble he's ever been in. I think
5 it's a good way for him to kind of put this to rest
6 without taking the chance of spending the rest of
7 his life in jail. He accepted responsibility.
8 He's walking in here to take 18 years." Why don't
9 tell me what your problem is with that?

10 A. I went to the wrong page. Can you
11 repeat the question again?

12 Q. I read lines 5 through 10 where it
13 talks about Attorney Thrower talking about it's a
14 good way for him to put this to rest without taking
15 the chance of spending the rest of his life in
16 jail. Okay?, Tell the Court what your problem is
17 with that statement and how it relates to your
18 understanding.

19 A. I had an understanding that if I didn't
20 take the 18-year sentence I was facing a life
21 sentence in prison. That was my understanding, you
22 know. So I was like life sentence, you know, or
23 18 months where he explained what the lesser
24 included offense was. So I was like, you know,
25 that's what induced me to plea. Had I known that I

1 wasn't facing a life sentence, I was only facing a
2 maximum mandatory 25.

3 Q. Then you would have done what?

4 A. I would have insisted on going to
5 trial.

6 Q. Were you prepared to go to trial?

7 A. I mean, I really didn't know because
8 counsel like I said, no investigation evidence and
9 stuff like that, to me, really I didn't know what
10 -- have no idea what was going on.

11 Q. So it is your testimony that Attorney
12 Thrower never told you that he investigated the
13 case?

14 A. No, he just told me about all the
15 friends he got in the legal business, the judge and
16 solicitor. They play golf together. They go eat
17 dinner together. That's all he told me about.

18 Q. Were there witnesses in this case?

19 A. Yes.

20 Q. Do you know whether or not those
21 witnesses were contacted by your lawyer?

22 A. No, I don't know nothing. That's what
23 I am trying to say.

24 Q. What about evidence? Do you know
25 whether or not your lawyer saw evidence and told

1 you about the things he saw in the chain of
2 custody?

3 A. The main conversation was talk to the
4 solicitor about seven years and where do I bank, do
5 I have any more banks, any more money, the bank and
6 my power of attorney. And like I said, the second
7 -- third time he came was about the plea deal of
8 taking the 18 instead of facing life in prison.

9 Q. What about credibility of witnesses?
10 Did you talk to your attorney about whether or not
11 the witnesses were credible against you, tipster,
12 confidential informants, hand to hand buys? Were
13 you made aware whether or not they existed or
14 whether or not there was credibility regarding it?

15 A. Like I said, nothing about none of that
16 stuff.

17 Q. Your answer is no?

18 A. No.

19 Q. Other than three times that you saw
20 Attorney Thrower did you see him any other times or
21 speak to him vis-a-vis by telephone?

22 A. I talked to him one time by telephone.
23 He said my -- I am still working on your case, you
24 know, because an inmate called him in the county
25 jail and I was right by. I said hey, Mr. Thrower,

1 I got him on the phone. So he say I am working on
2 your case.

3 Q. So you never saw him any more than the
4 three times?

5 A. Right.

6 Q. And you only spoke to him once on the
7 telephone?

8 A. Right.

9 Q. Y'all never talked about any
10 investigatory acts or mechanisms to be used,
11 correct?

12 A. No.

13 Q. What about filing Brady motions and
14 request for suppression? Do you know whether or
15 not he filed any of those on your behalf?

16 A. I'm not sure. Only how I know about
17 any kind of paperwork he filed on my behalf is when
18 you took my PCR -- got hired to do my PCR and when
19 you made attempts to try to get in touch with him
20 which I got the letters right here when you wrote
21 him several times to try to get in touch with him
22 and the last letter you wrote him you told him if
23 you don't respond to these requests I am
24 subpoenaing you to bring his file to court. And
25 that's when I -- whatever paperwork he gave you,

1 that's how I got it through you basically.

2 Q. Never got any Brady motions? .

3 A. No.

4 Q. Signed by him?

5 A. No.

6 Q. Or anybody else on your behalf; is that
7 correct?

8 A. No, sir.

9 Q. Did you ever get any Rule 5 requests or
10 Rule 5 information regarding the discovery of your
11 case for them for inculcation or exculpation?

12 A. Not through him.

13 Q. Did you get Rule 5 information through
14 any other lawyer?

15 A. Yes, I did, but like I said, other
16 lawyers it was we disagreed about a trial strategy
17 because they did a lot of riffraff and that's why I
18 got rid of -- just they wasn't -- that's why I
19 hired Mr. Thrower because he said he can do better
20 than them.

21 Q. Okay. Now, at some point you got some
22 time. How much did you get?

23 A. I got 18 years.

24 Q. And did you ask Attorney Thrower to
25 file a motion for reconsideration?

1 A. No, I didn't. Only time we had motion
2 for reconsideration pending is when we hired you to
3 do my PCR and then you did some investigation and
4 found out that he had a motion to reconsider filed.
5 And also he never wrote me a letter saying he filed
6 that. And then you have to do a substitution of
7 counsel to have the motion for reconsideration.

8 MR. CURRY: Your Honor, may I approach
9 the witness?

10 THE COURT: Yes.

11 MR. CURRY: This is probably already a
12 part of the record, the motion for reconsideration.
13 I will mark this Defendant's Exhibit 2.

14 (APPLICANT EXH. 2, motion, was marked
15 for identification.)

16 BY MR. CURRY:

17 Q. Hand you what has been previously
18 marked as Applicant's No. 2 for identification
19 purposes. Do you recognize this?

20 A. Yes.

21 Q. As your motion for reconsideration?

22 A. Yes.

23 MR. CURRY: Your Honor, I will ask that
24 it be admitted it as Applicant's No. 2.

25 MS. COLEMAN: No objection.

1 THE COURT: It's into evidence.

2 (APPLICANT'S EXH. 2 in evidence.)

3 BY MR. CURRY:

4 Q. Now, can you read and write?

5 A. Yes.

6 Q. Can you read into the record what was
7 the reason that Attorney Thrower filed the motion
8 for reconsideration on your behalf?

9 A. "The within motion will be made upon
10 the grounds that the sentence imposed is
11 unnecessary, too severe under the circumstances and
12 upon such other further grounds as may be hereafter
13 presented."

14 Q. Okay. And so what did you interpret
15 that to be when you read that?

16 A. It's like to me it's a contradiction
17 because of the fact that he really didn't file that
18 motion for reconsideration until you told him that
19 you was doing my PCR. And then for the records I
20 wrote the clerk of court to ask questions about
21 motion for reconsideration from studying and
22 reading a little bit of law while I was in here in
23 prison. It says that he say he filed it in March
24 of 2013 when I took the guilty plea in
25 December 20th, 2012, which 10 days from the date so

1 really it was filed late. So I made sure I got a
2 copy from the clerk of court saying what the
3 procedures on filing a motion for reconsideration.

4 Q. Let me sort of sum that up for you.
5 You're saying you pled on December 20th of 2012 and
6 that your motion for reconsideration was filed you
7 think outside of the ten days window that it should
8 have been filed?

9 A. Yes.

10 Q. Is that correct?

11 A. Yes. Because of clerk of court says, I
12 got a later saying from the clerk of court saying
13 how the procedures are done. I have the motion for
14 consideration right here.

15 Q. And basically your understanding on the
16 day that you filed it, that's the day that they
17 clock it in, correct?

18 A. Right. That's what she says. It's not
19 what I believe, but it's what she says.

20 Q. It is your position that the motion for
21 reconsideration was filed at least 90 days after
22 your plea in 2012?

23 A. Right.

24 Q. So what does that mean for you then?

25 A. Seems like Mr. Thrower got some kind of

1 guilt on my sentencing because the fact that he
2 really didn't file. He found out that I hired you,
3 because remember you wrote him a letter in February
4 of 2013 stating that you were representing me in
5 the PCR hearing. And then here it goes, I think if
6 I am not mistaken, I got it right here, February
7 you wrote him a letter saying you represent me and
8 in March you wrote him another letter saying he
9 needed to get in touch with you because you were
10 going to file it. And March 15th to be exact. And
11 then here is July the 2nd, that's when you asked
12 about a motion for reconsideration where if you
13 looked at it February is when you told him that you
14 was representing me in a PRC hearing. There go
15 March filed a reconsideration.

16 So my question is why would you do that
17 if that was the best deal you can get me on my
18 guilty plea and you told the judge, the judge asked
19 you in my transcript, said is that the best deal
20 you can get Mr. Cobbs and he said absolutely. So
21 if that's the best deal you can get me why would
22 you file a motion for reconsideration saying it was
23 too severe.

24 Q. All right. Let's get this straight.
25 You did not file a motion after your plea to appeal

1 your plea agreement, did you? Your plea that you
2 put on the record, you didn't file any kind of
3 appeal to that, correct?

4 A. I didn't file anything. Only thing I
5 know is that I got my sentence that day. Mr.
6 Dennis never said nothing about the four and-a-half
7 years so I reach over and I said, Mr. Thrower, I
8 have four and-a-half years, what's going on. He
9 told me he going to talk about -- come in the back
10 to talk about to me this situation and he never
11 showed up.

12 Q. Now, what about your forfeiture? You
13 had some property and properties that were involved
14 in this case, correct?

15 A. Right, a bit of it too.

16 Q. Was anything filed on your behalf
17 regarding that?

18 A. No. Only thing he said he is not
19 contesting none of that, just we got a great deal
20 and let my possessions go.

21 Q. All right. Did you have witnesses that
22 Mr. Thrower could have followed up on to check who
23 they are?

24 A. Yes, my mother and father.

25 Q. Did you see whether or not he spoke to

1 them prior?

2 A. They tried to get in touch with him.
3 They tried to call him. He wouldn't respond. They
4 tried to go by there. They say he wasn't there and
5 as you see how many times you have to write him
6 just to get -- you had to really threaten with a
7 subpoena to get my files.

8 Q. Did you talk to Attorney Thrower about
9 trial strategies or ways to decipher your case for
10 your best interest in a plea?

11 A. No, I haven't -- only thing he came to
12 me and told me what he could do and gave me a
13 price. I paid it and that was it. Seemed like
14 really he didn't help me at all.

15 Q. You went in front of a judge and the
16 judge gave you a colloquy. Colloquy I submit to
17 you as an officer of the court is a line of
18 questioning asking you are you pleading guilty
19 because you are, in fact, guilty. Do you recall
20 that line of questioning, are you under any drugs
21 or alcohol? Do you recall those kind of things?

22 A. Um-hmm.

23 Q. Correct?

24 A. Right.

25 Q. Now, when you answered those questions

1 to the judge what was going on in your mind if you
2 had those kind of misgivings or misthoughts about
3 what advice Mr. Thrower, Attorney Thrower was
4 giving to you at that point? Tell me what was
5 going on?

6 A. What was on my mind? Really either
7 take the guilty plea or go to trial, get a life
8 sentence. And so I was like when it broke down to
9 being I got to do a quarter of that which is 18,
10 27 months credit to me, that would make it
11 18 months I have to do. So 18 months sounded way
12 better than spending years, the rest of my life in
13 prison at an age of 38 years old. So in my mind it
14 was let's take the 18 and go with the 18 months
15 that he claims at the end of the day that's what it
16 was going to be. We go with it, but come to find
17 out that wasn't true.

18 Q. All right. While you are sitting here
19 on the stand you have told me this is your
20 opportunity to talk about any issues. If the judge
21 would allow for indulgence, are there any other
22 things that you have not told me or you told me
23 that I did not cover that you want to mention in
24 front of His Honor today regarding ineffectiveness
25 of your counsel or something that was done that you

1 asked not to do or something that was not done that
2 you asked to do?

3 A. Basically like I said, if I had known
4 the right information on the whole case and
5 investigation, whatever, I would have insisted on
6 going to trial because the State didn't have a case
7 on me and he took no time to investigate that.
8 Like I said, he was more to me like all about
9 saying he got friends and stuff like that, he can
10 make good deals. So he never took a chance to
11 investigate. So like I said, knowing what I know
12 doing my own research I don't see why we didn't go
13 to trial.

14 Q. Okay. Just to follow up on the return,
15 make sure we covered all those things, under
16 (A) (1) (a) which is number 2 on the return you
17 allege that plea counsel informed applicant he
18 could negotiate a plea deal where applicant would
19 plead to only one charge and would be sentenced to
20 approximately seven years and credit for time
21 served. What are you saying about that today?

22 A. That's what he said that I would be --
23 that's what the deal was plea to, one charge which
24 was PWID.

25 Q. How many charges did you plead to?

1 A. I plead to three charges.

2 Q. What three were they?

3 A. It was distribution, trafficking 28 to
4 100, and it started out as trafficking 10 to 28 and
5 they come back and made it PWID the second.

6 Q. (1)(B) you said informed applicant that
7 at the time applicant would be required to wear an
8 ankle monitor which would be included in the time
9 served calculations. What do you say about that?

10 A. I got my 27 months so and really that
11 was the issue that you talked about, I don't know
12 how to calculate it, but they gave me 27 months.

13 Q. Did you have to wear an ankle monitor?

14 A. Yes, I had to wear an ankle monitor for
15 like two years.

16 Q. (C), counsel told applicant he would
17 only be required to serve 65 percent of the
18 sentence.

19 A. Well, that's the one where you could
20 get the 18-year sentence, do a quarter of that and
21 only way -- 65 percent is the only way you can do a
22 quarter of a sentence, you know, and also you won't
23 be -- you would be eligible for parole after my
24 investigation. So really like I said, come to find
25 out none of that stuff was true what he said.

1 Q. 1(D). Applicant pled to three charges
2 instead of one. That's true or false?

3 A. That's true.

4 Q. You were told you were supposed to plea
5 to one?

6 A. To one charge.

7 Q. (E). The time applicant wore the ankle
8 monitor was not included in the time served
9 calculation. Applicant was informed at the
10 sentencing he would be required to serve at least
11 85 percent of the sentence as opposed to 65 as
12 promised by plea counsel. What do you say about
13 that?

14 A. Like I said, you know, I didn't know
15 nothing about 85/65, how the sentence go. Like I
16 said, it is my first time ever being in trouble in
17 the court system, significant trouble really facing
18 prison time. So I never knew or understood
19 anything about 65 or 85 until I got to prison
20 and --

21 Q. On page 3 (F) plea counsel never
22 discussed with applicant the evidence of the case
23 and potential strategies to be used during his
24 defense.

25 A. He never did that. Only thing he

1 talking about was the main thing he worrying about
2 do I got another bank account and the power of
3 attorney which I guess he never did.

4 Q. On (G) you said plea counsel only met
5 with or contacted applicant three times in
6 preparation of his case. We have already discussed
7 that, correct?

8 A. Right.

9 Q. And then (H), plea counsel only relied
10 on his contacts and made no attempt to examine the
11 evidence of the case. What do you say about that?

12 A. He hadn't. Like I said, the only thing
13 he talk with me where my bank money at, whether I
14 had money in the bank. He never told me about this
15 what they got on you or this, that, never told me
16 the maximum or minimum of the charges, just like I
17 said, seven years and if I don't -- and then he
18 turn around and said I got to plea to 18 years and
19 I just got to do a quarter of that. Like I said,
20 again 18 months so that sounds better than 27 years
21 or take a chance on spending the rest of my life in
22 jail if I go to trial.

23 Q. Do you know the difference between a
24 negotiated and non-negotiated sentence or plea
25 deal?

1 A. Now I do, but then I didn't.

2 Q. What do you mean by that?

3 A. Well, negotiated plea is when the
4 judge, solicitor and the lawyer and the client come
5 to agreement on the plea and also the judge didn't
6 have to accept the negotiated plea if he don't want
7 to.

8 Q. But if the judge doesn't accept the
9 negotiated plea based on your understanding what
10 happens?

11 A. He could give me the sentence whatever
12 he wanted, whatever the guidelines go with to my
13 understanding, you know.

14 Q. Right. Is there anything else you
15 would like to put in this court at this point on
16 the record regarding your malcontent, discontent or
17 ineffectiveness of your counsel Attorney Bill
18 Thrower?

19 A. I mean, like I said, if I had competent
20 counsel, you know, if I had a competent counsel, if
21 I had proceeded to trial with a competent counsel
22 that for me advocated the challenge, you know what
23 I am saying, to the State's weak case, the case
24 would have not made it to trial. So basically
25 saying the case is so weak it wouldn't have made it

1 to trial if he did an investigation.

2 Q. Do you recall how long attorney William
3 Thrower was your counsel before you made your plea?

4 A. I think like six months, June to -- I
5 want to say June to December, in that period.

6 Q. Do you not recall or is that what time?

7 A. I am not exact, but it's in that range.

8 Q. Do you have any further things to say
9 before you are examined by the attorney general?

10 A. No.

11 THE COURT: Ms. Coleman.

12 CROSS-EXAMINATION

13 BY MS. COLEMAN:

14 Q. Mr. Cobbs, I want you to think back to
15 the date of guilty plea on December 20, 2012. Do
16 you remember that?

17 A. Yes.

18 Q. The plea judge told you all three
19 charges that you were pleading guilty to, right?

20 A. Yes.

21 Q. And he went through each one of those
22 individually, right?

23 A. Right.

24 Q. Now, you claimed today that you thought
25 you were only pleading to one charge, not all

1 three?

2 A. Right.

3 Q. So why didn't you stop the judge when
4 he went through all three of those charges and say
5 wait a minute, I was only going to plead to one?

6 A. Because the fact that really like I say
7 this is my first significant trouble I been in the
8 court system and really I didn't really know how
9 the court system go on guilty pleas.

10 Q. Were you listening to the questions he
11 was asking you?

12 A. Yes, but Mr. Thrower told me just to go
13 ahead and just yes and no.

14 Q. The plea judge told you that you would
15 have to serve at least 85 percent of the sentence,
16 right?

17 A. Right.

18 Q. And, Your Honor, that's on page 11 at
19 line 7 just for your reference. Do you remember
20 waving your constitutional rights like your right
21 to a jury trial and right to remain silent?

22 A. Right.

23 Q. Do you recall telling the judge that
24 you were satisfied with your attorney at the guilty
25 plea?

1 A. Yes.

2 Q. And you had no complaints against him
3 at the time, right?

4 A. Right.

5 Q. You told the judge that no one was
6 promising you anything or threatening you to plead
7 guilty, right?

8 A. No, the promise was the negotiated plea
9 of 18 years.

10 Q. But other than that nobody was
11 promising you anything to plead guilty?

12 A. No.

13 Q. You told the judge that you were
14 actually guilty of these claims, right?

15 A. I never said I was guilty of these
16 crimes. I just went along with the guilty plea as
17 Mr. Thrower told me to.

18 Q. But you pled guilty to each of the
19 three individual charges, right?

20 A. Right. I mean that's like I said, you
21 know, what he told me, he had said I was going to
22 plead guilty to 18 years. That's what I thought I
23 was going to plea to, really.

24 Q. But there's no question that you
25 committed these crimes, right?

1 A. This is not about if I committed it or
2 not, this is about ineffective counsel.

3 Q. But you pled guilty, you told the Court
4 that you did it, right? And you agreed with the
5 facts as the solicitor stated them on the record;
6 is that right?

7 A. Yes.

8 Q. And that's on page 8, line 7 for your
9 reference. You did get credit for time served on
10 house arrest and in jail, right?

11 A. Right.

12 Q. Twenty-seven months. And you had ten
13 other charges dismissed as part of this guilty
14 plea, remember?

15 A. Yes, that's what he said.

16 Q. So the State had ten other charges
17 against you that they got rid of because you pled
18 guilty to these three charges, right?

19 A. I guess that's the way they worked it
20 out.

21 Q. And if you had gone to trial and been
22 convicted you were facing up to 50 years in prison
23 and if you win today on your PCR you will get a new
24 trial and you will face another 50 years in prison.
25 Is that something you still want to do?

1 A. Yes.

2 MS. COLEMAN: Thank you. Nothing
3 further.

4 THE COURT: Any redirect?

5 MR. CURRY: No.

6 THE COURT: Let me ask you one
7 question. You talk about there being adequate
8 investigation, you have various witnesses. What
9 was your defense?

10 THE APPLICANT: Say again.

11 THE COURT: What was your defense when
12 you talk about investigating, talking with
13 witnesses, preparing a defense. I was asking you
14 what was your defense?

15 THE APPLICANT: Defense for the charges
16 or?

17 THE COURT: For the trial?

18 THE APPLICANT: Really like I said, I
19 haven't discussed -- I didn't have a chance to know
20 anything about a defense. Nobody never discussed
21 the charges.

22 THE COURT: I am not trying to trick
23 you or anything, but you had some time in jail to
24 think about this matter. What would be your
25 defense if you were going to trial before a jury?

1 What would you -- would be your defense?

2 THE APPLICANT: The defense is I never
3 did do a drug sale.

4 THE COURT: Okay.

5 THE APPLICANT: I never did do a drug
6 sale from the start, you know, to actually get to
7 this point.

8 THE COURT: That was my question. What
9 was your defense. All right. You may step down.
10 Thank you, sir.

11 MR. CURRY: Your Honor, I'm going to
12 call Ms. Jamison.

13 THE COURT: Please come forward.

14 BLONDELL JAMISON

15 having been duly sworn, testifies as follows:

16 THE CLERK: Please state your full name
17 and spell your last name.

18 THE WITNESS: Blondell Jamison,
19 J-A-M-I-S-O-N.

20 DIRECT EXAMINATION

21 BY MR. CURRY:

22 Q. Ms. Jamison, you are related to
23 Jermaine Cobbs; is that correct?

24 A. My oldest son, yes.

25 Q. And how old is he?

1 A. Forty-two.

2 Q. And you're also related to Mr. Gentry
3 Jamison; is that correct?

4 A. Yes.

5 Q. And who is he?

6 A. My husband.

7 Q. And do you happen to know Attorney
8 William Thrower?

9 A. Yes, I knew him from -- someone told me
10 about him and I call him. I met him one day.

11 Q. What did you meet him about?

12 A. About representing my son.

13 Q. And do you recall what your son was
14 charged with?

15 A. Drugs.

16 Q. And I guess somebody in your household
17 retained Mr. Thrower; is that correct?

18 A. Excuse me?

19 Q. Someone in your household retained Mr.
20 Thrower?

21 A. Yes.

22 Q. And now at some point did you ever get
23 a chance to meet with Mr. Thrower about your son's
24 case?

25 A. Yes, I did.

1 Q. When did you meet with him?

2 A. I met with him -- I don't remember the
3 exact date I met with him, but I did call him. I
4 made an appointment. I told him the situation
5 what's going on. He said he would be willing to
6 talk to me. So I went and talked to him and he
7 give me a charge, a fee. He said he would help my
8 son.

9 Q. Did he tell you how he was going to
10 help your son?

11 A. He said he represent him. He also told
12 me that solicitor or prosecutor, they play golf
13 together and he could talk to them.

14 Q. At some point did y'all ever talk about
15 the liability that Mr. Cobbs was facing and what
16 would be the outcome through either a plea or a
17 trial?

18 A. No, all he told me, he had said that he
19 could get Jermaine, my son, four and-a-half years.

20 Q. When did he tell you that?

21 A. One of the visits. I can't recall
22 which visit, but it was one of the visits. I think
23 he told me more than one time.

24 Q. Did he tell you how much time Mr. Cobbs
25 was facing?

1 A. No, all he told me that he could get
2 him four and-a-half years.

3 Q. Did he put that in writing?

4 A. No.

5 Q. I don't want to overtalk you because we
6 have a court reporter, go ahead and finish. What
7 did you say?

8 A. He told me that he can get him four
9 and-a-half years. That he thought he could get a
10 lesser, solicitor and the prosecutor, they play
11 golf together and I heard that and I felt good that
12 he would be able to help my son.

13 Q. Did he ever tell you how much he was
14 facing? How much time?

15 A. No, I don't recall he told me how much
16 time. I don't recall that.

17 Q. Did he tell -- Mr. Thrower tell you
18 anything else about how the case was going or what
19 he was going to do for your son or what was going
20 to be the outcome on this case?

21 A. He said it was going good. After I
22 left his office I felt good.

23 Q. How long was Attorney Thrower Mr.
24 Cobb's attorney from your recollection?

25 A. From December until the day of trial.

1 Q. Do you know whether or not you offered
2 Mr. Thrower witnesses on Mr. Cobbs' behalf?

3 A. No, he did not.

4 Q. You say he did not. Did you offer it
5 to him?

6 A. No.

7 Q. Did you give Attorney Thrower any leads
8 about how to solve the case or any alibi witnesses
9 or any of those things?

10 A. No, I did not.

11 Q. Did you receive from Attorney Thrower
12 any documents for any sort of discovery or
13 suppression or any of that stuff?

14 A. No, I did not.

15 Q. How often do you think you saw Mr.
16 Thrower?

17 A. I saw him maybe about -- I called there
18 and they say he not in. Or I stop by there, he
19 wasn't there. So I might have seen him total about
20 four or five times. And the last time I seen him
21 he had -- my son had the trial at the court and
22 then the next morning the secretary, person up
23 front told me that hold on, she will go to the back
24 and then she came back, told me that he wasn't
25 there.

1 Q. So you haven't spoken to him any more
2 regarding your son's case?

3 A. No. I called and couldn't get no
4 answer.

5 Q. Is there anything you want to tell His
6 Honor about what you know about Attorney Thrower
7 representing your son on his criminal charges?

8 A. Yes. First I really trust his words.
9 I felt good about his words when I left his office.
10 And then on the end I really was disappointed how
11 it go, you know. Things he said it wasn't true and
12 I felt that he let my son and myself down.

13 Q. Court's indulgence.

14 (Attorney confers with client.)

15 MR. CURRY: Please answer any questions
16 the solicitor attorney general may have.

17 MS. COLEMAN: I have no questions.
18 Thank you.

19 THE COURT: Thank you. You may step
20 down.

21 MR. CURRY: Call Mr. Gentry Jamison,
22 Your Honor.

23 THE COURT: Please come forward.

24 GENTRY JAMISON

25 having been duly sworn, testifies as follows:

1 THE CLERK: Please state your full name
2 and spell your last name.

3 THE WITNESS: Gentry Jamison,
4 J-A-M-I-S-O-N.

5 THE COURT: Mr. Jamison, speak loudly,
6 clearly and slowly. I want to hear everything that
7 you have to say and, Mr. Curry, you are recognized.

8 DIRECT EXAMINATION

9 BY MR. CURRY:

10 Q. Please the Court. Mr. Jamison, do you
11 know Mr. Jermaine Cobbs?

12 A. Yes.

13 Q. How do you know him?

14 A. That's my son.

15 Q. Do you know Miss Blondell?

16 A. My wife.

17 Q. And what about Attorney William
18 Thrower?

19 A. I seen him, yes.

20 Q. How do you know Attorney William
21 Thrower?

22 A. I visited the office once with my wife,
23 the office once and I was with them the morning of
24 the trial.

25 Q. You mean the plea, the morning of the

1 plea for your son?

2 A. Yes.

3 Q. Now, from your recollection you all
4 retained Mr. Thrower to represent your son; is that
5 correct?

6 A. Correct.

7 Q. And based on previous testimony it
8 appears that he was his lawyer somewhere between
9 June and December of 2012; is that correct?

10 A. The date -- I'm not good on the dates.
11 I -- just whatever the same time frame that she
12 stated, those are the dates.

13 Q. All right. I'm going to get right to
14 the skinny. Do you recall having a conversation
15 with Attorney Thrower about the criminal liability
16 of your son?

17 A. Yes.

18 Q. What do you recall?

19 A. I was informed on the first visit -- I
20 didn't say anything. I just listened. On the
21 morning of the trial when I got to the courtroom
22 there and he told me, he said well, everything
23 going to be okay. He said he looking at four
24 years, he do 18 months, he said are you okay with
25 that. Let me back up a little bit. Before I even

1 came to trial he called to the house that morning,
2 I spoke with him on the phone that morning. And
3 then I came and the same thing that he said to me
4 on the phone he reiterated.

5 Q. What was that?

6 A. That he would have to do 18 months and
7 time served. So he said are you okay with that.
8 And I said yes, I'm okay with that. So I am
9 happy-go-lucky feeling this is what it is going to
10 be and after the trial -- after the I am calling it
11 a trial.

12 Q. It was a plea?

13 A. The plea. After they done that and
14 then they said 18 years, I fully didn't understand
15 it. I am hearing this, but I didn't understand
16 because I must be hearing wrong because I know that
17 ain't right. And I figure it was a legal term or
18 something that was being established here. And he
19 didn't say anything to me. The judge said what he
20 had to say and then we went out. As soon as we go
21 outside I said what's going on here?

22 Q. Who is we?

23 A. Myself and Will Thrower.

24 Q. Okay. What happened next?

25 A. And he said that I have to get with the

1 judge he said because it wasn't right.

2 Q. What wasn't right?

3 A. The term that he give him, the time.

4 He said that it wasn't correct.

5 Q. Then what happened next?

6 A. And the next thing he asked was about
7 the finances, the money. About the bail, about the
8 bail money. And once he find out where the bail
9 money was and that was the last I even heard of
10 him. I tried to call him, no answer. Go there. I
11 still couldn't see him. And the bail bond said
12 that the money was released to Will Thrower.

13 Q. Did you hear any more from Mr. Thrower
14 about filing an appeal for your son or filing a
15 reconsideration or filing a PCR?

16 A. No. Just like he drift off into the
17 sunset.

18 Q. And so why are you here today then?

19 A. Because I'm here first of all, to
20 represent my son. I know my son better than
21 anybody in here. And I know people do things and
22 they go through different obstacles in life. Could
23 I go on? And I know that -- I'm not saying guilty
24 or not guilty. I don't think that he was
25 represented right. I don't believe it then, I

1 don't believe it now. I will never believe that he
2 was represented right. I feel that it was mainly
3 the representation was only for money, it didn't
4 take into consideration on doing what he said was
5 going to happen. I'm here to get my son back home.

6 Q. Is there anything else?

7 A. No, sir.

8 Q. Please answer questions the attorney
9 general has.

10 MS. COLEMAN: No, I have no questions.

11 THE COURT: You may step down. Thank
12 you.

13 MR. CURRY: Judge, I call Attorney Bill
14 Thrower.

15 THE COURT: Mr. Thrower, please come
16 forward.

17 WILLIAM THROWER

18 having been duly sworn, testifies as follows:

19 THE CLERK: Please state your full name
20 and spell your last name.

21 THE WITNESS: William James Thrower.
22 T-H-R-O-W-E-R.

23 THE COURT: Mr. Thrower, I'm going to
24 ask if you could speak loudly and clearly.

25 DIRECT-EXAMINATION

1 BY MR. CURRY:

2 Q. Attorney Thrower, good afternoon. I am
3 Eduardo Curry, you and I know each other; is that
4 correct?

5 A. Yes.

6 Q. Over 20 plus years?

7 A. I believe so.

8 Q. And you had the opportunity -- you have
9 been practicing here in South Carolina for how
10 long?

11 A. Since 1991.

12 Q. And you have been practicing in an area
13 of criminal law among other areas?

14 A. Primarily criminal defense, yes, sir.

15 Q. How long have you been doing criminal
16 defense and in what jurisdictions?

17 A. I have been in Charleston since 1992.
18 I practiced one year in Anderson, South Carolina,
19 but I started at the Charleston County public
20 defender's office here.

21 Q. Right. And you practiced how long
22 before you went into private practice?

23 A. Three years.

24 Q. And you have had the opportunity to try
25 multiple kinds of cases, fair to say?

1 A. Yes.

2 Q. Violent crime, correct?

3 A. Yes.

4 Q. Drug crimes?

5 A. Yes.

6 Q. You had an opportunity to understand
7 sentencing and sentencing guidelines and ranges of
8 sentence, all of that, correct?

9 A. Parole eligibility.

10 Q. Know the difference between trafficking
11 and simple possession, right, distribution, all
12 those things, correct?

13 A. Yes, sir.

14 Q. At some point in your career you were
15 retained by the family of Jermaine Cobbs. Do you
16 recall that?

17 A. Yes, sir, I do. It wasn't six months
18 prior to his plea, was more like four. I believe
19 it was in August of 2012 they came to see me. They
20 had been through two lawyers already.

21 Unfortunately they had hired Mike
22 Bosnak who was suspended or disbarred, wasn't
23 practicing any more because of disciplinary
24 reasons, but Mr. Bosnak had represented Mr. Cobbs
25 after his first arrest in 2010. I believe it was

1 him actually got him on the ankle monitor. Then at
2 some point during that break between the first
3 arrest and the second arrest he was suspended and
4 then they hired Steve Davis here in Moncks Corner.
5 He represented him before his second arrest and
6 again obviously for his first arrest as well.

7 Q. They retained you sometime in August of
8 2012?

9 A. That's correct.

10 Q. Did you file any Brady motion, Rule 5
11 or Brady?

12 A. I filed a substitution of counsel order
13 and in that implied that all motions that have been
14 filed before by other attorneys would carry over to
15 my representation. I picked up a Rule 5 packet,
16 everything from Mr. Alfaro who still had the case
17 and started working on it right away.

18 Q. Mr. Alfaro, he was a senior assistant
19 solicitor at that point?

20 A. Yes.

21 Q. Which county?

22 A. Right here in Berkeley.

23 Q. So you had a chance to review the
24 Rule 5 request and the discovery information; is
25 that correct?

1 A. Yes.

2 Q. Did you review them with Mr. Cobbs?

3 A. I did. Met him at the detention
4 center. After his second arrest his ankle monitor
5 bond was revoked and he was incarcerated. We went
6 over the two arrests. They were really similar
7 factually. The first one was a controlled purchase
8 out of his shop and subsequent to that controlled
9 purchase that was used as probable cause for a
10 search warrant. At the first arrest I think they
11 found well over 300 grams of powder cocaine and the
12 second arrest was the same. It was a CI who also
13 made a controlled purchase out of the same shop and
14 at that time they found I want to say maybe
15 30 grams. It was trafficking weight again the
16 second time along with -- I think there was
17 marijuana found and some other drugs.

18 Q. In terms of the maximum exposure based
19 on what Mr. Cobbs was arrested for what did you
20 understand his maximum exposure to be?

21 A. From the first arrest 25 to 30 years if
22 everything was run concurrent which was
23 traditionally how it is done. But that amount of
24 powder cocaine put him in the 25 to 30 violent
25 serious trafficking weight.

1 Q. What about the second?

2 A. Because he had a drug conviction I
3 think in '99 or 2000, a cocaine conviction, that
4 second was going to be third offenses. Again a
5 trafficking third, an additional 25 to 30-year
6 mandatory minimum of 25.

7 Q. So you were thinking that his exposure
8 if it were ran consecutive which is like
9 non-traditional, but certainly within the realm he
10 would be facing 25 to 50 years on top of being 30,
11 38?

12 A. I was thinking that 50 to 60 years
13 actually because there was going to be with two
14 dates of arrest they were going to try to him on
15 the 2010 charge, sentence him, try him on the 2012
16 and sentence him. And Mr. Alfaro made it real
17 clear he was going to ask for consecutive time on
18 that second.

19 Q. What you mean by that?

20 A. He put it in a letter that if we don't
21 work out a plea, he gave us a time frame that week
22 of December, the week he pled was the expiration of
23 his deal at 18 years negotiated sentence. If he
24 didn't accept that plea he said I'll put him on the
25 trial docket. We will try the 2010 case and then

1 get him sentenced and then I will bring him back
2 later, try him for the 2012-case and ask for
3 consecutive time.

4 Q. Court's indulgence.

5 (Attorney confers with client.)

6 BY MR. CURRY:

7 Q. I know you don't have the Code of Laws
8 of South Carolina so I can't quiz you right there,
9 but are you aware that Mr. Cobbs did not have a
10 prior conviction prior to these two particular
11 charges or was the fact that he had a conviction
12 and these were going to make it the second and
13 third based on the charge?

14 A. That's correct. He had a conviction.

15 Q. So they charged him on the first arrest
16 with the second and on the second arrest with the
17 third?

18 A. I believe so. If I don't know if
19 that's -- I think that that's how they indicted
20 him.

21 Q. I apologize. I am getting some
22 information.

23 A. I know -- I am certain that the 2010
24 charge was charged as a second offense. The 2012
25 my understanding Mr. Alfaro he would at that point

1 indict him for --

2 Q. Third?

3 A. Trafficking third.

4 Q. Which would have expanded his exposure?

5 A. Another 25 mandatory.

6 Q. I am going to ask you the question.

7 Did you tell Mr. Cobbs that he was going to get
8 seven years?

9 A. No, sir. The seven came up because one
10 of the trafficking was reduced down. I think it's
11 a typographical error in the transcript. One of
12 the trafficking was reduced down to 7 to 25. It
13 was not -- that's when the 300 or 200 to 400-gram
14 range, I was able to negotiate that down to where
15 the range was 7 to 25 instead of 25 mandatory.

16 Q. Twenty-five mandatory would be that's
17 the least the judge would have been able to give
18 him?

19 A. That's it, yes, sir.

20 Q. Did you tell him he was going to get
21 18 months?

22 A. No, sir. It was 18 years.

23 MR. CURRY: Court's indulgence now.

24 (Attorney confers with client.)

25 THE COURT: Can we agree to stipulate

1 as to whether or not he had a prior drug offense
2 prior to these two?

3 MR. CURRY: Judge, my client indicates
4 he doesn't want me to stipulate because he said he
5 had a possession in 1999 and not necessarily a
6 trafficking or a distribution charge. As an
7 officer of the court I'm just relating what he said
8 for the record.

9 MS. COLEMAN: Your Honor, I don't have
10 his record in front of me, but I would rely on the
11 transcript whatever the solicitor presented to the
12 Court at that time.

13 THE WITNESS: It was my understanding
14 it was a possession of cocaine from 1999.

15 THE COURT: Which does enhance the
16 subsequent drug offense. All of them were
17 enhanceable offenses.

18 MR. CURRY: Right. That's what we are
19 raising.

20 BY MR. CURRY:

21 Q. Mr. Thrower, how much investigation did
22 you do in this particular case from your
23 recollection or your records?

24 A. I looked into both of the purchases --
25 the only hope would be as the suppression motion.

1 The prosecutor -- we went through the documents and
2 I went through them and what the drug agents had
3 done was they had a CI and there was no indication
4 that he had ever been untruthful. They searched
5 him, they searched his vehicle, they hooked him up
6 with audio video recording, they gave him marked
7 money. He went in, he knew Mr. Cobbs as a Mark, as
8 the name Mark. He went in, he made a purchase, he
9 came out. They immediately searched him and took
10 the evidence in and searched his vehicle as well.
11 There was very little chance to convert that CI
12 into a witness because they had taken all his
13 discretion out of it. There was nothing that -- I
14 felt like there was nothing I could do to reveal
15 his identity or even do anything that would kind of
16 chip away at the probable cause for the search
17 warrant. And it was the same situation in 2012.
18 It was another purchase out of his shop, guy named
19 Mark and again he was searched extensively and he
20 went in and made the purchase, came out.

21 Q. So you never filed a suppression
22 hearing?

23 A. No, sir.

24 Q. Would they have allowed you to file a
25 suppression hearing with the reduced charges or

1 would you have had to face all of the charges
2 enhanced in order to file a suppression motion?

3 A. We could have filed it, but to argue it
4 it would have been pretrial motion which means you
5 would have passed up the 18-year deal and you would
6 have been facing that first trafficking with 300 --
7 over 300 grams of powder cocaine.

8 Q. Did you explain that to Mr. Cobbs?

9 A. Yes.

10 Q. Are you sure?

11 A. Yes.

12 Q. Did you explain it to Mr. Gentry
13 Jamison?

14 A. I don't remember specifically talking
15 about it with him as far as trial strategy. Not
16 everybody as parents likes to hear that their son
17 was selling drugs or had that much drugs in his
18 shop and I just didn't feel like that it was my
19 place with them. Mr. Cobbs was my client, not
20 them.

21 Q. What about Ms. Jamison?

22 A. No.

23 Q. Same with her?

24 A. Same with her.

25 Q. Okay. Did Mr. Cobbs ever ask you --

1 move to strike. Did you ever tell Mr. Cobbs he was
2 facing a life sentence?

3 A. If I used that term it was because the
4 possibility of a 50 to 60-year sentence for a man
5 around 40 years old. To me I said you don't want
6 to spend the rest of your life in prison. You
7 know, you made a mistake. It wouldn't have been
8 life as far as that. It would have been in the
9 context of this could -- eventually this could be a
10 life sentence for you as far as you can spend the
11 rest of your life in jail. It wouldn't have been
12 life on the sentencing sheet, but it would have
13 been life in practical terms.

14 Q. So the answer is no, you never told him
15 that, correct?

16 A. I would not have told him the possible
17 sentence was life because that's impossible.

18 Q. Did you tell Mr. Cobbs that he was
19 facing a 65 percent versus 85 percent?

20 A. No, sir. It was always 85 percent.
21 Unfortunately it was trafficking and it was a
22 serious -- most serious offense.

23 Q. Do you believe that Mr. Cobbs got the
24 benefit of his bargain with regards to his plea?

25 A. Absolutely.

1 Q. Why?

2 A. The possibility of going to trial on a
3 very, very one sided case. I think that he got a
4 good deal. He was offered 15 to 20 years in 2010
5 after his first arrest. They offered him that and
6 then he got rearrested with another trafficking
7 weight. And I was expecting the offer to be much
8 higher than that, but I just -- I asked Mr. Alfaro,
9 I do know him well and I said, look you can't blame
10 this guy. He has had two lawyers just whack out on
11 him. For God's sake he has not been given good
12 advice. And for whatever reason I was able to
13 convince him to stay in that range, but he didn't
14 want to take that chance of him getting 15. He
15 wanted him to get 18.

16 Q. Did you file anything for his
17 forfeiture hearing?

18 A. He was in default on all that from his
19 prior.

20 Q. By the time he got to you?

21 A. Yes.

22 Q. And then on the motion for
23 reconsideration, there's some issue. Tell me what
24 happened with that?

25 A. I was -- I felt bad because he had

1 gotten bad advice years prior to me taking his case
2 that perhaps his chance to cooperate had been kind
3 of been squandered. Obviously you don't have that
4 much cocaine without having somebody delivering an
5 awful lot. I was just grasping at straws really.
6 I figured couldn't hurt that if once he got --
7 because at the time he said he did not want to
8 cooperate. And I thought well, sometimes the
9 Department of Corrections will change a man. And
10 if he wants to cooperate and tell anything at least
11 that gave us an avenue to come back in and get a
12 reduced sentence. That was my only hope and I
13 talked to Mr. Alfaro about it. I said look, I know
14 this looks crazy because it's a negotiated 18-year
15 sentence, but I'm going to file a motion to
16 reconsider. If he wants to cooperate don't object
17 to it being outside the ten days and we will get
18 him in here and get him a reduced sentence.

19 Q. Did you tell Mr. Cobbs that this was
20 his opportunity to do post sentencing cooperation?

21 A. Through a motion for reconsideration?
22 I had not yet, no, and then I got your letter
23 saying that you had been retained.

24 Q. Court's indulgence.

25 (Attorney confers with client.)

1 MR. CURRY: Please answer any questions
2 the assistant attorney general has.

3 CROSS-EXAMINATION

4 BY MS. COLEMAN:

5 Q. Mr. Thrower, was there ever any
6 discussion between you and the applicant of
7 agreeing to a deal for four and-a-half years?

8 A. No, there was never. That wasn't even
9 the deal after one arrest.

10 Q. What about an 18-month sentence?

11 A. No.

12 Q. After time served?

13 A. The fight was on to get credit for that
14 ankle monitor time because the solicitor was -- he
15 was saying he sold drugs with his ankle monitor on
16 and he was angry about it and I was able to just
17 calm him down on that. And I said he still was --
18 he didn't have any violations of him being either
19 not at home or not at the shop. He was allowed to
20 go to those two places and even though there was
21 criminal activity while he had the ankle monitor on
22 he still wasn't out of his area.

23 Q. He did get credit for time served for
24 those 27 months on the ankle monitor?

25 A. Yes, every day of it.

1 Q. Did you ever have any question that the
2 applicant understood your discussion about the
3 18-year negotiated sentence?

4 A. I didn't think he had any problems with
5 it. He had some problems understanding -- I think
6 both lawyers he had had inexplicably told him that
7 they -- if you hire me I think I can get you out on
8 probation and it was tough going to him and saying
9 look, you never had an offer of probation. And
10 that was -- it was erroneous advice, it was
11 promises that put me in a bad position because he
12 was expecting me to I guess to deliver the same
13 kind of deal. I said there's a reason why neither
14 one of those lawyers is here any more because you
15 are not getting probation and I thought he had a
16 pretty good understanding of that.

17 Q. So you told him that he was pleading to
18 an 18-year sentence negotiated serving 85 percent
19 of that, right?

20 A. I showed him where it was marked as a
21 violent crime.

22 Q. Okay. Did you advise him of the rights
23 that he was waiving when he pled guilty?

24 A. Yes.

25 Q. Did he seem to understand that

1 discussion?

2 A. Yes.

3 Q. And ultimately whose decision was it to
4 plead guilty?

5 A. It was his. After we discussed the
6 risk of going to trial and losing the suppression
7 motion, than there was no more plea bargain offer.

8 MS. COLEMAN: Thank you. Nothing
9 further.

10 THE COURT: Any redirect, Mr. Curry?

11 REDIRECT EXAMINATION

12 BY MR. CURRY:

13 Q. Just to follow up, you had no problems
14 with his competency, reading skills? He wasn't
15 under the influence of anything, correct?

16 A. No, sir. I thought he was always
17 pretty sharp.

18 THE COURT: You may step down. Thank
19 you, sir. You may call your next witness.

20 MR. CURRY: Judge, I think we rest
21 other than summary if it pleases the Court.

22 MS. COLEMAN: The State has no
23 witnesses.

24 THE COURT: You will go first.

25 MR. CURRY: Thank you very much. If it

1 please the Court, Judge, I am Eduardo Curry.

2 Obviously in a post-conviction relief there is a
3 two-prong test that has to be dealt with. Number
4 one, whether or not counsel was deficient; number
5 two, whether or not that deficiency would lead to a
6 prejudice that would afford him not having proper
7 right outside the reasonableness of trial.

8 Judge, in terms of the first prong of
9 the test, in terms of deficient, it is our argument
10 based on what has been presented, and I know it's
11 an argument that has to rebut the fact that Mr.
12 Thrower was competent and actually did what he was
13 supposed to do, but what rings out to the applicant
14 and myself is this whole issue of whether or not
15 Attorney Thrower did his due diligence along the
16 line to obviously put the applicant in a position
17 where he really understood there was no reasonable
18 way that he was going to get anything like
19 18 months or like 65 percent or those sort of
20 things along the line. And I think fundamentally
21 that was the breakdown between the applicant and
22 his representative. So that when the applicant's
23 father and mother comes in they're fully expecting
24 something that if you were to believe Attorney
25 Thrower was nowhere remotely possible given his

1 prior history, given the charges that were there
2 and the maximum exposure that could have either run
3 consecutive if not concurrent. So, Judge, I look
4 at it to say well, number one, is it deficient.
5 Well, if you can't communicate with your client
6 very well, that is one of the tenets and cannons of
7 professional responsibility that we have to have.
8 You have got to communicate to them this is what's
9 going on and this is what's there.

10 I submit to you that based on the
11 testimony of the applicant and his family that just
12 wasn't there. There was a fundamental breakdown
13 from the record with regard to what he was facing
14 and maybe it was written poorly or maybe it was
15 said poorly whether or not 7 to 25 versus something
16 like 17 to 25. But it was real confusion that was
17 there and I think in Mr. Cobbs' mind he really
18 didn't have a grasp of the amount of criminal
19 liability he was going to be exposed to.

20 If that's the case, then secondarily
21 the question is whether or not it was prejudicial
22 and I would believe that if Mr. Cobbs' mind is so
23 foggy that he can't grasp what the criminal
24 liability is and the charges and exactly what his
25 exposure is, then quite frankly the prejudicial

1 effect is he got up saying I think I am facing a
2 life, I better take the 18, but I would have tried
3 my case if I had known I was going for seven
4 because he said I didn't do a drug buy. Whether or
5 not that's factual or truthful I don't know at this
6 point. I wasn't his trial lawyer. I can only look
7 at the records that are there, listen to what he
8 said to me about post plea what he would have said
9 and then question the lawyer about it.

10 So what I would ask, Judge, is that you
11 vacate the sentence and allow him to face -- if he
12 is going to face mandatory minimum to 25 then maybe
13 that's what he would face. But I would find that
14 the two-prong test has been satisfied and allow
15 this sentence of 18 years to be vacated. Thank
16 you, Judge.

17 MS. COLEMAN: And, Your Honor, I just
18 ask you to rely on Attorney Thrower's testimony as
19 credible and use that as a basis to deny
20 post-conviction relief.

21 THE COURT: Ms. Coleman, I'm going to
22 ask you to draft an order and essentially set forth
23 the procedural history of this case and to
24 delineate how the transcript is dispositive of the
25 ruling. The transcript addresses all of the issues

1 that have been put before the Court here today.
2 Asked if he was satisfied with his lawyer, he
3 indicated that he was. The transcript indicates 85
4 percent rule and that's set out on page 11 line 7.
5 I have reviewed the transcript. Certainly waive
6 his rights to a jury trial and his constitutional
7 rights. They asked him if he was satisfied with
8 his lawyer and at that time he was, which would
9 seem to indicate there had been good communication,
10 there had been an understanding of what transpired.
11 He indicated there was no promise or threats other
12 than no promises and the applicant was very apt, he
13 said was there any promise, yes, the promise was he
14 was going to get 18 years. And he acknowledged
15 that in his testimony here today.

16 Also importantly the facts of the
17 indictments were set forth on the record and the
18 judge asked him under oath if those facts were true
19 and he indicated that they were. He was indeed
20 given credit for 27 months on house arrest despite
21 the fact that he committed -- that's really
22 discretionary. But despite the fact that he
23 committed a crime while on electronic monitoring he
24 was nonetheless given credit for that. There was
25 an allegation of generally that Mr. Thrower did not

1 adequately investigate the case which would seem to
2 indicate that there was something that a defense
3 lawyer could have done to present a valid defense.
4 And in order to assert such a claim of
5 ineffectiveness it would be incumbent on the
6 applicant to present that testimony here today and
7 show why he is not guilty of the offense for which
8 he has already admitted. That's not been done here
9 today.

10 I sympathize with Mr. Cobbs. One could
11 argue philosophically that's too much time for
12 criminal activity of this sort. Obviously a lot of
13 people could argue that it is not. And I
14 sympathize with the parents. I feel their pain.
15 But unfortunately under these circumstances I can't
16 grant the relief. I know this is hard for Mr.
17 Cobbs and the parents to understand at this time,
18 but probably the worst thing I can do for Mr. Cobbs
19 would be to grant the post-conviction relief
20 because he will go back and I can promise you under
21 those circumstances the solicitor's office would
22 prosecute each one of those sequentially until they
23 got all there is to get and that would be a
24 terrible thing. Mr. Cobbs, I wish the best of luck
25 to you.

1 (These proceedings were concluded at
2 5:23 p.m., December 4, 2017, Charleston County,
3 South Carolina.)
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1 CERTIFICATE OF REPORTER

2
3 I, Ruth C. Weese, Registered Diplomate
4 Reporter for the State of South Carolina at Large,
5 do hereby certify that the foregoing transcript is
6 a true, accurate, and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 16th day of March, 2018 at
12 Charleston, Charleston County, South Carolina.

13
14 *Ruth C. Weese*

15
16 _____
17 Ruth C. Weese

18 Registered Diplomate

19 Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Jermaine L. Cobbs, #353719,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2016-CP-08-0593

ORDER OF DISMISSAL

MAFAY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC.

11 DEC 28 AM 9:14

FILED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 9, 2016. Respondent submitted its return on March 29, 2017. An evidentiary hearing into the matter was convened on December 4, 2017, at the Berkeley County Courthouse. Applicant was present at the hearing and was represented by Eduardo Curry, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from Blondelle Jamison, Gentry Jamison, and William Thrower, Esquire.

Before this Court are the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the State's Return, the records of Applicant's previous PCR action, and the current application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted at the October 2010 term of the Berkeley County Grand Jury for trafficking cocaine, 200-400 grams, first offense (2010-GS-08-1722), and distribution of cocaine, first offense (2010-GS-08-1724). Applicant was subsequently indicted in September 2012 for trafficking cocaine, 10-28 grams (2012-GS-08-1787). William Thrower, Esquire ("Plea Counsel") represented Applicant. Brian Alfaro, Esquire, represented the State. On December 20, 2012, Applicant pleaded guilty before the Honorable R. Markley Dennis, Jr. to the lesser included offenses of trafficking cocaine, 28-100 grams, first offense, and possession with intent to distribute cocaine, second offense, and as indicted to distribution of cocaine, first offense. Pursuant to a negotiated sentence, Judge Dennis sentenced Applicant to imprisonment for concurrent terms of eighteen years each for trafficking cocaine and possession with intent to distribute cocaine, and to time-served for distribution of cocaine.

Applicant filed a motion to reconsider on March 19, 2013. During the pendency of the motion to reconsider, Applicant filed an application for post-conviction relief (2013-CP-08-2751). Judge Dennis issued an order dismissing that application without prejudice on April 15, 2015. Judge Dennis thereafter denied the motion to reconsider on July 16, 2015. Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Plea counsel informed Applicant he could "negotiate a plea deal where [Applicant] would plead to only one charge and be sentenced to approximately seven years . . . with credit for time served.
 - b. Counsel informed Applicant that at that time Applicant "would be required to wear an ankle monitor which would be included in the time-served calculation."
 - c. Counsel told Applicant he would only be required to serve 65% of his sentence.
 - d. Applicant pleaded to three charges instead of one.
 - e. The time Applicant wore the ankle monitor was not included in the time-served calculations. Applicant was informed at the sentencing that he would be required to serve at least 85% of his sentence, as opposed to the 65% promised by plea counsel
 - f. Plea counsel never discussed with Applicant the evidence of the case and potential strategies to be used during his defense.
 - g. Plea counsel only met with or contacted Applicant three times in preparation of this case.
 - h. Plea counsel relied only on his contacts, and made no attempts to examine the evidence of the case.

Applicant filed an amended application on November 2, 2017, adding the following additional allegations:

"Attorney Thrower informed Plaintiff that he could negotiate a plea deal where Plaintiff would plead to only one (1) charge and be sentenced to approximately seven (7) years in the penitentiary with credit for time served. Furthermore, Attorney Thrower informed Plaintiff that at that time, Plaintiff would be required to wear an ankle monitor which would be included in the time served calculation. During a meeting, Attorney Thrower told Plaintiff that he would only be required to serve sixty-five percent (65%) of his sentence. At the plea hearing much to his surprise, Plaintiff pled to three charges (3), not to the one (1) charge Attorney Thrower initially suggested. Plaintiff was sentenced to eighteen years (18) for two (2) charges and twenty-seven (27) months for the final charge; to be served concurrently and credited with time served. Additionally, Plaintiff was informed at the sentencing that he would be required to serve at least eighty-five percent

(85%) of his sentence, as opposed to the sixty-five percent (65%) promised by Attorney Thrower.

Attorney Thrower only met with and/or contacted the Plaintiff three (3) times in preparation of this case. Attorney Thrower made no attempts to examine the evidence of the case."

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he pled guilty to these charges on December 20, 2012. He stated his parents retained Plea Counsel to represent him, and he met with Plea Counsel at least three times before his plea. Applicant testified that Plea Counsel wanted him to plead guilty to get an eighteen year sentence, but he would only have to serve a quarter of the sentence, which was four and half years. He stated that, after he got credit for time served, he was under the impression that he would only have to serve eighteen months in prison. He testified that Plea Counsel presented the decision to plea to him as a choice between an eighteen months sentence or the rest of his life in prison. He stated that, based on this advice, he chose to plead guilty. Applicant testified that if he had known the sentence he would actually get, he would not have pled guilty but would have gone to trial instead.

Applicant testified Plea Counsel misinformed him of the actual potential sentencing range of the crimes with which he was charged, and he never advised him of the minimum or maximum punishments. He testified that he did not know if Plea Counsel investigated the evidence or witnesses on his behalf. He stated they did not discuss the credibility of any of the State's witnesses or any defenses. Applicant stated Plea Counsel did not file any Brady motions or Rule 5 motions to get discovery. He testified that he did not ask Plea Counsel to file a motion to reconsider his sentence, but Plea Counsel filed one anyway, and it was filed well outside the ten day statute of limitations, which was ineffective.

Applicant testified that he had been represented by two attorneys before Plea Counsel took over his case, but he disagreed with those attorneys on trial strategy. Applicant stated he wanted to use his mother and father as witnesses at trial. Applicant stated he did not know what his defense would have been if he went to trial, but he did not sell any drugs, and he was innocent.

Blondelle Jamison's testimony

Blondelle Jamison testified that she is Applicant's mother, and she is married to Gentry Jamison. She stated that she hired Plea Counsel to represent her son on these criminal charges, and she met with him four or five times to discuss the case. She stated that all Plea Counsel told her is that he would get her son a four and a half year sentence, and he told her this more than one time. Ms. Jamison testified that when she asked Plea Counsel how the case was going, he told her the case was going good, and that is all he would tell her. She stated he did not ask her about witnesses, and she did not offer him any leads or alibi witnesses to investigate.

Gentry Jamison's testimony

Gentry Jamison testified that he is Applicant's father, and he is married to Blondelle Jamison. He testified that he met with Plea Counsel once at his office and once before the guilty plea. He stated Plea Counsel told him Applicant would only serve eighteen months in prison. Mr. Jamison testified he was surprised at the guilty plea when the judge sentenced Applicant to eighteen years in prison. He stated he asked Plea Counsel about this sentence during the plea, and Plea Counsel told him the sentence was not right, so he would have to get with the judge to fix it. He stated that he never heard from Plea Counsel again after the plea.

Plea Counsel's testimony

Plea Counsel testified that he was retained to represent Applicant four months prior to the guilty plea. He stated he felt bad for Applicant because he had already been through two lawyers, and one was suspended from the practice of law. He stated his first attorney was able to get Applicant on ankle monitoring before he was suspended, and his second attorney handled his case for his first and second arrests. Plea Counsel stated he felt that Applicant's first two attorneys had made unrealistic promises to Applicant about being able to get a probationary sentence or a very low sentence, which was very unlikely and placed him in a tough position by making his advice seem unfavorable.

Plea Counsel testified that when he was retained, he filed a motion of substitution and got a Rule 5 packet from the Solicitor, and he started working on the case right away. He stated he reviewed the discovery materials with Applicant and met with him at the detention center. Plea Counsel emphasized that he believed in was the State's intention to try the charges separately, starting with the 2010 case, and then trying the 2012 case separately, asking for two strikes and consecutive sentences. He testified that Applicant was facing up to fifty or sixty years in prison, depending on how the State tried the case. He stated Applicant already had a prior conviction on his record from 1999, so the 2010 case would be his second offense, and by the time the 2012 case was tried, it would have been a third offense, and Applicant would have faced a mandatory minimum sentence of twenty-five years.

Plea Counsel testified that he never told Applicant he would get a seven year sentence. He believed Applicant might have gotten that number from the sentencing range of the reduced charge he pled to, which was seven to twenty-five years. However, he stated as Applicant was indicted, he faced a mandatory minimum of twenty-five years. Plea Counsel testified he never

promised a sentence of four and a half years, or that Applicant would only have to serve eighteen months. Plea Counsel stated the evidence against Applicant was strong, and there was nothing he could do to challenge the existence of probable cause to obtain the search warrant. He stated he did not file a suppression motion because he had no reasonable basis to do so. He stated that he could have filed a suppression motion, but in order to argue the motion, Applicant would have had to reject the plea offer for eighteen years.

Plea Counsel testified that he did not feel it was his place to discuss the details of the case with Applicant's parents. He stated that, in his experience, most parents do not really want to know that their son had 300 grams of cocaine, and he felt the discussions needed to be between him and his client. Plea Counsel testified the plea deal was always to serve 85 percent of the sentence, never 65 percent. He stated he absolutely believes Applicant got the benefit of the bargain of his plea deal. He stated Applicant was offered 15-20 years after his first arrest, and now, even after his second arrest and new charges, he was able to plead to an 18 year sentence. He stated he was even able to get Applicant credit for time served for the time when he was on ankle monitoring, even though Applicant committed the second crime while he was on the ankle monitor.

Plea Counsel testified he filed the motion to reconsider because he always files them for his clients, even if they are outside the time limit, because it allows his clients an avenue to have their sentence reconsidered if they chose to cooperate with law enforcement after their plea. He stated he thought it could not hurt Applicant to file the motion to give him the opportunity to cooperate if he chose. Plea Counsel testified that Applicant understood all of their discussions and the proceedings. He stated Applicant was sharp, and there were no competency issues. He stated it was Applicant's decision to plead guilty.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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.

V. 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 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

In the present case, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. The guilty plea transcript shows Applicant was fully advised of the terms of the plea deal and was aware of the negotiated sentence of eighteen years. The plea court advised him that he would have to serve at least 85 percent of the sentence. Applicant indicated on the record that he was satisfied with Plea Counsel's representation at the time. The record shows there was good communication between them at the time, and he had no complaints. The facts of the offenses were placed on the record, and Applicant agreed that they were true. Applicant was given credit for time served at Plea Counsel's request, including the time he was on ankle monitoring.

Plea Counsel credibly testified he fully discussed the evidence and plea negotiations with Applicant, and Applicant understood their discussions and chose to plead guilty. This Court finds Plea Counsel represented Applicant well within the bounds of professional norms, and none of his actions or advice were ineffective. Furthermore, this Court finds Applicant has failed to prove his allegation that Plea Counsel was ineffective for failing to investigate his case. The testimony presented shows Plea Counsel investigated and worked on the case thoroughly, and Applicant has failed to present a valid defense that could have been used at trial. This Court finds neither deficiency nor prejudice on this ground or any other, and these allegations are denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

To any extent that Applicant argues his plea was not given freely and voluntarily, this Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes 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.

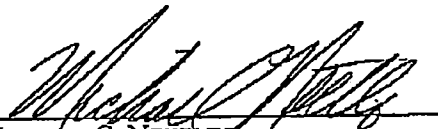
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an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

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 12 day of Dec, 2017

Florence, South Carolina


 MICHAEL G. NETTLES
 Presiding Judge
 Ninth Judicial Circuit

ALF2010-08-01564

WITNESSES

Albert Mitchum

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

1008033935

ARREST WARRANT NUMBER

M325365

DATE OF ARREST

August 7, 2010

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: 10-20-10

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010-GS-08- 1722

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2010

THE STATE

vs.

Jermaine L. Cobbs

DOB: [REDACTED]

B/M

Indictment for

Trafficking Cocaine

2010 OCT 20 PM 12:14
MARY J. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

[Handwritten signature]

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on October 20, 2010 the Grand Jurors of Berkeley County present upon their oath:

Trafficking Cocaine

That Jermaine L. Cobbs did in Berkeley County on or about the 6th day of August, 2010, knowingly, sell, deliver, purchase or bring into this State, or did aid, abet, attempt, or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of 200 grams or more, but less than 400 grams, the same being a controlled substance, within the meaning of Section 44-53-370, et. seq., S.C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370(e)(2)(d), S.C. Code of Laws, 1976, as amended, for the crime of Trafficking.

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


BRYAN A. ALFARO
DEPUTY SOLICITOR

ALF2010-08-01564

WITNESSES

Albert Mitchum

Berkeley County Sheriff's Office



AGENCY CASE NUMBER

1008033935

ARREST WARRANT NUMBER

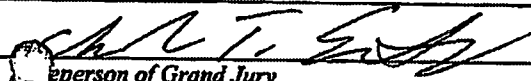
M332024

DATE OF ARREST

August 7, 2010

ACTION OF GRAND JURY

True Bill


Foreperson of Grand Jury

Date: 10-20-10

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010-GS-08-1724

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2010

THE STATE

vs.

Jermaine L. Cobbs

DOB: [REDACTED]

B/M

Indictment for

Distribution of Cocaine

2010 OCT 20 PM 12:15
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC2010
FED

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on October 20, 2010 the Grand Jurors of Berkeley County
present upon their oath:

Distribution of Cocaine

That in Berkeley County, South Carolina, on or about August 6, 2010, the Defendant, Jermaine L. Cobbs, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: Cocaine; in violation of Section 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.


BRYAN A. ALFARO
DEPUTY SOLICITOR

ALF2012-06-00869

WITNESSES

Berkeley County Sheriff's Office

H. Baird

AGENCY CASE NUMBER

201206025897

ARREST WARRANT NUMBER

N160632

DATE OF ARREST

June 15, 2012

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: 9-19-12

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012-GS-08-01787

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

September Term 2012

THE STATE

vs.

JERMAINE LAMARCUS COBBS

DOB: [REDACTED]

B/M

Indictment for

Trafficking Cocaine

12 SEP 19 PM 12:16
MARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

JH

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

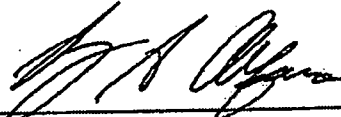
INDICTMENT

At a Court of General Sessions, convened on September 19, 2012 the Grand Jurors of Berkeley County present upon their oath:

Trafficking Cocaine

That in Berkeley County, South Carolina, on or about June 14, 2012, the Defendant, JERMAINE LAMARCUS COBBS, 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 ten (10) grams but less than twenty-eight (28) grams. This action is in violation of Section 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.


BRYAN A. ALFARO
DEPUTY SOLICITOR