

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Edgar W, Dickson, Circuit Court Judge

RECEIVED

APR 13 2017

S.C. SUPREME COURT

Appellate Case No: 2016-000823

James Livingston.....Petitioner

v.

State of South Carolina.....Respondent

APPENDIX

Robert W. Mills
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STATE OF SOUTH CAROLINA		COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON		
STATE OF SOUTH CAROLINA	)	
-vs-	)	TRANSCRIPT OF RECORD
JAMES LIVINGSTON,	)	06-GS-32-00170, et al
Defendant.	)	

April 13, 2009
Lexington, South Carolina

B E F O R E:
HONORABLE J.C. NICHOLSON, JR., Judge.

A P P E A R A N C E S:
STEPHEN C. BURN, JR., Asst. Solicitor
Attorney for the State
JOSHUA S. KENDRICK, Esquire
Attorney for the Defendant

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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INDEX OF WITNESSES

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

INDEX OF EXHIBITS

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

1 (The following proceedings are reported on
2 April 13, 2009).

3 THE COURT: This is the State versus James
4 Morris Livingston, Indictment Number 170, charged with
5 distribution of cocaine third; is that correct?

6 MR. KENDRICK: Yes, sir.

7 THE COURT: We have got the State versus James
8 Morris Livingston, distribution of cocaine base third or
9 subsequent. We have got trafficking -- let's see --
10 distribution of cocaine third. Indictment Number 647,
11 distribution of cocaine third or subsequent.

12 Is that correct, Mr. Livingston, those three
13 charges?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Sir, what is your name?

16 MR. KENDRICK: Josh Kendrick, Your Honor.

17 THE COURT: Mr. Kendrick, are those the extent
18 of the charges?

19 MR. KENDRICK: Yes, sir.

20 THE COURT: I believe he can receive 15 to 30
21 on all three; is that correct?

22 MR. KENDRICK: Yes, sir.

23 THE COURT: He will be looking at a maximum of
24 90 years; is that correct?

25 MR. KENDRICK: Yes, sir.

1 THE COURT: Mr. Livingston, do you understand
2 that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: We could run all three charges
5 consecutively, and you would be looking at 90 years. Do
6 you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any question about the
9 charge or the maximum time you can receive?

10 THE DEFENDANT: No, sir.

11 THE COURT: How old are you, Mr. Livingston?

12 THE DEFENDANT: Thirty-three.

13 THE COURT: How far did you go in school?

14 THE DEFENDANT: Eleventh grade.

15 THE COURT: Did you complete the 11th?

16 THE DEFENDANT: No.

17 THE COURT: Did you complete the tenth grade?

18 THE DEFENDANT: Tenth.

19 THE COURT: Have you ever worked anywhere?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Where? What type of work have you
22 done?

23 THE DEFENDANT: Worked in restaurants, I did
24 construction work.

25 THE COURT: What kind of work did you do in

1 restaurants?

2 THE DEFENDANT: Head cook.

3 THE COURT: Head cook. Did you start out as a
4 head cook or were you assistant cook to begin with?

5 THE DEFENDANT: I was...

6 THE COURT: You were head cook all along?

7 THE DEFENDANT: No, started out and worked my
8 way up.

9 THE COURT: Are you married?

10 THE DEFENDANT: No, sir.

11 THE COURT: Ever been married?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you have any children?

14 THE DEFENDANT: Five (sic).

15 THE COURT: What are their ages?

16 THE DEFENDANT: Eleven, thirteen, three, and
17 two.

18 THE COURT: Do they live with you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Does the mother live with you
21 also?

22 THE DEFENDANT: Yes.

23 THE COURT: What is your date of birth?

24 THE DEFENDANT: 9/24/76.

25 THE COURT: What's your Social Security

1 number?

2 THE DEFENDANT: 248-51-8697.

3 THE COURT: You have obviously been through
4 the criminal justice system before; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: How many times have you been
7 through the criminal system?

8 THE DEFENDANT: Twice.

9 THE COURT: Twice. Were they all drug
10 charges?

11 THE DEFENDANT: No, sir.

12 THE COURT: What were the charges?

13 THE DEFENDANT: Assault.

14 THE COURT: This is your third time going
15 through the system; is that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand the system?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You understand the charges that
20 you have, you are not eligible for parole? Do you
21 understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have to serve at least
24 85 percent.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions about
4 that?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you had any drugs or alcohol
7 in the last 24 hours?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you taking any prescription
10 medication?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you ever been diagnosed with
13 an emotional or nervous or mental condition by a doctor?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you satisfied with the
16 services of your attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has Mr. Kendrick done everything
19 you have asked him to do?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is there anything else that you
22 have asked him to do that he should have done?

23 THE DEFENDANT: No, sir.

24 THE COURT: Has he done anything that you feel
25 like he should not have done?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you understood the
3 conversations that you have had with your attorney?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you had enough time to talk
6 with your attorney?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Kendrick, have you explained
9 to Mr. Livingston his constitutional rights?

10 MR. KENDRICK: I have, Your Honor.

11 THE COURT: Have you explained to him the
12 crime and the elements of the crime?

13 MR. KENDRICK: Yes, sir.

14 THE COURT: Have you explained to him the
15 maximum time he could receive?

16 MR. KENDRICK: Yes, sir.

17 THE COURT: From your investigation of the
18 case and talking to your client, do you think the State
19 could produce sufficient evidence to convince 12 jurors
20 of the Defendant's guilt beyond a reasonable doubt?

21 MR. KENDRICK: I do, Your Honor.

22 THE COURT: Do you agree with his decision to
23 plead guilty?

24 MR. KENDRICK: I agree.

25 THE COURT: Have you had any difficulty

1 communicating with Mr. Livingston?

2 MR. KENDRICK: No, sir.

3 THE COURT: Has he appeared to understand the
4 conversations you have had with him?

5 MR. KENDRICK: Yes, sir.

6 THE COURT: Mr. Livingston, do you understand
7 under the Fifth Amendment to the Constitution, you have
8 a right to remain silent? Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: When you enter a guilty plea, you
11 will have to acknowledge your guilt, and therefore you
12 will testify against yourself. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you willing to give up the
15 Fifth Amendment right to remain silent and enter a
16 guilty plea?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand you are entitled
19 to a jury trial?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I understand the case was on the
22 roster number two for this week; is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand in a jury trial,
25 the State would be required to prove you guilty beyond a

1 reasonable doubt. All 12 jurors would have to vote to
2 find you guilty. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Your attorney could cross examine
5 witnesses and present witnesses on your behalf. Do you
6 understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Knowing that about a jury trial,
9 do you want a jury trial?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you understand you have the
12 right to appeal the guilty plea ten days from today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anybody coerced you,
15 intimidated you, threatened you to make you plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Any promises been made to you?

18 THE DEFENDANT: No, sir.

19 THE COURT: Any reduction in charges?

20 MR. KENDRICK: Just on one count, Your Honor.

21 I believe there was a trafficking charge.

22 THE COURT: Reduced down to distribution?

23 MR. KENDRICK: Yes, sir.

24 MR. BURN: That's correct, Your Honor. The
25 State is also going to dismiss three counts of

1 distribution of cocaine third or subsequent and two
2 counts of distribution of crack cocaine within proximity
3 of a school or park.

4 THE COURT: Other than that, Mr. Livingston,
5 have any promises been made to you?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you had enough time to make
8 your decision to plead guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you pleading guilty of your
11 own free will and accord?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you understood all my
14 questions?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you answered them truthfully
17 and correctly?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions you want
20 to ask the Court or your attorney?

21 THE DEFENDANT: No, sir.

22 THE COURT: How do you wish to plead?

23 THE DEFENDANT: Guilty.

24 THE COURT: Are you guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Livingston, I am going to ask
2 the solicitor to give me the fact of the case. I want
3 you to listen, okay?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: After he gives me the facts, I
6 will ask if you agree with the facts or disagree. If
7 you disagree, I want to know which facts you disagree
8 with. Can you do that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Solicitor.

11 MR. BURN: Thank you, Your Honor. The first
12 of these incidents that Mr. Livingston is pleading to
13 occurred on February 17, 2005. Your Honor, on that date
14 investigators with the West Columbia Police Department,
15 along with the aid of a confidential informant,
16 conducted a controlled purchase of crack cocaine from
17 Mr. Livingston at 1512 Holmes Street in the West
18 Columbia area of Lexington County.

19 Your Honor, in exchange for \$40, the
20 confidential informant received .34 grams of crack
21 cocaine. This transaction was under continuous
22 electronic surveillance by West Columbia investigators,
23 and Livingston was recorded on video making this
24 transaction.

25 The incident report indicates this transaction

1 occurred within a one-half mile radius of Saluda River
2 Elementary School, located at 1520 Duke Street in West
3 Columbia.

4 Your Honor, then on March 12, 2005, once again
5 involving West Columbia investigators and with the aid
6 of a confidential informant, they conducted another
7 controlled purchase of crack cocaine from Livingston,
8 once again the same location, 1512 Holmes Street, West
9 Columbia here in Lexington County.

10 At that time in exchange for \$40, the
11 confidential informant received .29 grams of crack
12 cocaine. Once again, this transaction was under
13 continuous electronic surveillance.

14 This time, Your Honor, the informant
15 identified Livingston in a photo lineup subsequent to
16 the transaction. Once again, this occurred as mentioned
17 previously within a half mile radius of Saluda River
18 Elementary School.

19 Then, Your Honor, the offense that
20 Mr. Livingston was actually going to be tried on this week
21 occurred on February 27, 2008. Your Honor, on that date
22 agents with S.L.E.D., with the aid once again of a
23 confidential informant, conducted a controlled purchase
24 of powder cocaine from Mr. Livingston at Livingston's
25 residence located at 3111, Highway 6, in the Gaston area

1 of Lexington County.

2 Your Honor, at that time in exchange for
3 \$1,625, the informant received 228 grams of powder
4 cocaine from Mr. Livingston. The \$1,625 constituted the
5 first of four payments that were to be made to
6 Mr. Livingston for the cocaine.

7 Mr. Livingston was essentially fronting six of
8 the approximately eight ounces of cocaine involved in
9 the transaction. This transaction was once again under
10 continuous audio electronic surveillance by S.L.E.D.
11 agents and an officer with the Lexington County
12 Narcotics Enforcement Team.

13 Livingston was recorded also on video making
14 this transaction. Your Honor, also present during the
15 drug transaction were Livingston's two daughters, both
16 of whom were eating in Livingston's kitchen where the
17 purchase was taking place. At least one of the
18 daughters was caught on video at that time, Your Honor.

19 A search warrant was executed at Livingston's
20 residence on March 4, 2008. As a result of that search,
21 S.L.E.D. agents and officers with the Lexington County
22 N.E.T. team discovered \$10,751 in cash in a briefcase
23 hidden above Livingston's closet.

24 None of this money was identified as the money
25 that was used in the February 27th transaction. A

1 Lexington County canine unit alerted on both the brief
2 case and the currency.

3 After being Mirandized, Livingston was
4 interviewed at S.L.E.D. headquarters. At that time he
5 admitted to his involvement in dealing cocaine.
6 Following this interview, Mr. Livingston was transported
7 to L.C.D.C. for booking.

8 THE COURT: All right. Mr. Livingston, are
9 those facts correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Any of those facts you disagree
12 with?

13 THE DEFENDANT: No, sir.

14 THE COURT: I find there is a factual basis
15 for the plea. He has freely, voluntarily, knowingly,
16 and intelligently made the decision to plead guilty with
17 the advice of his attorney. All elements of the charge
18 have been met.

19 Mr. Kendrick, I would be glad to hear you on
20 the sentence.

21 MR. KENDRICK: Thank you, Your Honor. Your
22 Honor, I have known Mr. Livingston for some time now.
23 He is an intelligent young man. He is polite. He works
24 hard. Actually I don't think he got to describe the
25 last job he held at a transmission shop in Gaston, South

1 Carolina.

2 Mr. Livingston actually owns part of the shop
3 and works there a great deal trying to take care of his
4 family. This is a very tragic situation, Your Honor.
5 As you know and pointed out, the very least sentence you
6 can give him today would be 15 years. He would have to
7 do 85 percent of that.

8 Your Honor, I will ask that you sentence him
9 to that number. I think that would be appropriate. He
10 does have a record. He has been in trouble. He has not
11 gone to jail. I think he has done a little bit over a
12 year on a prior occasion. So he has not been in the
13 system.

14 Your Honor, I understand these are serious
15 charges. I would point out the person that purchased
16 the 200-something grams from Mr. Livingston was actually
17 someone Mr. Livingston had had prior transactions with.

18 So he wasn't actually buying all those drugs.
19 He was getting some of them back. So they had bought
20 them together. That isn't to try to say Mr. Livingston
21 is less responsible, but in mitigation, Your Honor, I
22 don't think he was someone who was moving that kind of
23 weight.

24 He made some bad decisions. He was selling
25 drugs and trying to augment his income and made a

1 terrible judgment call. I think the agent from
2 S.L.E.D., who I talked to, would tell you that
3 Mr. Livingston has been cooperative with them. They
4 didn't have to chase him or anything. He told them what
5 he had been doing when they caught up to him.

6 Your Honor, the reason we were on the trial
7 docket and this kind of came together so late is we had
8 a situation to go to trial on a mandatory 25 years or
9 plead guilty to a mandatory 15 years. I can understand
10 why my client took a long time making that decision.
11 Neither choice is any good.

12 But he spent the latter part of last week and
13 the weekend speaking with his girlfriend that lives with
14 him and the four children and explained to them what was
15 going on. He has been on bond this time, Your Honor.

16 He is here today to accept what is going to be
17 at least a 15-year sentence. I think that is a decision
18 that says he is here and he is taking responsibility.
19 It's an adult decision and a difficult one.

20 I would ask that Your Honor recognize that and
21 give him that minimum sentence. Even in describing it
22 as a minimum sentence, I think we all have to agree it's
23 a very serious sentence. It is the least you can give
24 him, but it is by no means a break or a short amount of
25 time. I think 15 years would certainly be appropriate,

1 and I think the lesson to be learned here will be
2 learned.

3 THE COURT: Mr. Livingston, anything you would
4 like to say?

5 THE DEFENDANT: No, sir, Your Honor.

6 THE COURT: You have nothing to say?

7 THE DEFENDANT: No, sir.

8 THE COURT: I would be glad to hear from the
9 State on sentence.

10 MR. BURN: Your Honor --

11 THE COURT: What is his criminal record, first
12 of all?

13 MR. BURN: Yes, he does have a prior criminal
14 history, starting in 1995 when he has a conviction for
15 possession with intent to distribute crack cocaine.

16 That was pled down from a trafficking in crack charge.

17 Your Honor, that same year he has a D.U.S.
18 second offense. 2000, he has malicious injury to
19 personal property, a thousand or less. 2002, he has a
20 distribution of crack cocaine and a distribution of
21 crack cocaine within proximity of a school or park.

22 Then, Your Honor, in 2003 he has the filing a
23 false police report of a felony. 2004, he has a
24 possession of marijuana conviction and a giving false
25 information conviction.

1 Your Honor, then in 2005, he has a failure to
2 stop for a blue light conviction, driving under
3 suspension, failing to comply with the direction of a
4 police officer, and possession with intent to distribute
5 cocaine and possession of crack cocaine. That latter
6 conviction was actually also pled down from a
7 trafficking crack charge, Your Honor.

8 THE COURT: Anything else from the State?

9 MR. BURN: Nothing, Your Honor. I believe you
10 have everything as far as what is being given in
11 negotiation already on the record.

12 THE COURT: Thank you very much. Was he in
13 jail for any period of time? How long were you in jail,
14 Mr. Livingston, on these charges?

15 MR. KENDRICK: A couple of weeks, Your Honor.
16 I am trying to figure it out.

17 THE COURT: Fourteen days?

18 MR. BURN: It wasn't long, Your Honor.

19 MR. KENDRICK: He bonded out shortly after.

20 THE COURT: Mr. Livingston, Indictment
21 Number 170, distribution of cocaine base third,
22 sentenced to the State Department of Corrections for a
23 period of 18 years. That is current with the other
24 indictments. Give credit for 14 days.

25 Indictment Number 172, distribution of cocaine

1 base third, sentenced to the State Department of
2 Corrections for a period of 18 months -- excuse me -- 18
3 years. That is concurrent. Give you credit for 14
4 days. Concurrent means it runs together.

5 Indictment number 647, sentenced to the State
6 Department of Corrections for 18 months. It's
7 concurrent. Give you credit for 14 days. Thank you
8 very much.

9 MR. BURN: I'm sorry, Your Honor. You said 18
10 months?

11 THE COURT: Eighteen years. I'm sorry. If I
12 said months, Mr. Livingston, it's 18 years on all three
13 indictments. Do you understand?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Thank you very much.

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 13th day of April, 2009.

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

December 8, 2010

L Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) COURT OF GENERAL SESSIONS

State of South Carolina,)
PLAINTIFF,) PROBATION REVOCATION
-VS-) HEARING
James Livingston,) 2005-GS-32-01921
DEFENDANT.) 2008-GS-32-02325

BEFORE THE HONORABLE R. KNOX McMAHON, JUDGE

MAY 22, 2009

LEXINGTON, SOUTH CAROLINA

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

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E X H I B I T S

THERE WERE NO EXHIBITS SUBMITTED AT THIS HEARING.

1 (The defendant, together with
2 counsel, was personally present in the courtroom.)

3 THE COURT: Yes, sir.

4 SOLICITOR: Your Honor, next we've got Mr.
5 James Livingston.

6 CLERK OF COURT: Is that Mr. James
7 Livingston?

8 MR. LIVINGSTON: Yes, ma'am.

9 (Whereupon, the witness was
10 sworn.)

11 THE COURT: All right, Mr. Livingston, the
12 Department alleges you have willfully and
13 intentionally violated the terms and conditions of
14 your probation. How do you plead to that, guilty or
15 not guilty?

16 MR. LIVINGSTON: Guilty.

17 THE COURT: Okay. Do you do not have an
18 attorney?

19 MR. LIVINGSTON: No, sir.

20 THE COURT: And you say do not want an
21 attorney?

22 MR. LIVINGSTON: No, sir.

23 THE COURT: You want to proceed today
24 without an attorney?

25 MR. LIVINGSTON: Yes, sir.

1 THE COURT: All right then, thank you.

2 Madam Agent?

3 PROBATION AGENT: Thank you, Your Honor.

4 Mr. Livingston is on probation from a possessing
5 cocaine, first offense, two counts. He was placed on
6 probation in October of '05.

7 He's had no prior violations on this case,
8 Your Honor. He's been in full compliance. He's done
9 perfectly, in fact -- has a great attitude, and he's
10 a nice guy.

11 He's done nothing wrong except this new
12 conviction, Your Honor. And he was sentenced to 18
13 years for another drug offense, Your Honor.

14 THE COURT: All right, thank you very much,
15 Madam Agent.

16 Mr. Livingston, anything you'd like to say?

17 MR. LIVINGSTON: No, sir.

18 THE COURT: All right. I find that he has
19 willfully and intentionally violated the terms and
20 conditions of his probation. I will revoke in full,
21 and it shall run concurrent with the current active
22 sentence.

23 All right then, that will take care of it,
24 I think?

25 PROBATION AGENT: Yes, sir.

1 THE COURT: Mr. Livingston --

2 MR. LIVINGSTON: Yes, sir.

3 THE COURT: -- good luck to you.

4 MR. LIVINGSTON: All right.

5 PROBATION AGENT: Thank you, Your Honor.

6 THE COURT: Thank you.

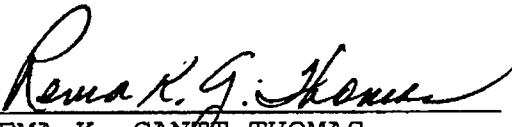
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-
CAPTIONED CASE ON MAY 22, 2009, IN LEXINGTON, SOUTH
CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION,
NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
TWENTY-THIRD DAY OF DECEMBER, 2009.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

FORM 5

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2009 OCT 28 P 1:44

JAMES MORRIS LIVINGSTON 226920

Full name and prison number (if any) of Applicant
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

v.

APPLICATION FOR

State of South Carolina

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 McCormick Correctional Institute
2. Name and location of Court which imposed sentence Lexington General Sessions Court
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-32-02647-Distribution of Cocaine-3d or subsequent offense
 - (b) 2006-GS-32-00170-Distribution of Cocaine Base-3d or subsequent offense
 - (c) 2006-GS-32-00172-Distribution of Cocaine Base-3d or subsequent offense
 - (d) 2005-GS-32-1921,W-32-09-0165-Violation of Probation
 - (e) 2005-GS-32-2325,W-32-09-0165-Violation of Probation
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) April 13, 2009--18 years
 - (b) April 13, 2009--18 years
 - (c) April 13, 2009--18 years
 - (d) April 13, 2009--2 years
 - (e) April 13, 2009--12 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (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?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. June 22, 2009
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (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) Counsel failed to properly advise Applicant, failed to investigate the facts and law, failed to show Applicant all of the evidence.
- (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? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

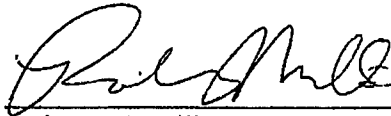
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Counsel-this is first opportunity to raise this issue.

(b) _____

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
 - (b) your trial, if any? _____
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Josh Kendrick
 - ii. 1720 Main Street, Suite 202
 - iii. Columbia, SC 29201
 - (b) the proceedings at which each such attorney represented you:
 - i. Guilty plea, probation violation and sentencing
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
New trial on all indictments and probation violations
20. Are you now under sentence from any other court that you have not challenged?
No

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Robert W. Mills", written over a horizontal line.

Robert W. Mills
1728 Main Street
Columbia, SC 29201
803-252-9648
Attorney for the Applicant

October 28, 2009

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

-CP -

Defendant(s)

2009CP3204821

(Please Print)

Submitted By: [Signature]

Address: [Address]

SC Bar #: [Bar Number]

Telephone #: [Phone Number]

Fax #: [Fax Number]

Other: [Other Information]

E-mail: [Email Address]

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

DOCKETING INFORMATION (Check all that apply)**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture—Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature: [Signature]

Date: [Date]

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

James M. Livingston, #226920,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2009-CP-32-4821
ORIGINAL

RETURN

BEITH A. CARRICO
CLERK OF COURT
LEXINGTON, SC

2010 MAR 16 A 10

FILED

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 28, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was charged with three counts of Distribution of Cocaine—3rd or Subsequent Offense (2006-GS-32-0170, -172, 2008-GS-32-2647), and two counts of Violation of Probation (2005-GS-32-1921, -2325). Applicant was represented by Josh Kendrick, Esquire. On April 13, 2009, the Applicant pled guilty as charged. On February 24, 2009, the Applicant was sentenced by the Honorable J. C. Nicholson, Jr., to concurrent sentences with an aggregate period of confinement of eighteen (18) years.

A timely Notice of Appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently dismissed the Applicant's appeal on June 22, 2009.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to properly advise Applicant, failed to investigate the facts and law, failed to show Applicant all of the evidence."

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

IV.

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

James Livingston #226920,)
)
Applicant,)
)
vs)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2009-CP-32-04821

PROOF OF SERVICE BY MAIL.

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Lisa A. Suber, who being first duly sworn, states:

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

Robert W. Mills, Esquire
1728 Main Street
Columbia, South Carolina 29201

DATED this 15th day of March, 2010

Lisa A. Suber
LISA A. SUBER

FILED
2010 MAR 16 A 10:21
BETH A. O'NEILL
CLERK OF COURT
LEXINGTON, SC



HENRY McMASTER
ATTORNEY GENERAL

March 15, 2010

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street
Lexington, South Carolina 29072

Re: James Livingston #226920 v. State of South Carolina
Case #2009-CP-32-04821

Dear Ms. Carrigg:

Enclosed please find the original Return in the above-captioned case, James Livingston #226920 v. State, for filing in your office.

Sincerely,

A. West Loe
Assistant Attorney General

AWL/las

Enclosures

cc: Robert W. Mills, Esquire w/enclosures

FILED
2010 MAR 16 A 10:21
BETH A. CARRIGGS
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS **FILED**

Case No.: 2009-CP-32-4821

2011 MAY 16 A 11: 12

JAMES LIVINGSTON)
vs.)
STATE OF SOUTH CAROLINA)
_____)

ADDENDUM TO APPLICATION
FOR POST-CONVICTION
RELIEF

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

The Applicant respectfully requests that the Court grant to Applicant a new trial based upon the fact that the Applicant received ineffective assistance of counsel and did not receive the proper warnings before proceeding without counsel in his probation violation case. This Application and Addendum is based upon many failures of the Applicant's trial counsel to fully inform him of all of the facts of the case; failure of trial counsel to review evidence with applicant before the court date; failure of trial counsel to fully investigate the facts; failure of trial counsel to advise Applicant of the full nature of the sentence; failure of trial counsel to advise the applicant of the full nature of the chemical analysis; failure of trial counsel to properly advise applicant on the choices of pleading to a lesser offense; failure of trial counsel to properly advise Applicant about the possible sentence if Applicant chose to go to trial; failure of trial counsel to file a Motion of Reconsideration as he told the Applicant he would; failure of trial counsel to advise Applicant of his right to challenge any statements made to law enforcement and failure of the trial judge in the probation violation hearing to properly warn the Applicant of proceeding without counsel.

In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) the United States Supreme Court ruled that for a defendant to gain a reversal of a conviction for ineffective assistance of counsel that the applicant must show that counsel's performance

fell below an objective standard of reasonableness and that counsel's deficient performance prejudiced the defendant which resulted in an unreliable or fundamentally unfair outcome of the proceedings. Applicant submits that trial counsel's performance was deficient and prejudiced the Applicant.

Due to the failure of trial counsel to fully inform him of all of the facts of the case; failure of trial counsel to review evidence with applicant before the court date; failure of trial counsel to fully investigate the facts; failure of trial counsel to advise Applicant of the full nature of the sentence; failure of trial counsel to advise the applicant of the full nature of the chemical analysis; failure of trial counsel to properly advise applicant on the choices of pleading to a lesser offense; failure of trial counsel to properly advise Applicant about the possible sentence if Applicant chose to go to trial; failure of trial counsel to file a Motion of Reconsideration as he told the Applicant he would; failure of trial counsel to advise Applicant of his right to challenge any statements made to law enforcement, the Applicant received ineffective assistance of counsel. Furthermore the failure of the trial judge in the probation violation hearing to properly warn the Applicant of proceeding without counsel renders the probation violation unconstitutional by denying Applicant's Sixth Amendment right to an attorney.

Applicant, therefore, requests that an evidentiary hearing be convened since the issues raised above are outside of the record. Sharper v. State, 279 S.C. 264, 305 S.E. 2d 247 (1983).

WHEREFORE, the Applicant prays that this Court grant to the Applicant a new trial on all indictments and probation violation warrants based upon ineffective assistance of counsel and a denial of his Sixth Amendment right to an attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Mills', written over a horizontal line.

Robert W. Mills
Attorney for the Applicant
1728 Main Street
Columbia, SC 29201
(803) 252-9648

Dated: 5 - 16 - 11

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON) COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT

James M. Livingston,)
)
) Post-Conviction Relief
 APPLICANT,) Hearing
) 2009-CP-32-04821
)
)
 -VS-)
)
State of South Carolina,)
)
 RESPONDENT.)

)

BEFORE THE HONORABLE EDGAR W. DICKSON, JUDGE

AUGUST 16, 2013

LEXINGTON, SOUTH CAROLINA

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

Robert W. Mills, Esq.
For the Applicant

Mary Williams, Esq.
For the State

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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1 (The defendant, together
2 with counsel, was personally present in the
3 courtroom.)

4 COURT REPORTER: Your Honor, I've marked
5 Applicant's Exhibits for identification One through
6 Four.

7 THE COURT: Okay.

8 MS. WILLIAMS: May it please the Court,
9 this is Mr. James Livingston. He pled guilty on
10 April 13, 2009. He had I believe three charges of
11 distribution of a cocaine base. His sentence was 18
12 years from that charge.

13 He also, on May 22, 2009, had a probation
14 revocation hearing. He was on probation at the time
15 of his plea, and that was the basis for the
16 revocation. He was represented by Mr. Joshua
17 Kendrick for the guilty plea.

18 He was unrepresented at the probation
19 revocation. His counsel today is Bob Mills, so he
20 submitted an amended application. And he has set
21 forth several grounds for ineffective assistance of
22 counsel. But I believe we'll go into those in more
23 depth in this PCR hearing, and I'll turn that over
24 to Mr. Mills.

25 THE COURT: And, Mr. Mills --

1 MR. MILLS: Yes, sir, Your Honor.

2 THE COURT: -- the first page.

3 MS. WILLIAMS: I believe you have the
4 front page. He sent me the three pages.

5 MR. MILLS: We filed it back -- I don't
6 understand why it wouldn't have been in the file,
7 but we did file all three pages.

8 MS. WILLIAMS: Yes, sir. And you've given
9 it to me.

10 MR. MILLS: I do have an extra copy. I
11 believe it's an unfiled copy.

12 THE COURT: I'd just like to have all the
13 pages.

14 MR. MILLS: Yes, sir.

15 THE COURT: Thank you, sir.

16 MR. MILLS: Thank you, Your Honor.

17 THE COURT: I appreciate it. Okay, yes,
18 sir.

19 MR. MILLS: Your Honor, this is a post-
20 conviction relief action that Mr. James Livingston,
21 who is present, did plead guilty to three charges
22 based on three different incidents and was
23 represented by Josh Kendrick for those pleas back on
24 April 13, 2009.

25 And he had filed an appeal, which was

1 dismissed. This PCR was timely filed in 2009. And
2 we have an addendum that was actually filed back in
3 2011. There are several listed failure of trial
4 counsel that are listed and also a Beretta violation
5 for the allegation for the violation of probation
6 hearing. If Your Honor needs some more information,
7 we can give it to you. If not, we will call our
8 first witness.

9 THE COURT: You can call your first
10 witness.

11 MR. MILLS: Your Honor, the applicant
12 calls James Livingston to the stand.

13 (Whereupon, the applicant was sworn.)

14 JAMES M. LIVINGSTON, having first been
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MILLS:

18 Q Good morning, Mr. Livingston.

19 A Good morning.

20 Q Where are you incarcerated?

21 A Broad River Road Correctional Institution.

22 Q Okay. How long have you been incarcerated
23 in the South Carolina Department of Corrections?

24 A Almost four years.

25 Q Okay. And do you remember these charges

1 back from -- actually, on the plea that you did in
2 2009, you pled to three different charges, correct?

3 A Yes, sir.

4 Q Okay. Do you remember the charges that
5 you pled to?

6 A Trafficking cocaine and distribution of
7 crack cocaine.

8 Q Okay. You actually pled to distribution
9 three counts, correct, third offense?

10 A Yes, third offense.

11 Q Okay. One was originally a trafficking,
12 is that correct?

13 A Yes, sir.

14 Q Okay. And that was what we would call the
15 SLED case? That was a SLED investigation, South
16 Carolina Law Enforcement Division?

17 A Yes, sir.

18 Q Okay. And you also had two different
19 warrants from West Columbia, correct?

20 A Yes, sir.

21 Q That initiated in West Columbia?

22 A Yes, sir.

23 Q And they were all pending in the Lexington
24 County General Sessions Court?

25 A Yes, sir.

1 Q Okay. So the 2006-GS-32-00170 and the 172
2 were the West Columbia cases, correct?

3 A Yes, sir.

4 Q Okay. And then you also had a violation
5 of probation that occurred after the plea, is that
6 correct?

7 A Yes, sir.

8 Q And that was done before Judge McMahon, I
9 believe?

10 A That's correct.

11 Q On May 22, 2009?

12 A That's correct.

13 Q And did you have an attorney in that case
14 -- in the probation violation?

15 A No, sir.

16 Q Okay. Were you told the dangers of
17 proceeding without a lawyer?

18 A No, sir.

19 Q Okay. And Mr. Kendrick didn't represent
20 you at that time, correct?

21 A No, sir.

22 Q His representation had ended at that
23 point?

24 A Yes, sir.

25 Q And did the judge or anyone tell you that

1 you -- the dangers of proceeding without an
2 attorney?

3 A No, sir.

4 Q Okay. And did a probation officer tell
5 you anything about the dangers of proceeding without
6 a lawyer at that time?

7 A No, sir.

8 Q Okay. So no one told you -- you've seen
9 the transcript in this case, correct?

10 A Yes, sir.

11 Q And no one in the transcript, including
12 the judge, told you the dangers of proceeding
13 without a lawyer?

14 A Not to that effect.

15 Q Okay, all right. Well, let's go to the
16 2005 case with 2006 indictments out of West Columbia
17 and also the 2008 SLED case which was originally
18 trafficking, which was reduced down to distribution
19 of cocaine third offense. Who represented you on
20 those charges?

21 A Joshua Kendrick.

22 Q When did you -- was he retained or
23 appointed?

24 A He was retained.

25 Q When did you retain Mr. Kendrick?

1 A A little prior to after I caught the
2 charge.

3 Q Which one?

4 A The '05 charge.

5 Q Okay. So right after you caught the '05
6 charges, you retained Mr. Kendrick, okay. And those
7 charges were pending for a couple of years, correct,
8 before you came to court?

9 A Yes, they was held back almost three
10 years.

11 Q Okay. And in that case, there are two
12 different incidents, correct?

13 A Yes, sir.

14 Q And was there a confidential informant
15 that was actually involved in the alleged
16 transaction?

17 A Yes, sir.

18 Q Okay. And it was two different
19 transactions, correct, and two different dates?

20 A Yes, sir.

21 Q Okay. And was it the same confidential
22 informant on both cases?

23 A Yes, sir.

24 Q And you pled to those 2005 cases actually
25 at the same time with the 2008, which would have

1 been 2009, correct?

2 A Yes, sir.

3 Q And were you -- did you find out later
4 that the confidential informant who was part of the
5 transaction -- with no other witnesses to my
6 understanding, correct?

7 A Yes, sir.

8 Q Did you find out that he was deceased?

9 A Yes, sir.

10 Q Okay. Was that before -- was his date of
11 death before the date of the plea that you did in
12 2009?

13 A Yes, sir.

14 Q Okay. And did Mr. Kendrick do any
15 investigation to that effect that you know of to
16 determine that a witness -- a vital witness to the
17 case -- was deceased before your plea?

18 A No, sir.

19 Q Okay. And was the -- let me ask you this.
20 How do you know who the confidential informant was
21 in the two cases from West Columbia?

22 A How did I know --

23 Q Yes, sir.

24 A -- who he was?

25 Q Yes.

1 A Because I was present at the time.

2 Q Okay. You were present?

3 A Yes, sir.

4 Q Okay. And what was his name?

5 A Bernard Hutto.

6 Q Robert Bernard Hutto?

7 A Robert Bernard Hutto.

8 Q Does this look like -- this death
9 certificate that I have in my hand, which is marked
10 Plaintiff's Exhibit Number One, does it say Robert
11 Bernard Hutto --

12 A Robert Bernard Hutto.

13 Q -- and was born in 1954? Is that the
14 person that was involved when you were present?

15 A Yes, sir.

16 Q Okay. And just to -- what was the date of
17 death that Mr. Hutto died?

18 A May 29, 2007.

19 Q Okay. So your allegation is that Mr.
20 Kendrick failed to investigate this before your
21 plea?

22 A Yes, sir.

23 Q And therefore, since this was a witness,
24 the only witness for the State that actually would
25 have testified to any personal knowledge, you would

1 have been denied the right to cross-examine that
2 witness since they were dead, and therefore the case
3 could not have gone forward by the State?

4 A Yes, sir.

5 Q Okay. So you're claiming that he didn't
6 do a complete factual investigation at the time of
7 the plea to the charges from 2005?

8 A Yes, sir.

9 MR. MILLS: Your Honor, we would move that
10 death certificate into evidence.

11 MS. WILLIAMS: No objection from the
12 State.

13 THE COURT: Okay, with no objection.
14 Which one is that, applicant's number what?

15 COURT REPORTER: One.

16 THE COURT: Applicant's Number One is in
17 without objection, the death certificate.

18 (Whereupon, Applicant's Exhibit Number,
19 Death Certificate, was entered in evidence.)

20 Q And, Mr. Livingston, you had asked me to
21 see if we could get some information from West
22 Columbia, correct, to verify information?

23 A That's correct.

24 Q Okay. And I had subpoenaed records from
25 the West Columbia Police Department, to the best of

1 your knowledge?

2 A Yes, sir.

3 Q And are you aware -- and I've shown you
4 this letter as well as to the State, a letter
5 showing that they had basically "In reference to
6 James Livingston versus the State, several documents
7 listed in the subpoena are not available. The
8 charges Mr. Livingston pled guilty to were two
9 controlled buys of narcotics detectives organized
10 using a confidential informant, and all but one are
11 no longer employed by West Columbia."

12 It goes on to basically say that they
13 didn't have the information about the confidential
14 informant, that it is no longer available. And,
15 Your Honor, we would just move this letter into
16 evidence. I don't believe there's any objection.

17 THE COURT: Which one is it?

18 MR. MILLS: This is Plaintiff's Exhibit
19 Number Two.

20 THE COURT: Okay, all right.

21 Is there any objection, Ms. Williams?

22 MS. WILLIAMS: No, sir.

23 THE COURT: All right. Applicant's Number
24 Two is in without objection.

25 (Whereupon, Applicant's Exhibit Number

1 Two, Letter, was entered in evidence.)

2 THE COURT: What's the date of that
3 letter?

4 MR. MILLS: Your Honor, it does not have a
5 date on it, and we talked to the State about that.
6 It came to me awhile back. I just can't say what
7 date. I had actually subpoenaed West Columbia to
8 come here today, and they're not here, just if there
9 was any question about that. And I'm not sure why
10 they didn't follow the subpoena that we issued to
11 them last week, but they are not here.

12 THE COURT: Okay. And, Mr. Mills, it was
13 received by you sometime after 2011?

14 MR. MILLS: That's correct. That's
15 correct.

16 THE COURT: Okay, all right. Thank you,
17 sir.

18 MR. MILLS: Thank you, Your Honor.

19 Q Mr. Livingston, just another question
20 about the West Columbia incident. You are sure that
21 Mr. Hutto was the person that would have been a
22 witness if he had lived, correct?

23 A Yes, sir.

24 Q And he died before you actually pled
25 guilty in 2009?

1 A That's correct.

2 Q Okay. Is there anything else you would
3 like to add about that issue?

4 A Yes. From what I researched, see State
5 versus Ezell, it states that when a confidential
6 informant cannot be located to testify at trial, any
7 audio or visual tapes that have been recorded in
8 which the confidential informant identifies the
9 defendant may not be admitted into evidence because
10 the confidential informant is not available for
11 cross-examination.

12 Q And if you had known that the witness for
13 the State, the only witness that could place you at
14 the scene of this alleged distribution, was
15 deceased, would you have pled guilty?

16 A No, sir.

17 Q Okay. And you pled guilty along with some
18 other charges in this case, correct?

19 A Yes, sir.

20 Q Okay. So you pled to three charges at the
21 same time, correct?

22 A Yes, sir.

23 Q And two of those were the ones from these
24 West Columbia incidents?

25 A That's correct.

1 Q Okay. And the same confidential informant
2 who was deceased was involved?

3 A Yes, sir.

4 Q So there was a cumulative effect as far as
5 what you pled to. You pled to more than one, and
6 two of those were unprovable by the State?

7 A Yes, sir.

8 Q And you would not have pled if you had
9 known that?

10 A That's correct.

11 Q Okay. All right, let's move to the SLED
12 case. Now, when you hired Mr. Kendrick, you also
13 hired him not only for the West Columbia case but
14 later for the SLED case as well, is that correct?

15 A Well, he was already hired for the West
16 Columbia case.

17 Q Right, okay.

18 A Yes.

19 Q Okay. So he continued --

20 A He picked up the SLED case.

21 Q -- his representation at that point?

22 A That's correct.

23 Q Okay, all right. So tell me how many
24 times you met with Mr. Kendrick about the case and
25 about the West Columbia case. I didn't ask you

1 about that.

2 A Probably about a total of four times.

3 Q Okay. Where were you at the time? Were
4 you out on bond?

5 A Yes, I was out.

6 Q Okay.

7 A I was out on bond. I met him at his
8 office.

9 Q Okay. And you said about four times?

10 A Yes.

11 Q Okay. Did y'all go over the discovery in
12 the case?

13 A Not the West Columbia case.

14 Q Okay, I'm glad you answered that, because
15 I was going to ask you about that.

16 A Okay.

17 Q He did not go over the discovery in the
18 West Columbia case?

19 A No.

20 Q Did you ever see any of the discovery in
21 the West Columbia case?

22 A Nothing but the file.

23 Q What do you mean, the file?

24 A The paperwork.

25 Q Okay. Did you see any drug analysis from

1 the West Columbia cases? There are two cases.

2 A Yes, I seen a drug analysis.

3 Q Okay.

4 A Yes.

5 Q And did you see any audio or video in that
6 case?

7 A No, sir.

8 Q Okay. And that is the case where the
9 confidential informant was deceased by the time you
10 pled?

11 A That's correct.

12 Q Okay. Now, the SLED case -- so you had
13 talked to Mr. Kendrick prior to the SLED case
14 occurring, correct?

15 A Yes, sir.

16 Q The West Columbia case. How many times
17 did you meet with him about the West Columbia case?

18 A Probably about five times.

19 Q Okay. And how many times on the SLED
20 case?

21 A About twice.

22 Q Okay. And did you see the evidence in the
23 -- what evidence did you see from the SLED case,
24 which is the 2008-GS-32-2647 case?

25 A I called Mr. Kendrick. He asked me to

1 come down to his office. I arrived at his office,
2 and he said that he had the evidence from SLED, that
3 he received it from SLED. And he put the video in,
4 but he only played part of it. It did not have no
5 audio. And the only thing I could identify on the
6 video at that time was me standing in my kitchen
7 washing dishes.

8 Q Okay.

9 A And my daughters was in the kitchen trying
10 to warm up something to eat.

11 Q Okay.

12 A But they had left before any transaction
13 started.

14 Q Okay, let me ask you this. What did you
15 tell Mr. Kendrick was the basis of this transaction?

16 A That the confidential informant supplied
17 me with the drugs and came back and purchased some
18 of the same drugs and turned them over to SLED.

19 Q Okay. Did you mention to Mr. Kendrick an
20 entrapment defense? Did you mention that?

21 A No, sir.

22 Q Okay. Did he mention that to you?

23 A Mr. Kendrick brought out I wasn't entitled
24 to an entrapment defense because of my prior record.

25 Q Okay. And did he tell you why that was?

1 A Because of my prior record.

2 Q I mean, did he go into any further details
3 about an entrapment defense other than that?

4 A No, sir.

5 Q Okay. Did he also ask you whether or not
6 you had dominion and control over those alleged
7 drugs?

8 A No, sir.

9 Q Okay. Did you have dominion and control
10 over those alleged drugs?

11 A No, sir.

12 Q Okay. Did you have the right to do
13 anything with those drugs?

14 A No, sir.

15 Q Okay.

16 A But to give them back to the rightful
17 owner.

18 Q Okay.

19 A The confidential informant that was
20 working for SLED, Andrew Wilkins.

21 Q Okay. Were you able to -- so what was the
22 purpose of that, the confidential informant coming
23 by the house?

24 A The purpose of the confidential informant
25 coming by the house was to come back and pick the

1 drugs up that he had prior gave to me.

2 Q Okay. And you didn't have the right to
3 keep those, correct?

4 A No, sir.

5 Q Okay. Were you able to -- you said you
6 were able to see the video in the case?

7 A Parts.

8 Q Okay.

9 Beg the Court's indulgence.

10 Your Honor, this is Plaintiff's Exhibit
11 Number Four that we'd move into evidence. I don't
12 believe there's any objection from the State. This
13 is the audio/video from the alleged transaction from
14 2008 -- 2/27/2008.

15 MS. WILLIAMS: Your Honor, I've seen just
16 the part of the transaction, and I think this video
17 is pretty long. We looked at just the part that was
18 the transaction today, and it's my understanding it
19 came from Mr. Kendrick's file. So it is the video
20 in this issue.

21 THE COURT: Am I going to be watching the
22 whole thing.

23 MR. MILLS: I was going to show the part
24 that's relevant to the alleged transaction, because
25 otherwise it's an hour and a half or so. So we're

1 just going to do --

2 THE COURT: I'm not going to watch an hour
3 and a half.

4 MR. MILLS: Yes, sir. It's about five
5 minutes, Your Honor, a little less than that maybe.

6 THE COURT: And no objection, is that
7 correct, Ms. Williams?

8 MS. WILLIAMS: That's correct.

9 THE COURT: Okay. Applicant's Number Four
10 is in evidence without objection.

11 (Whereupon, Applicant's Exhibit Number
12 Four, Audio/Video Tape, was entered in evidence.)

13 MR. MILLS: Your Honor, could I have it so
14 that Mr. Livingston could see this, so he can
15 comment after he watches it?

16 (Whereupon, a portion of Applicant's
17 Exhibit Number Four was played before the Court.)

18 MR. MILLS: That's the end of the actual
19 inside the home --

20 THE COURT: Okay.

21 MR. MILLS: -- to identify it.

22 THE COURT: Thank you, sir.

23 Q So, Mr. Livingston, were you able to see
24 and hear that prior to your plea?

25 A Not all that.

1 Q Okay.

2 A Mr. Kendrick's equipment didn't have no
3 audio.

4 Q Okay.

5 A Mr. Kendrick said he would take it home to
6 his house and review it because he had better
7 equipment at his house.

8 Q Okay.

9 A So I didn't hear none of the audio.

10 Q Okay. And tell the Court what was the
11 actual transaction and what you told Mr. Kendrick
12 about what the actual transaction was.

13 A The actual transaction was he was coming
14 back to pick up the drugs that he had given to me
15 prior, after he had agreed it wasn't any good. He
16 gave me the option to sell some, but I refused.

17 Q Okay. And did you tell that to Mr.
18 Kendrick?

19 A Yes.

20 Q Did you tell him that you didn't have
21 dominion and control --

22 A Yes, sir.

23 Q -- over it, that it didn't belong to you
24 and you had no right to do anything with those
25 drugs?

1 A Yes, sir.

2 Q Okay.

3 Beg the Court's indulgence. Your Honor,
4 I'm going to move Applicant's Exhibit Number Three
5 into evidence. This is a telephone recording of the
6 conversation between the confidential informant and
7 Mr. Livingston.

8 THE COURT: Any objection?

9 MS. WILLIAMS: I've heard this
10 conversation. I don't have an objection to it.
11 There are several other conversations I have not
12 heard. And if there's anything on those
13 conversations I'd like to ask later, I would just
14 ask if I could do so.

15 THE COURT: I'll allow you to do that.

16 MR. MILLS: Well, could we listen to just
17 one this then this is all.

18 MS. WILLIAMS: He can listen to it.

19 THE COURT: That's what she --

20 MR. MILLS: There's another one -- another
21 that I have.

22 THE COURT: I think she'd probably like to
23 hear it ahead of time.

24 MR. MILLS: Because we listened to it
25 before Mr. Livingston was allowed. We couldn't take

1 this to the Department of Corrections, so I would
2 just ask him to listen to it in whole.

3 MS. WILLIAMS: Because I'd really like to
4 listen to it all.

5 THE COURT: You want to listen to them
6 before we go forward?

7 MS. WILLIAMS: We can talk about the one
8 that I've heard. I don't know what the other one
9 says.

10 THE COURT: You want to just go forward
11 with the one that you have that she's heard?

12 MR. MILLS: Well, we could do all of them
13 if you want to take two or three minutes and take a
14 break.

15 THE COURT: Okay, I'll take a break and
16 let you listen to them.

17 MS. WILLIAMS: Okay.

18 THE COURT: Okay. That way you won't have
19 to --

20 MR. MILLS: Yes, sir.

21 THE COURT: Okay, thank you.

22 MR. MILLS: Thank you, Your Honor.

23 THE COURT: Ms. Williams, you told me
24 you've heard this?

25 MS. WILLIAMS: Yes. And what we will do

1 is I will review all of them at a later date, not
2 that I think there's anything in any of the others,
3 but in case there is.

4 THE COURT: Okay.

5 MS. WILLIAMS: This is fine.

6 MR. MILLS: So we'd move Plaintiff's
7 Exhibit Number Three into evidence.

8 MS. WILLIAMS: Again, my understanding is
9 this is from Mr. Kendrick's file.

10 MR. MILLS: That's right.

11 THE COURT: Okay.

12 (Whereupon, Applicant's Exhibit Number
13 Three, Audiotape, was entered in evidence.)

14 (Whereupon, Applicant's Number Three was
15 played before the Court.)

16 Q Okay, Mr. Livingston, let me ask you a
17 couple of questions about that. Did you hear that
18 audio before you pled guilty?

19 A No, sir.

20 Q Okay. Did you know whether Mr. Kendrick
21 had that audio?

22 A He advised me he had it.

23 Q Okay. And tell me, first of all, is that
24 the full conversation to your knowledge, or is there
25 more to it?

1 A There was more to it.

2 Q Okay. What else was said? I guess at the
3 beginning of the conversation, what was said at that
4 point?

5 A At the beginning of the conversation, he
6 called and he asked me did I have anything. And I
7 responded, "Bro, I don't even know what I've got it.
8 I've got the same stuff you gave me to hold. Is you
9 ready to come back and pick it up, swap it out, or
10 whatever you want to do with it?"

11 Q Okay. And then the rest was that part
12 that we just heard?

13 A Yes.

14 Q Okay. So does that confirm that you did
15 not have dominion and control over the drugs, or
16 what could have been drugs at that time?

17 A Yes, sir.

18 Q Okay. And Mr. Kendrick didn't talk to you
19 about that, or did he?

20 A He just said he heard some money figures.

21 Q Okay.

22 A And that was it. And that they got me.

23 Q Okay. Would you have pled guilty if you
24 had known what all the evidence was in this case?

25 A No, sir.

1 Q Okay. Would you have raised a defense in
2 this case if you had known what the recording said?

3 A Yes, sir.

4 Q Okay. Both a potential entrapment
5 defense, correct?

6 A Yes, sir.

7 Q And potentially that you had no dominion
8 and control over the alleged drugs, correct?

9 A Yes, sir.

10 Q Okay. Let me just go back on the
11 probation violation. Would you have -- knowing the
12 dangers of getting several years in prison, would
13 you have proceeded without a lawyer in the probation
14 violation if you had known the dangers of it at that
15 time?

16 A No, sir.

17 Q Okay. Yes, sir?

18 A I'd like to speak on the conversation.

19 Q Okay.

20 A What I had, I had the surveillance
21 reports. The conversation says investigators and
22 agents had the CI to target Maurice Quinton
23 Livingston at phone number 755-1546, to record the
24 conversation for investigative purposes. They said
25 that I said I answered the phone, and I advised that

1 I was selling eight and a quarter ounces of powder
2 cocaine for the price of \$1,625. That's noted on
3 the tape. They erased it.

4 Q Okay. What conversations did you have
5 with Mr. Kendrick about sentencing?

6 A It was a 20-year plea offer.

7 Q Okay. That was the initial plea offer?

8 A Yes, sir.

9 Q On what charges?

10 A On the SLED charge.

11 Q Okay.

12 A The trafficking charge.

13 Q All right. And then what happened?

14 A I told him that the drugs came from the
15 informant, and I don't see why I have to plead to
16 something when the drugs come from the government.

17 Q Okay. You pled to transacting the fact of
18 the government is what they were alleging, correct?

19 A Yes, sir.

20 Q Okay. And what other conversations did
21 y'all have about sentencing?

22 A That's when the other two charges came
23 about.

24 Q Okay. You already had the other two
25 charges pending --

1 A Yes.

2 Q -- for several years at that point?

3 A Yes.

4 Q Okay. And you mean as far as what the
5 sentence would be?

6 A When I first got to the courtroom, it was
7 just supposed to have been the trafficking charge.

8 Q Okay.

9 A And when I got there, he said, "What about
10 these other two charges?" which the other two
11 charges was paid for with the probation. That's how
12 I ended up with the probation for them two charges,
13 that one probation for the two charges that was
14 supposed to go away. I have a letter where him and
15 the Solicitor agreed, right here.

16 Q This letter was prior to the 2008 case?
17 This is a letter from 2006?

18 A 2006.

19 Q Right, okay.

20 A Yes. I had just received it when I got my
21 discovery from Mr. Kendrick. It states -- this is a
22 letter from --

23 MS. WILLIAMS: Your Honor, I think this
24 letter -- I have just a couple of objections to it.
25 I believe that Mr. Kendrick would have to properly

1 identify it and make it relevant. But this is also
2 related to the case that gives raise to his
3 probation violation. This is a plea he entered
4 prior to these cases. This is not the plea that's
5 on the report.

6 THE COURT: What's the relevance of this?

7 MR. LIVINGSTON: This was the --

8 THE COURT: Hold on one second, Mr.
9 Livingston. I need to ask Mr. Mills.

10 MR. MILLS: I believe this goes into the
11 plea negotiations prior to the trafficking case.

12 MS. WILLIAMS: That's my understanding.

13 MR. LIVINGSTON: To the '05 charges.

14 THE COURT: This is for --

15 MR. MILLS: This goes to --

16 MS. WILLIAMS: The 2005 charges. He was
17 on probation.

18 MR. MILLS: -- the 2005 charges which are
19 pending in this PCR application --

20 MS. WILLIAMS: No.

21 MR. MILLS: -- with the West Columbia
22 case.

23 THE COURT: We're dealing with just his
24 probation violation in 2005, is that true?

25 MR. LIVINGSTON: No.

1 MS. WILLIAMS: The 2005 cases were entered
2 as a guilty plea. He was on probation at the time
3 of these 2006 and 2008 offenses.

4 MR. MILLS: This is a letter concerning he
5 was on the probation, and then this is concerning
6 the 2005 cases which are on the application today.

7 MS. WILLIAMS: But that plea is not on the
8 table today. And if it is, we'll need to stand back
9 and get that plea transcript. And I believe that
10 would be barred under the statute of limitations.

11 THE COURT: The only thing I have to
12 discuss, I've got he was complaining about not
13 having an attorney for the probation violation.

14 MR. MILLS: That's correct, Your Honor.

15 THE COURT: Does that paper have anything
16 to do with this hearing in front of Judge McMahon on
17 May 29, 2009?

18 MR. MILLS: No, sir. This has to do with
19 -- this is relevant to the plea negotiations prior
20 to --

21 THE COURT: Okay.

22 MR. MILLS: -- the 2009 plea which
23 included the 2008 case, because this is a 2006
24 letter.

25 THE COURT: Right. I just don't

1 understand what the relevance is.

2 MR. MILLS: To show what the negotiations
3 were prior to the 2008 case.

4 THE COURT: Okay. I usually give people a
5 lot of leeway in these, but I just don't see any
6 relevance to it. If you want to make it --

7 MR. MILLS: I'll mark it as a Court's
8 exhibit.

9 THE COURT: -- as a proffer --

10 MR. MILLS: Yes, sir.

11 THE COURT: -- I'll accept it that way.

12 MR. MILLS: Yes, sir.

13 THE COURT: But as far as going into
14 evidence, I'm not going to let you do that, okay?

15 MR. MILLS: Yes, sir.

16 THE COURT: So this is going to be
17 Applicant's Number Five?

18 MR. MILLS: That's correct, Your Honor.

19 THE COURT: Okay. And that's going to be
20 your proffer?

21 MR. MILLS: That's a proffer, Your Honor.
22 I'll have him testify about what his --

23 THE COURT: Okay.

24 (Whereupon, Applicant's Exhibit Number
25 Five, Proffer, 1/16/06 Letter, was marked for

1 identification purposes.)

2 THE COURT: Give her time to review it.

3 Q Mr. Livingston, tell me about what
4 occurred in this letter to your knowledge as far as
5 Plaintiff's Exhibit Five.

6 A The letter states, "It is my
7 understanding" -- as well as the discussion between
8 the Solicitor and Mr. Kendrick, it states, "It is my
9 understanding you have no problem with pleading this
10 case to a sentence of probation concurrent to the
11 probation Mr. Livingston is currently serving. This
12 would be appropriate considering these warrants were
13 issued before Mr. Livingston's plea but not served
14 until after the plea."

15 Q So it's dealing with the pending cases,
16 the West Columbia cases that we've talked about?

17 A With the dead informant.

18 Q With the dead informant.

19 A Yes, sir.

20 Q And this letter was from January 16, 2006?

21 A Yes, sir, that's correct.

22 Q Were there any other conversations about
23 sentencing with Mr. Kendrick? Let me just ask you
24 this. Did he talk about the fact that you were not
25 pleading the trafficking, that you were pleading to

1 a lesser distribution charge instead of trafficking?

2 A Yes, lesser included offense, distribution
3 third.

4 Q Okay. And you had two prior drug
5 offenses, correct?

6 A Yes, sir.

7 Q Okay. Did he say anything about the
8 possibility of a life without parole sentence?

9 A Yes, sir.

10 Q Okay. What was the conversation about
11 that?

12 A He said if I didn't take the plea, then I
13 was looking at life without parole.

14 Q And what was the basis of that?

15 A I really didn't understand it.

16 Q Did he tell you why you would be looking
17 at life?

18 A Oh, third offense.

19 Q Third offense for what charge?

20 A Drug charge.

21 Q Okay. But that was your understanding,
22 that you were looking at life without parole for a
23 third offense drug offense?

24 A If I went to trial.

25 Q Okay. Did he tell you the law that was

1 based on?

2 A No, sir. He just -- I was out in the
3 hallway, and he walked in the courtroom. And he
4 came back with the box marked on the sentencing
5 sheet.

6 Q Well, did the State ever serve you with
7 notice to seek life without parole?

8 A No, sir, I did not get a notice of
9 requirement.

10 Q But your conversations with Mr.
11 Kendrick --

12 A Was I was facing life without parole.

13 Q And you don't know the basis of that?

14 A No, sir. Like I said, from my
15 understanding I thought it was the third offense.

16 Q Would you have pled guilty if you were not
17 looking at life without parole?

18 A No, sir.

19 Q Okay. Did the judge in the plea hearing
20 warn you of any life without parole type sentencing
21 structure?

22 A No, sir.

23 Q Okay. Did you ask -- so under the plea
24 that you did take --

25 A Uh-huh.

1 Q -- you were looking at a 15-year mandatory
2 sentence. Did you understand that?

3 A Yes, sir.

4 Q You were told that on the record?

5 A Yes, sir.

6 Q And the judge gave you an 18-year
7 sentence?

8 A Yes, sir.

9 Q Did you request that your lawyer file a
10 motion to reconsider?

11 A No, sir. But he promised me a motion to
12 reconsideration to take me back in front of the
13 Court, but it was off the record. And he also
14 promised that I could have this PCR hearing. He
15 stated that.

16 Q Okay. Is there anything else you want to
17 tell the Court about this case -- your cases?

18 A From my research dealing with my 2008
19 issue, if the Court would look at the transcript
20 page number 16, lines 14 through 20, Mr. Kendrick
21 stated, "Your Honor, I understand these are serious
22 charges. I will point out the person that purchased
23 the 200 and something grams from Mr. Livingston was
24 actually someone Mr. Livingston had had prior
25 transactions with.

1 "So he wasn't actually buying all of these
2 drugs, that he was giving some of them back, so that
3 they had purchased them together." But I'd like to
4 correct that. I wasn't -- we didn't purchase
5 nothing together. I was present when he purchased
6 it.

7 Q Is there anything else you want to say?

8 A In Truman versus U.S., Your Honor, 356
9 U.S. 369, Supreme Court, it states that "The Courts
10 refused to convict an entrapped defendant, not
11 because his conduct falls outside the proscription
12 of the statute but because even if his guilt be
13 admitted, the methods employed on a buyout -- for
14 the government to bring about conviction cannot be
15 counted."

16 THE COURT: Are there no other factual
17 issues?

18 MR. MILLS: I believe that's it, Your
19 Honor. I just wanted to cover one quick thing, Your
20 Honor.

21 THE COURT: Okay.

22 Q So would you have pled guilty to any of
23 these charges had you known, number one, that there
24 was a missing witness in the West Columbia cases;
25 and, number two, that you had defenses to the second

1 case, the SLED case?

2 A No, sir.

3 Q Okay. And would you have gone forward
4 without a lawyer in the probation case if you had
5 known the dangers of proceeding without a lawyer?

6 A No, sir.

7 Q All right, thank you. Please answer any
8 questions for the State.

9 THE COURT: Ms. Williams.

10 CROSS-EXAMINATION

11 BY MS. WILLIAMS:

12 Q Mr. Livingston, by the time you pled
13 guilty, you understood what you were pleading to
14 carried up to 90 years in prison, right?

15 A Yes, ma'am.

16 Q You understood these weren't your only
17 charges?

18 A Yes, ma'am.

19 Q You had three more charges of distribution
20 that also carried 30 years --

21 A Uh-huh.

22 Q -- two proximity charges, right?

23 A Yes, ma'am.

24 Q So you got rid of those by pleading guilty
25 here, right?

1 A Yes, ma'am.

2 Q That kind of helped out, right?

3 A Yes, ma'am.

4 Q Because those were all separate incidents
5 on different dates, is that correct?

6 A That's correct.

7 Q And this wasn't your first time in court
8 either, was it?

9 A No, ma'am.

10 Q You had a record including giving false
11 reports to police?

12 A Yes, ma'am.

13 Q You had had convictions for distributing
14 crack cocaine in proximity of a school?

15 A Yes, ma'am.

16 Q False report of a felony?

17 A Yes, ma'am.

18 Q Possession of marijuana?

19 A Yes, ma'am.

20 Q Failing to stop for blue lights?

21 A Yes, ma'am.

22 Q Possession with intent to distribute
23 cocaine?

24 A Yes, ma'am.

25 Q Possession of crack?

1 A Yes, ma'am.

2 Q Okay. And in this case involving SLED,
3 you heard the Solicitor give some facts on the
4 record during your plea, right?

5 A Yes, ma'am.

6 Q They included that your daughters were in
7 the kitchen when this happened, right?

8 A Yes, ma'am.

9 Q And that you had actually given a
10 confession at SLED headquarters admitting that you
11 were dealing cocaine?

12 A Yes, ma'am.

13 Q And you agreed that those facts were
14 correct?

15 A The facts that actually took place by
16 SLED, yes.

17 Q And you said you didn't agree with any of
18 the facts you gave?

19 A Repeat that?

20 Q On page 15 of the transcript, the Court
21 asked you, "Mr. Livingston, are those facts
22 correct?" You replied, "Yes, sir."

23 A Hold on, give me a second.

24 Q No problem.

25 THE COURT: You want to look at my copy of

1 the transcript?

2 A What page?

3 Q Page 15, beginning at line eight through
4 13.

5 A Fifteen, line eight?

6 Q Through 13.

7 A Okay, go ahead.

8 Q Now, with the CI in reference to West
9 Columbia, you weren't given his name prior to your
10 plea, is that correct?

11 A No, ma'am.

12 Q So the only way you can identify Mr. Hutto
13 is that you're telling the Court you sold drugs to
14 him that day?

15 A No, ma'am.

16 Q So how do you know who Mr. Hutto is?

17 A I've been knowing Mr. Hutto. Mr. Hutto
18 was an old friend.

19 Q So how do you know that that was the CI
20 that purchased those drugs that day?

21 A Because it was two other people in the
22 house that day.

23 Q So it was and two other people?

24 A Yes, ma'am.

25 Q Who bought drugs from whom?

1 A Bernard bought drugs from one of the other
2 individuals that was in the house.

3 Q And that's the only time you saw any drugs
4 being dealt that day?

5 A Yes, ma'am.

6 Q So that's why you feel it was Mr. Hutto?

7 A No, because I was present. I know it was
8 Mr. Hutto. I watched them.

9 Q So you were there that day. So that's a
10 speculation then? You never testified, you never
11 got any information from the State that said it was
12 Mr. Hutto, correct?

13 A No, ma'am.

14 Q Okay.

15 Beg the Court's indulgence, I apologize.

16 So you had been in court several times by
17 the time you went to your probation revocation
18 hearing, is that correct?

19 A Yes, ma'am.

20 Q You understood you could have an attorney
21 there?

22 A Roll call?

23 Q No, for your probation revocation.

24 A Oh, for the probation hearing?

25 Q I'm sorry, I'm skipping on you.

1 A Yes, ma'am.

2 Q And you understood that you could have an
3 attorney there if you wanted?

4 A Yes, ma'am.

5 Q You had retained Mr. Kendrick?

6 A No, not for the probation.

7 Q Okay. You made a decision not to have an
8 attorney?

9 A I already had 18 years. I didn't go back
10 to the probation revocation till after I was already
11 in prison.

12 Q Okay. And basically at the time of your
13 plea, you faced going to trial with a mandatory 25
14 years --

15 A Yes.

16 Q -- for pleading, right?

17 A Yes, ma'am.

18 Q Is that why you entered this plea? Is
19 that any basis for your decision to plead guilty?

20 A No, ma'am.

21 Q Why did you plead guilty?

22 A Because of what Mr. Kendrick told me.

23 Q About life without parole?

24 A Yes, ma'am.

25 Q Okay. Did he ever discuss with you the

1 probation revocation case?

2 A No, ma'am. It never was stipulated.

3 Q All right. I'm going to shift gears over
4 to the SLED buy where we have the videotape.

5 A Yes, ma'am.

6 Q Now, those drugs were in your house,
7 right?

8 A Yes, ma'am.

9 Q Okay. And that gentleman, he paid you for
10 them, right?

11 A Yes, ma'am.

12 Q He gave you \$1,625?

13 A Yes, ma'am.

14 Q And then you're selling me those drugs,
15 and they weren't your drugs?

16 A No, ma'am.

17 Q Was that a storage fee?

18 A No, ma'am. The drugs was his, and the
19 money was his.

20 Q And when you said that you were fronting
21 the drugs to him, what did you mean?

22 A I didn't tell him I was fronting.

23 Q You didn't?

24 A He stated fronting. I told him he could
25 take them all back because I couldn't do nothing

1 with them.

2 Q So they weren't good enough for you to
3 sell?

4 A Yes, ma'am.

5 Q Because you usually sell better drugs,
6 right?

7 A No, ma'am.

8 Q Why were those drugs there if they're not
9 good enough for you to sell? You planned to sell
10 them, right?

11 A No, ma'am.

12 Q You said they weren't good enough for you?

13 A Right. So he gave them to me to hold till
14 he come back and picked them up.

15 Q Why didn't you tell him to come pick it up
16 outside?

17 A Ma'am?

18 Q Why didn't you tell him to come pick it up
19 outside your house?

20 A Why didn't I tell him?

21 Q Uh-huh.

22 A To come pick it up outside of my house?

23 Q Uh-huh.

24 A What you mean, outside?

25 Q Did he have to pick it up in the kitchen

1 with your family inside your house?

2 A No, ma'am.

3 Q Could you take it to him?

4 A No, I didn't take it to him. He came in
5 and picked it up.

6 Q So people just leave drugs laying around
7 your house?

8 A He said he was dealing drugs.

9 Q And he just left the drugs in your house.
10 Did he drop them?

11 A No.

12 Q So you knew they were there?

13 A I was holding them till he called back and
14 picked them up.

15 Q Okay.

16 I think that's all, Your Honor. Thank
17 you.

18 THE COURT: Anything on redirect limited
19 to whatever --

20 MR. MILLS: Yes, sir.

21 THE COURT: -- she went over on cross?

22 REDIRECT EXAMINATION

23 BY MR. MILLS:

24 Q Mr. Livingston, you were asked by the
25 State whether or not you agreed with the facts, and

1 part of the question was that you made a statement
2 to the investigator. Did Mr. Kendrick tell you that
3 you could challenge the statements made to any kind
4 of law enforcement?

5 A No, sir. And the statement that I made
6 was voluntary. And when the discovery came, then it
7 was in affidavit form as an interrogation report.

8 Q Okay. That's all the questions I have.

9 A Because they said -- when they came to the
10 house, they said I was not under arrest and if I
11 would like to come down to the station to talk to
12 them.

13 MS. WILLIAMS: Your Honor, that's hearsay.

14 THE COURT: I note your objection, okay.

15 Anything else?

16 MR. MILLS: That's all, Your Honor.

17 THE COURT: All right.

18 Ms. Williams, I'm assuming nothing on
19 recross?

20 MS. WILLIAMS: No, sir,

21 THE COURT: Okay, you may step down.

22 Thank you, sir. I appreciate it.

23 All right, Mr. Mills, your next witness.

24 MR. MILLS: Your Honor, the applicant
25 rests.

1 THE COURT: Okay.

2 (Whereupon, the applicant rested.)

3 THE COURT: Ms. Williams, any witnesses
4 for the State?

5 MS. WILLIAMS: Yes, sir, Your Honor, Josh
6 Kendrick.

7 THE COURT: Mr. Kendrick.

8 (Whereupon, the witness was sworn.)

9 JOSHUA KENDRICK, having first been duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q Mr. Kendrick, can you tell me briefly
14 about how long you've been practicing law and
15 generally about your practice?

16 A Eleven years, and it's mostly criminal
17 defense.

18 Q And how did you come to represent Mr.
19 Livingston?

20 A He had hired me on an old -- well, the
21 original case that you talked about in this
22 courthouse and then came back to me when he got the
23 second charges --

24 Q Okay.

25 A -- the second set of charges.

1 Q And he received a sentence of probation
2 for the first set of charges?

3 A On the first case, yes.

4 Q Okay. And then you represented him on --
5 there were several charges that were not proessed.
6 Was that included in your representation, as well?

7 A At the point when we got to court,
8 whatever was pending against him I considered myself
9 representing him on.

10 Q Tell me about the posture of this case.
11 Was this ready to go to trial?

12 A Yes. The Solicitor was calling the case
13 on Monday. I think the day we pled was a Monday.
14 We were going to go to trial, but we were going to
15 go to trial on the trafficking case, not the other
16 case.

17 Q That was the case that SLED investigated?

18 A Correct.

19 Q Okay. So that was the only one that was
20 to be at trial on Monday?

21 A Correct.

22 Q The remaining cases would be still
23 pending?

24 A Correct.

25 Q Those involved different dates, different

1 witnesses?

2 A Correct.

3 Q Okay. Had you been given any information
4 identifying the confidential informant in those
5 other cases at that point?

6 A No.

7 Q Was that a common practice at the time?

8 A I mean, if we had been going to trial,
9 yes, I would have gotten the identification of the
10 confidential informant. But we weren't going to
11 trial on those cases, so I wasn't focusing on it at
12 that second.

13 Q Okay. Tell me about the plea negotiations
14 in this case.

15 A Well, if I remember correctly, he is
16 correct about the letter that he had from Mr. Burns,
17 and I may get some of the charges confused. But I
18 was under the impression that we were going to plead
19 some of those charges concurrently to probation.

20 And the reason for that was because Mr.
21 Livingston had done very well on probation, and my
22 argument was he had stayed out of trouble. These
23 charges should have been handled at the same time as
24 the plea, and they weren't. And that's certainly
25 not his fault.

1 Q Okay.

2 A The trafficking case came up later, and
3 that's what threw all that out the window, because
4 at that point, the Solicitor didn't really believe
5 me anymore that he had stayed away from drugs.

6 Q So the charges referenced in that letter
7 were some of the either nol prossed or the two that
8 he pled guilty to?

9 A Those were the old charges, and the date
10 of that letter is in 2006, where some of these
11 charges came up in 2008. So at that point, we are
12 talking about charges that basically the West
13 Columbia Police Department held because they knew it
14 was going to the charges he had. And then they
15 brought them back up, thinking that would mess
16 everything up, and it was going to.

17 Q Okay.

18 A It was the trafficking case that caused
19 all the trouble.

20 Q Okay. How did it come to be that these
21 other two cases were kind of rolled up with the
22 trafficking case for a plea?

23 A My guess is that -- we had never talked
24 about those cases. We had never talking about
25 pleading them. The final deal got done Friday night

1 at around 10:00 by cell phone, because we had missed
2 the 5:00 deadline to accept the deal.

3 I happened to know Mr. Burns' cell phone
4 number and was able to track him down. And he said
5 no, got off the phone for a little while, called me
6 back and said he had had a change of heart and would
7 let us plead to 15 to 30 on trafficking. I don't
8 remember clearly what happened the morning of the
9 plea, but I imagine at that point he told me that he
10 wanted those other pleas.

11 It was all going to be concurrent, and it
12 wouldn't have made any difference to my case,
13 because if we had not been able to reach a plea
14 agreement, we were going to start trial on the
15 trafficking case.

16 Q That trafficking case, that carried a
17 minimum of 25?

18 A Correct.

19 Q And you had explained that to Mr.
20 Livingston?

21 A Correct.

22 Q He's mentioned that you kind of threatened
23 him with a life without parole sentence. Do you
24 recall that conversation?

25 A Vaguely. I mean, "threat" might be a

1 little bit -- and I guess it depends on your
2 interpretation. I certainly was worried about that
3 because we're in Lexington County, and I had had
4 them do that to me before, where they had taken what
5 I had thought were relatively minor drug charges,
6 but because they were enhanced -- you know, second
7 or third offenses -- there had been an LWOP.

8 As a matter of fact, you know, it had
9 happened not long before all this came up. So it
10 was certainly a possibility. You know, whether they
11 would have done it or not, I'll never know. But it
12 was definitely an issue.

13 Q So given his prior offenses and he had the
14 SLED case, then you had other offenses that occurred
15 at separate incidents --

16 A Correct.

17 Q -- that could have been tried separately?

18 A Right. I mean, I think that in all
19 honesty they would have convicted him on the
20 trafficking case, and I don't think they would have
21 gone back and tried to try him again. But at that
22 point, he would have had 25 years instead of less.
23 So, I mean, it still was something that was a
24 benefit to him.

25 Q Had you had an opportunity to discuss with

1 him the evidence in the trafficking case,
2 specifically this videotape --

3 A Yes.

4 Q -- and audiotapes?

5 A Yes.

6 Q And had you talked about an entrapment
7 defense with him?

8 A Probably not much more than what he
9 relayed, which I don't remember that, but that is an
10 accurate statement of the law. So I would imagine
11 that's what I told him.

12 Q Did you think that an entrapment defense
13 was going to be viable at trial in this case?

14 A No. The problem with an entrapment
15 defense is that it has two elements. We didn't meet
16 either one of the elements. So the initial hurdle
17 to get the entrapment charge would have been
18 difficult.

19 And then the second issue is once you get
20 the entrapment charge, it's just a jury charge. It
21 doesn't lead to a directed verdict or a legal
22 resolution. So I didn't think we would get the jury
23 charge, and I didn't think we would, if we got the
24 jury charge, convince a jury to find him not guilty
25 on these charges.

1 MS. WILLIAMS: Beg the Court's indulgence.

2 Q And you were not retained on the probation
3 revocation matter?

4 A No, I never knew about the probation
5 revocation.

6 Q Okay. So you all never spoke about that
7 case at all, is that correct?

8 A No. I think he showed me the transcript,
9 and I imagine that that came up after the plea on
10 these charges. I mean, I probably would have shown
11 up with him if I had known about it, but I didn't
12 know about it.

13 Q Okay. You've represented many criminal
14 defendants in drug cases earlier. Would that be
15 safe to say?

16 A Yes, in pleas and trials.

17 Q Was this a fairly large amount of drugs
18 for someone who wasn't familiar with the drug trade?

19 A It's all relative. I mean, maybe it was a
20 little more than -- it wasn't personal use, I'll say
21 that.

22 Q Okay. And he was familiar with the
23 practice of fronting something; he seemed to know
24 what those kind of words meant?

25 A I don't have any idea what he was familiar

1 with. The problem I had was that unfortunately I
2 think it just happened in here too. He admitted the
3 conduct that met the definition of the statute, so I
4 couldn't put that up as my defense. And that's why
5 we were stuck on the trafficking case.

6 MS. WILLIAMS: I don't believe I have any
7 other questions.

8 THE COURT: All right.

9 Mr. Mills, anything on cross?

10 MR. MILLS: Yes, sir, Your Honor, may it
11 please the Court.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. MILLS:

15 Q Mr. Kendrick, how are you this morning?

16 A Good, Mr. Mills.

17 Q Let's talk about the West Columbia case.
18 You had represented Mr. Livingston for a while on
19 the West Columbia cases, correct --

20 A Correct.

21 Q -- the two that hadn't pleaded to?

22 A Correct.

23 Q Okay. And did you do any investigation to
24 determine whether or not the person who was actively
25 involved as a witness in the case was still

1 available at the time he pled?

2 A I did not.

3 Q Okay. And did you attempt to do anything
4 with that?

5 A No.

6 Q Okay. And did you have a file on that
7 case, a full -- with the drug analysis, incident
8 reports, and all that?

9 A Correct.

10 Q The file from the Solicitor's Office did
11 not have the confidential informant's name, correct?

12 A I don't think I ever knew the confidential
13 informant's name.

14 Q Okay. But you did no research to find out
15 before the plea in 2009?

16 A No, like I said, those cases weren't at
17 issue when we were doing the plea negotiations. So
18 I assume they got added Monday morning. They
19 weren't up for trial.

20 Q I understand, they weren't up for trial.
21 But they were added to make it two extra charges
22 that he was pleading guilty to, correct?

23 A Right. And, you know, maybe that was a
24 mistake to plead them. The problem was if we hadn't
25 pled to those charges, we were picking a jury on the

1 trial.

2 Q I understand. But there is a cumulative
3 -- you agree there is a cumulative effect as far as
4 sentencing when you plead to more than one offense
5 at the same time, especially two extra offenses?

6 A Certainly, there can be.

7 Q Okay. So the judge -- in this case,
8 actually the judge did not give the minimum
9 sentence, correct?

10 A He gave him a little bit over the minimum.

11 Q Okay. So you had pled to -- or he pled to
12 -- the two West Columbia charges and the trafficking
13 and got 18 years instead of 15 years, correct?

14 A Correct.

15 Q So there could have been a cumulative
16 effect of having two charges added to the
17 trafficking which was brought down to a
18 distribution?

19 A Certainly.

20 Q Okay, all right. And as far as the SLED
21 case is concerned, did you tell Mr. Livingston that
22 he could challenge any statements made to the
23 police?

24 A We probably didn't talk about that. And I
25 think that, you know, I would have asked him the

1 circumstances of the statements. And, I mean, I
2 don't think they were challengeable. I mean,
3 certainly you can challenge anything.

4 Q Right,

5 A I mean, we can file any motion we want as
6 long as we've got a printer. Whether we were going
7 to win that or not in light of how much more time he
8 was facing would have been the issue. So I don't
9 know. I assume I may have told him how you
10 challenge a statement.

11 But I would have explained to him that if
12 they read him his rights and he agreed to talk to
13 them that, you know, I didn't think many judges in
14 South Carolina were going to toss that confession
15 out.

16 Q Do you have an independent recollection of
17 that?

18 A Not particularly.

19 Q Okay. So when he says you didn't do that,
20 you don't have anything to challenge that with?

21 A I don't have anything to challenge what he
22 said on the stand that day.

23 Q Okay. And as far as the aspects of
24 dominion and control of the drugs or entrapment,
25 either defense, did you talk about that with him?

1 A Yes. And what y'all discussed earlier is
2 completely correct on both theories. I mean, we
3 would have talked about dominion and control and
4 that what appears to be the confusion is that
5 ownership is irrelevant when you talk about it in
6 terms of who may have bought or sold. I mean,
7 unfortunately what he said up here was substantially
8 what I remember him telling me at the time, and that
9 meets the definition of trafficking.

10 Q So you told him that he did not have
11 dominion and control over the drugs?

12 A No, I told him that he did.

13 Q Okay.

14 A He had to be in possession.

15 Q Okay.

16 A The video reflected actual possession.

17 Q Okay.

18 A But then construction would have been
19 enough, which it also reflected. Dominion and
20 control is a way of explaining possession.

21 Q I understand. In other words, if I pick
22 up your pen, as you know, I may have it in my
23 possession, but I don't have dominion and control
24 over it because it's your pen. I do not have the
25 right to sell it, destroy it, or anything because

1 it's still your pen, correct?

2 A I mean, you're correctly explaining what
3 the words mean, but that's not how it works. In the
4 theory of drugs in a drug case, the person that is
5 in possession of the drugs, simply because they
6 don't have the right, which is unenforceable, but
7 the right to do something with them, that wouldn't
8 change the level of possession.

9 That was the problem we ran into, and it's
10 a problem I agree that Mr. Livingston was hung up
11 on. But it made no difference who owned those drugs
12 if he was in possession of them.

13 Q Okay. And did you explain that to him?

14 A That was what we -- if we had a
15 disagreement, which we really never did; I always
16 got along well with Mr. Livingston -- it was the
17 process of explaining that to him. I understood his
18 concern. It would tick me off to be in that
19 situation. But it didn't change whether I could
20 actually get him out of the charges.

21 Q Okay. So you explained to him that mere
22 presence with the drugs is not enough to be in
23 possession?

24 A I doubt we talked about mere presence,
25 because that wasn't what was going on in any of -- I

1 mean, in this case at all.

2 Q Okay. Did you explain that to him so he
3 potentially would have that defense?

4 A I don't remember. I would have probably
5 not have explained frivolous defenses to him,
6 because I would have been doing him a disservice to
7 make him think he should go to trial on a case that
8 he couldn't win.

9 Q Well, that's not necessarily frivolous, is
10 it, to explain the basis of the law about possessory
11 offenses such as drugs?

12 A Mere presence would be someone who was at
13 a crime scene but not -- I mean, I don't know. I
14 get your point, and I get Mr. Livingston's point.
15 You know, at that time, could I have beaten the
16 trafficking charge? And the answer is not on these
17 facts.

18 Q Okay.

19 A So, I don't know. Maybe I didn't explain
20 mere presence, but it didn't make any difference in
21 the case.

22 Q All right. And you did explain
23 entrapment; you did have a conversation with him
24 about entrapment?

25 A Yes, but I think it was probably just to

1 the extent of what he said. I don't think we went
2 into it in depth --

3 Q Okay.

4 A -- because I know that the critical part
5 of entrapment is predisposition, and you bring in
6 people's record. Even arrests can come up. He had
7 made some statement. Whatever statement he made to
8 SLED would have come up, even if it had been thrown
9 out, if we had tried to raise entrapment.

10 Q Well, did you fully explore the defense of
11 entrapment or just briefly --

12 A Not with him.

13 Q Okay, you didn't --

14 A I was aware of whether or not it would
15 work.

16 Q Okay.

17 A I may have done the research on it. But I
18 just know what the entrapment law is.

19 Q Okay.

20 A But I don't know how in depth I went into
21 it with him.

22 Q Now, let's talk about the sentencing. You
23 said you were worried about life without parole
24 potentiality?

25 A I was.

1 Q What was the basis of the life without
2 parole? He had not been served with any life
3 without parole, correct?

4 A No, absolutely not. And there was no
5 chance of him getting a life without parole sentence
6 that morning. My concern is if we balked at
7 pleading. We were only going to trial on one of his
8 charges. And I didn't know what they were going to
9 do with the rest of them.

10 Hopefully, no matter what happened to the
11 trafficking charge, they would have gotten rid of
12 the rest of them, because that was what we had
13 talked about prior. But I don't have any way of
14 predicting that.

15 Q What was the basis of the State seeking a
16 life without parole in this case?

17 A To be very clear, they were not seeking a
18 life without parole in this case.

19 Q Okay.

20 A The problem was he had other charges
21 pending which would have triggered life without
22 parole with the conviction he already had and if he
23 had been convicted of trafficking.

24 Q Okay. So what were the convictions? Let
25 me rephrase that. What were the convictions, then,

1 that would have potentially led to a life without
2 parole sentence that you advised him about in order
3 to preempt any seeking of life without parole by the
4 State?

5 A Distribution and trafficking plus one of
6 the other pending distributions.

7 Q Okay. So you think just a distribution --
8 you told him a distribution and a trafficking would
9 be enough as what -- as serious offenses?

10 A Yes. I have had people with three
11 distributions before get sentenced to life without
12 parole, and it got upheld on appeal. So I could be
13 wrong about that. And if I am, then I'll certainly
14 concede that point. But I am of the understanding
15 that a distribution counts as a strike. And a
16 proximity certainly counts.

17 Q Yes, proximity does. But are you sure
18 that distribution does?

19 A Then maybe it was the proximity, but I
20 believe the trafficking would have counted and the
21 proximity. And to understand something, it's not
22 fair to characterize that as being a major component
23 of what we were talking about that morning. Just
24 like if I talk to somebody about a drug enhancement,
25 I don't assume they're going to get charged again.

1 But it was a consideration I brought up.
2 It's not fair to say that I threatened him with it.
3 But, you know, if he had gotten it, I'd be sitting
4 up here explaining why I didn't explain.

5 MR. MILLS: Beg the Court's indulgence.

6 THE COURT: Okay.

7 Q So the sentencing sheet is marked with
8 172545, correct, as a serious offense?

9 A I haven't seen the sentencing sheet.

10 Q Okay. I think it's already into evidence
11 in the packet.

12 A I just haven't seen it. I'm not disputing
13 what it says.

14 Q It's marked as serious?

15 A It is.

16 MR. MILLS: Beg the Court's indulgence.

17 Q And now back to the entrapment issue. You
18 said you didn't think you could get a jury charge on
19 that?

20 A No.

21 Q Okay. But did you explain all the
22 elements to Mr. Livingston of entrapment?

23 A I don't remember.

24 Q Okay. As far as you remember right now,
25 you do remember saying about his prior record giving

1 him some sort of predisposition part?

2 A I just remember what he said. When he
3 said it up here, I have a memory of talking about
4 that because I feel like it was very close to the
5 last minute. And we were sort of grasping at straws
6 for a trial defense.

7 Q Okay. But you did not explain the full --
8 all the elements so that he could make a decision on
9 all the elements of entrapment, to your knowledge?

10 A I don't know if I did or not.

11 Q Okay.

12 That's all the questions I have, Your
13 Honor.

14 THE COURT: Anything on redirect limited
15 to his cross?

16 MS. WILLIAMS: Yes, sir, just briefly.

17 REDIRECT EXAMINATION

18 BY MS. WILLIAMS:

19 Q You said that the life without parole was
20 not a major factor of what y'all were discussing
21 that morning. What were the major factors that
22 morning?

23 A The 25 years on the trafficking charge.

24 Q On the trafficking charge. And he did
25 have two additional proximity charges he was facing

1 that were not proessed as a result of this, right?

2 A Correct.

3 Q And he had a prior proximity charge, as
4 well?

5 A I believe so.

6 Q Okay. And this trafficking charge could
7 have been a strike for him?

8 A That's what I always thought.

9 Q Okay, all right, thank you.

10 THE COURT: All right, anything on
11 recross?

12 MR. MILLS: That's all we have.

13 THE COURT: Any other witnesses?

14 You may step down. Thank you, Mr.

15 Kendrick.

16 MR. KENDRICK: Do you need me to stay,
17 Your Honor?

18 THE COURT: You can be excused unless
19 somebody wants you --

20 MR. MILLS: No objection.

21 THE COURT: Okay, you are now free to go
22 to work.

23 MR. KENDRICK: Thank you, Judge.

24 THE COURT: Okay.

25 All right, Ms. Williams, any other

1 witnesses for the State?

2 MS. WILLIAMS: Nothing further from the
3 State, Your Honor.

4 THE COURT: All right, I'll go back, and
5 I'll look over this. And I'll get back to you all
6 with my decision.

7 MR. MILLS: Thank you, Your Honor.

8 THE COURT: Thank you all very much.

9 --End of Transcript of Record--

STATE OF SOUTH CAROLINA)

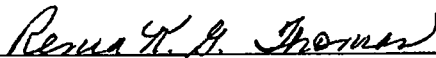
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON AUGUST 15, 2013, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE SEVENTH DAY OF APRIL, 2015.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON
BETH A. CARRIGG
CLERK OF COURT

IN THE COMMON PLEAS / GENERAL SESSIONS / FAMILY COURT

CASE NO. 2009 CP 32 14821

JUDGE Eg. Dixon

CT. REP. Rena Thomas DATE 8-16-13

CLOCK - IN AREA

(NOTES)

(1) _____

(2) _____

(3) _____

PLAINTIFF

VS.

DEFENDANT

James Livingston

State of S.C.

Atty. Robert Miller

Atty. Mary Williams

NO.	ID.	EV.	DESCRIPTION	NO.	ID.	EV.	DESCRIPTION
1		✓	Death Certificate				
2		✓	HR Police Dept				
3		✓	DVD audio				
4		✓	DVD				
5		✓	HR (letter) to S. BURN				

CT. REP. Rena Thomas

REC. BY MTW/LL

VERIFIED

TITLE CP Clerk

TITLE

WHITE: COURT RECORDS * YELLOW: EVIDENCE VAULT * PINK: FILE

STATE OF SOUTH CAROLINA

CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-07-016967

DECEDENT'S NAME: ROBERT BERNARD HUTTON

AKA'S: NA

ARMED FORCES: YES

DATE OF BIRTH: DECEMBER

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: PALMETTO HEALTH BAPTIST, COLUMBIA, SC 29201

PLACE OF DISPOSITION: CELESTIAL MEMORIAL GARDENS AND MAUSOLEUM

DISPOSITION LOCATION: WEST COLUMBIA, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: 1211 HOLLAND STREET, WEST COLUMBIA, LEXINGTON COUNTY, SC, 29169

PLACE OF BIRTH: SOUTH CAROLINA

SURVIVING SPOUSE'S NAME: PAMELA HUTTON

FATHER'S NAME: HOMER HUTTON

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: EARNESTINE ANDREWS

INFORMANT'S NAME: EARNESTINE HUTTON

MAILING ADDRESS: 1211 HOLLAND STREET, WEST COLUMBIA, SC, 29169

FUNERAL HOME: JONES METROPOLITAN FUNERAL HOME, 1101 CHARLESTON HIGHWAY, WEST COLUMBIA, SC, 29169

FUNERAL DIRECTOR: CHARLES EDWARD JONES SR.

EMBALMER'S NAME: WILLIE MCCOY JR.

ACTUAL OR PRESUMED DATE OF DEATH: MAY 29, 2007

ACTUAL OR PRESUMED TIME OF DEATH: 0120

CAUSE OF DEATH- PART I

END STAGE AIDS

SEX: MALE

SOCIAL SECURITY NUMBER:

AGE: 52 YEARS

COUNTY OF DEATH: RICHLAND

MARITAL STATUS: MARRIED

RELATIONSHIP: FAMILY MEMBER

LICENSE NUMBER: 2470

LICENSE NUMBER: 1856

MANNER OF DEATH: NATURAL

OTHER SIGNIFICANT CONDITIONS- PART II:

MRSA, PNEUMONIA, DEHYDRATION

CORONER CONTACTED? NO

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: NA

TIME OF INJURY: NA

INJURY AT WORK? NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: MD RHONA M HARRELL

LICENSE NUMBER: 16208

CERTIFIER'S ADDRESS: TAYLOR AT MARION, COLUMBIA, SC, 29220

DATE FILED: JUNE 12, 2007

DATE OF ISSUANCE: AUGUST 15, 2013

SPECIAL INSTRUCTIONS

NA

PLAINTIFF'S
EXHIBIT

SC03132167

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

*Catherine Templeton*Catherine Templeton
Director and State Registrar*Guang Zhao*Guang Zhao
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 03/21/2012



West Columbia Police Department

Chief Dennis Tyndall
Chief of Police

Captain Seth Zeigler
Chief of Detectives



To whom it may concern:

In reference to James Livingston v State of South Carolina, several of the documents listed in the subpoena are not available. The charges Mr. Livingston pled guilty to were from two controlled buys our narcotics detectives organized using a confidential informant. All of the detectives that were part of that case, except one, are no longer employed by West Columbia Police Department.

There is only one recording in our evidence room from the audio surveillance conducted by those detectives during the controlled buys. The recording that was kept in the evidence room after the guilty plea is only there because of an appeal. The second recording has been destroyed because the case was disposed of.

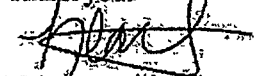
The recording that does exist has been copied by our evidence custodian and given to Robert Mills, the plaintiff's attorney.

Information requested about the confidential informant used during the controlled buys is no longer available. The original case files containing the confidential informant's information have been destroyed. The only information still available is redacted versions of the case files with the confidential informant's information purposely blacked out. Those case files are located in our records department at West Columbia Police Department headquarters.

There is no way to find out who the confidential informant used in this case was. Investigator Mark Jones was involved in the original case from 2005 and can not recall the name of the informant.

Please feel free to contact me with any questions you may have.

Thank you.

A handwritten signature in black ink, appearing to read "Leah Smith".

Detective Leah Smith
West Columbia Police Department
803.518.1042
803.794.0721 ext 287
LSmith@westcolumbiasc.gov



Exhibit 3-A

JOSHUA SNOW KENDRICK, PC

ATTORNEY AT LAW

1720 MAIN STREET, SUITE 202

COLUMBIA, SC 29201

(803) 765-0717

FACSIMILE (803) 765-0817

January 16, 2006

Via facsimile 359-8431

Stephen Burn, Jr., Esquire

Lexington County Solicitor's Office

205 East Main Street, Third Floor

Lexington, SC 29072



Re: State v. [REDACTED]

Dear Mr. Burn, *Chip*

I received your notice requiring Mr. Livingston to be in court Tuesday, January 17, 2006. I only received this notice today, as it was sent to Ms. Debra Chapman's office.

I have spoken with Mr. Livingston and he will be present. I have a doctor's appointment in Greenville tomorrow and will be at the courthouse around 10. I need to be back in my office at 11 for a conference call with lawyers from Boston and Raleigh regarding an oral argument I have scheduled in front of the Fourth Circuit Court of Appeals February 2.

It is my understanding you have no problems with pleading this case to a sentence of probation concurrent to the probation Mr. Livingston is currently serving. This would be appropriate, considering these warrants were issued before Mr. Livingston's plea, but not served until after the plea. *

I hope it will be okay to excuse Mr. Livingston and me after he reports tomorrow and schedule a plea for later this week. I am free Wednesday and Thursday and would like to schedule the plea on one of those days.

If it is convenient, you may call me tomorrow on my cell phone at 348-1876 to discuss this matter before I arrive.

Sincerely,

[Signature]
Joshua Snow Kendrick

ORIGINAL

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	2009-CP-32-4821
James Livingston, #226920,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 28, 2009. An evidentiary hearing was convened on August 16, 2013, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Robert W. Mills, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Joshua Kendrick, Esquire. This Court had before it the records of the Lexington County Clerk of Court, the guilty plea transcript, the probation revocation transcript, the Applicant's records from the South Carolina Department of Corrections, and exhibits introduced at hearing.

PROCEDURAL HISTORY

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted for Trafficking in Cocaine (2008-GS-32-2647) and two counts of Distribution of Cocaine Base – 3rd or Subsequent Offense (2006-GS-32-0170 & -172).



Joshua Snow Kendrick, Esquire, represented him. On April 13, 2009, the Applicant pled guilty before the Honorable J.C. Nicholson, Jr., to both counts of Distribution of Cocaine Base – 3rd or Subsequent Offense and to the lesser offense of Distribution of Cocaine – 3rd or Subsequent Offense.¹ Applicant was sentenced to three (3) concurrent terms of eighteen (18) years each.

At the time of his plea, Applicant had been on probation for Possession With Intent to Distribute Cocaine (2005-GS-32-2325) and Possession of Crack Cocaine (2005-GS-32-1921) since October 5, 2005. On May 22, 2009, Applicant appeared without counsel before the Honorable Knox McMahon. Judge McMahon revoked a portion of the probationary sentences, the revocation to be served concurrently with other charges, and terminated probation.

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

1. Ineffective assistance of counsel.
 - a. "Counsel failed to properly advise Applicant, failed to investigate the facts and law, failed to show Applicant all of the evidence."

In an addendum to his application, Applicant set forth his allegations as follows:

1. Ineffective assistance of counsel.
 - a. Failure to fully inform applicant of all of the facts of the case;
 - b. failure of trial counsel to review evidence with applicant before the court date;
 - c. failure of trial counsel to fully investigate the facts;
 - d. failure of trial counsel to advise applicant of the full nature of the sentence;
 - e. failure of trial counsel to advise the applicant of the full nature of the chemical analysis;
 - f. failure of trial counsel to properly advise applicant on the choices of pleading to a lesser offense;
 - g. failure of trial counsel to properly advise applicant about the possible

¹ In addition to the reduction, the State *not proessed* three additional counts of Distribution of Cocaine Base – 3rd or Subsequent Offense and two counts of Distribution of Crack Cocaine within Proximity of a School or Park. (Plea Tr. p. 10, line 24 – p. 25, line 3.)

- sentence if applicant chose to go to trial;
 - h. failure of trial counsel to file a motion of reconsideration as he told the applicant he would;
 - i. failure of trial counsel to advise applicant of his right to challenge any statements made to law enforcement;
2. Failure of the trial judge in the probation violation hearing to properly warn applicant of proceeding without counsel.

At his PCR hearing, Applicant presented testimony regarding ineffective assistance of counsel based on Counsel's failure to investigate, failure to advise him regarding the defense of entrapment, advice regarding possible sentences, failure to file a motion to reconsider, and failure to adequately warn of dangers of proceeding without counsel during probation revocation hearing.

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.

Ineffective Assistance of Counsel

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

104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Entrapment

Applicant contends that he had a viable defense to the charge involving the transaction on February 27, 2008, and Counsel's failure to adequately explain the defense to him constitutes ineffective assistance of counsel. During the plea hearing, the solicitor recited the facts as follows:

...agents with SLED, with the aid once again of a confidential informant, conducted a controlled purchase of powder cocaine from [Applicant] at [Applicant]'s residence located at 3111, Highway 6, in the Gaston area of Lexington County.

Your Honor, at that time in exchange for \$1,625, the informant received 228 grams of powder cocaine from [Applicant]. The \$1,625 constituted the first of four payments that were to be made to [Applicant] for the cocaine.

[Applicant] was essentially fronting six of the approximately eight ounces of cocaine involved in the transaction. This transaction was once again under continuous audio electronic surveillance by SLED agents and an officer with the Lexington County Narcotics Enforcement team.

(Tr. p. 13, line 22 – p. 14, line 12.) The solicitor went on to note that Applicant's daughters were present, and a search warrant executed on March 4, 2008, yielded a finding of \$10,751 in a closet, though none of the cash was associated with the February 27, 2008, buy. (Tr. p. 14.) Finally, the solicitor noted that Applicant gave a statement after receiving Miranda² warnings in which he admitted to his involvement in dealing cocaine. (Tr. p. 15.) Applicant was asked during the plea if he disagreed with any of the facts recited by the solicitor, and Applicant assured the plea judge that all of the facts given were indeed correct. (Tr. p. 15.)

Applicant stated at the PCR hearing that the actual transaction on the video involved the CI coming to pick up drugs from his house because the drugs were not any good. Appellant stated he was given the option to sell the drugs, but he refused to do so. Applicant stated that he was merely returning the cocaine to its "rightful owner." Appellant maintained that while his children were home when the CI came, they left the room prior to the transaction with the CI.

The defense of entrapment requires a showing that the defendant was induced, tricked, or incited to commit a crime which he would not otherwise have committed. The entrapment defense

² Miranda v. Arizona, 384 U.S. 436 (1966).

consists of two elements: (1) government inducement, and (2) lack of predisposition. State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). Entrapment is "an affirmative defense which necessarily assumes that the acts charged were committed." State v. Haulcomb, 260 S.C. 260, 195 S.E.2d 601 (1973).

Counsel explained that the defense of entrapment would not be successful at trial. One problem with a defense of entrapment in Appellant's case was that when the informant arrived on February 27, 2008, the cocaine was in Applicant's house. The cocaine was present before the informant made his appearance under control of law enforcement officers. Because Appellant had cocaine in his house, under his dominion and control, prior to the informant approaching him under government surveillance, Counsel rightly had doubt that a jury would believe Appellant had no predisposition to participate in drug activity but for the government inducement. Counsel noted that Applicant had a prior record involving drug crimes and felt that this record would weigh against his claim of entrapment before a jury. U.S. v. McLaurin, 764 F.3d 372 (4th Cir. 2014) (proving predisposition is one of the purposes for which prior bad act evidence may be admissible); See also 2 Crim. Prac. Manual §41.4 "Subjective test-Evidence of prior bad acts, good acts." (noting that courts have admitted evidence of prior similar drug offenses to rebut defense of entrapment as such evidence goes to the question of propensity). Counsel also noted Appellant's statement as a concern in presenting a defense of entrapment. Counsel testified that even if he were able to get a jury instruction on entrapment, he did not feel he would prevail in a jury trial under the defense of entrapment given these aspects of the case.

I find Counsel's assessment of the matter to be reasonable. Further, I find no evidence of prejudice where the defense of entrapment was highly unlikely to be successful at trial. Counsel is

not required to present his client with every potential defense, particularly, where, as here, the defense was so unlikely to prevail.

Failure to Investigate

Applicant further argues that Counsel failed to adequately investigate the undercover purchases in West Columbia prior to his guilty plea (2006-GS-32-0170 & -172). Applicant asserts that the undercover informant in those two instances was deceased at the time of his plea, and Counsel should have discovered this. Applicant testified that he did see paperwork regarding the two West Columbia charges, but he did not see the audio and video. Counsel explained that the normal practice at that time was that the undercover informant would not be revealed unless the defendant decided to go to trial. As Applicant did not go to trial, he would not have received the informant's name.³ Counsel further noted that once Applicant was charged with Trafficking, that charge became his primary concern. Counsel explained that the offered plea included the two charges of Distribution, and if they did not accept the offered plea, they would be proceeding to a jury trial on the charge of Trafficking. By entering the plea agreement, the count of Trafficking was reduced to Distribution, thus lowering his minimum sentence requirement from 25 years to 15 years. As discussed previously, Counsel had well-founded concerns that Applicant would be convicted during a jury trial. Because Trafficking carried a far greater sentence exposure than the Distribution charges, Counsel noted that the inclusion of the two counts of Distribution had little practical effect in terms of sentence for Appellant. Further, the plea deal meant that several other pending drug charges would be *nol prossed*. (Tr. pp. 10-11.) Had those charges not been *nol prossed*, he would be facing those additional charges as well. Given the benefits of the plea deal, Counsel would have drastically

³ Applicant testified during the PCR hearing that he knew who the confidential informant was in those cases because

affected his client's sentence exposure had he insisted on going to trial and having the CI revealed.

Even if the CI was deceased, Applicant has failed to show that those cases against him would be unsuccessful. Appellant cites State v. Ezell, 345 S.C. 312, 548 S.E.2d 852 (2001) for the proposition that the State would not have been able to present a case without the CI. The Ezell case hinged on the fact that the CI identified the defendant in an audio tape, and the CI was not available to testify, thus rendering those portions of the tape where the defendant was identified inadmissible hearsay. The entire tape was not subject to the hearsay rule. The court further found that there was not strong testimony from any other witness identifying him. Ezell does not stand for the broader position stated by Applicant. Applicant has not shown that the audio and video surveillance tapes from the two West Columbia cases would have been excluded in their entirety where the CI was deceased. Finally, even if those two charges were not brought to trial, the other *not proessed* charges could have been brought to trial. Where Applicant was faced with a very beneficial plea offer, and in light of all the circumstances noted above, I do not find that Counsel was ineffective. Further, I find that Appellant has failed to demonstrate that his pleas would have been altered.

Possibility of Life Without Parole (LWOP)

Applicant testified that his attorney advised him that he could face an LWOP sentence if he did not accept the plea offer. Counsel explained that in his experience, clients had received notices of LWOP where drug charges which were considered serious and/or most serious were strung together separately. S.C. Code §17-25-45. Based on the string of charges Appellant amassed, this was a legitimate concern. Counsel explained that the possibility of LWOP was discussed not as a concern on the day of the plea, but as a concern if other charges were not dismissed. I find Counsel's

he was present when the transactions occurred.

testimony credible and his advice well within reasonable professional norms.

Reconsideration

Applicant testified that Counsel informed him that he could file a motion to reconsider and could file a PCR application after his plea, but Counsel did not file a motion to reconsider sentence. However, Applicant has presented no new matter upon which to base a motion to reconsider sentence. Absent any non-frivolous basis for filing such a motion, Counsel was not ineffective in failing to do so.

Probation Revocation

Counsel did not appear with Applicant at his probation revocation hearing on May 22, 2009. There is a right to counsel at probation revocation hearings. Salley v. State, 306 S.C. 213, 410 S.E.2d 921 (1991). "The trial judge should advise the defendant of the dangers of self-representation. However, in the absence of a specific inquiry by the trial judge to determine whether the defendant has made his decision to proceed pro se 'with eyes wide open,' [the appellate court] will look to the record to discern whether there are facts to show the defendant had sufficient background or was apprised of his rights by some other source so as to constitute a knowing and intelligent waiver of the right to counsel." Id. at 215, 410 S.E.2d 922. Ten factors have been enumerated to determine if a probationer has the requisite sufficient background to understand the dangers of self-representation. State v. Bryant, 383 S.C. 410, 680 S.E.2d 11 (2009).

In the present case, the hearing judge posed no questions to determine whether petitioner was aware of the dangers of self-representation. The court's inquiry on the subject was limited:

THE COURT: Okay. You do not have an attorney?

MR. LIVINGSTON: No, sir.

THE COURT: And you say you do not want an attorney?

MR. LIVINGSTON: No, sir.

THE COURT: You want to proceed today without an attorney?

MR. LIVINGSTON: Yes, sir.

(Probation Revocation Tr. p. 4, lines 17-25.) Applicant's probation was revoked solely on the basis of his recent conviction. The probation agent indicated that Applicant had been compliant with terms of probation since 2005 and had no prior violations.

Applicant's probation was revoked less than one month from his guilty plea. During the plea, Applicant stated that he was 33 years of age, completed 10th grade, and had worked in construction and restaurants, working his way up to head cook. (Plea Tr. pp. 4-5.) In his most recent employment, Applicant worked at a transmission shop and had partial ownership of the shop. (Plea Tr. pp. 15-16.) Applicant stated that his plea was his third involvement with the justice system. (Plea Tr. p. 6.) The solicitor rendered a record of several convictions ranging from minor offenses to drug offenses. (Plea Tr. pp. 18-19.) At the time of his plea he was not on any medications and indicated that he had never been treated for any emotional, nervous, or mental condition. (Plea Tr. p. 7.) Counsel discussed constitutional rights with him, and Counsel never had any problems communicating with Applicant. (Plea Tr. pp. 8-10.)

At PCR hearing, Applicant stated that he had retained Counsel to assist with charges in 2005 and retained him on these matters as well. This court has also observed Applicant in court and finds him to be by all indications competent and appropriately conversant about his case.

Of the factors listed by our appellate courts for consideration in determining whether the accused has sufficient background to understand the dangers of self-representation, I find the following to be particularly relevant in this matter:

- The accused's age, educational background, and physical and mental health: At the time of his probation revocation, Applicant was an adult father of four, age 33. His education extended only to tenth grade, but he has exhibited through his work history and presence in court a satisfactory education such that he is capable of understanding criminal proceedings. The record reflects no health concerns.
- Whether the accused was previously involved in criminal trials: While Applicant had not previously been involved in probation revocation proceedings, he had substantial contact with the justice system in other proceedings.
- Whether he knew of the nature of the charge and of the possible penalties: Appellant was aware of his guilty plea, which was the sole basis for the revocation.
- Whether the accused's waiver resulted from either coercion or mistreatment: There is no evidence in the record of either.

For all these reasons, I believe Applicant's decision to waive his right to have counsel present was valid.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

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

established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13th day of May, 2015.



EDGAR W. DICKSON
Presiding Judge
Eleventh Judicial Circuit

Orangelay, South Carolina.

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

JUN 12 2015
IN THE COURT OF COMMON PLEAS

2009-CP-32-4821

VENIA A. CATRICE
CLERK OF COURT

James Livingston SCDC #226920)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

The above captioned Applicant, through his undersigned attorney, hereby moves to alter the judgment pursuant to SCRCP Rule 59(e). Applicant's Attorney received the Order of Dismissal in this case on June 2, 2015. Applicant moves that this court alter the its findings of fact and conclusions of law for the following grounds:

This court has determined in its findings of facts and conclusions of law that Applicant has not met his burden in proving that the his constitutional rights were violated to a degree that requires the court to grant the application. Applicant moves that this court alter its findings or fact and conclusions of law regarding both the deficiency of counsel's performance and that the deficiency had a prejudicial effect. Applicant has shown not only deficient performance but also that Counsel's deficient performance prejudiced Petitioner. Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001). To demonstrate prejudice, the applicant must show that but for Counsel's errors, there is a reasonable probability that the result of the trial would have been different. Id. at 156, 551 S.E.2d at 262. A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. Id. The reasonable probability that the outcome in this case would have been different has been proven

by a preponderance of evidence.

Applicant testified at the PCR hearing that a confidential informant, the sole identifying witness for the State in the two West Columbia cases (2006-GS-32-0170 and -0172), was deceased at the time of Applicant's plea and that trial counsel should have discovered this fact through a proper investigation. Applicant entered the death certificate of the confidential informant into evidence. Applicant moves that this court alter its findings of fact and conclusion of law as to this issue and find that trial counsel was deficient for not investigating the lack of availability of the only eyewitness. "While the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008). Furthermore, Applicant contends that this deficiency created prejudice since the State could not have proceeded with its prosecution without this unavailable witness since the only identifying evidence would have been from the unavailable witness and the introduction of other evidence would have violated the hearsay rule. See Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (S.C., 2001). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonable available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Mr. Livingston further testified that he would not have pleaded guilty if he had known that the witness was dead. Also, a suppression hearing should have been requested by plea counsel in order to have this issue brought before the court.

The Applicant further testified that in the SLED case that he explained to trial counsel that the confidential informant had given him drugs to hold for a temporary period of time and over

which he had no dominion and control to do anything with the substances except return them to the rightful owner. He testified that he had no right to do anything with the drugs. The Applicant further testified that trial counsel stated that he did not have a valid entrapment defense due to his criminal record. Conviction for two prior drug offenses alone is insufficient to establish that the defendant was predisposed to sell illegal drugs. See U.S. v. Brooks, 215 F.3d 842 (8th Cir. 2000) and Sherman v. United States, 356 U.S. 369 (1958) The affirmative defense of entrapment is available where there is the 'conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for trickery, persuasion, or fraud of the officer.'" State v. Johnson, 295 S.C. 215, 216, 367 S.E.2d 700, 701 (1988) In this case, the informant was acting as an agent of the government in order to trick and defraud the Applicant into possessing the drugs. Also, trial counsel did not produce the audio portion of the video in order for the Applicant to hear its contents. Clearly, since the Applicant did not have full dominion and control over the drugs and was only returning the drugs to the person who actually owned the drugs and was tricked and defrauded by the government agent, trial counsel should have informed the Applicant of the potential defense of entrapment and the defense of lack of possession. If the Applicant had heard the audio portion of the videotape he would have had further reasons to raise the defenses of entrapment due to the government agent's trickery and/or lack of possession since he had no dominion and control over the illegal substances. Also, a suppression hearing should have been requested by plea counsel in order to have these issues brought before the court. Applicant contends that he would have not been in possession of the alleged drugs at all but for the government's informant and agent. It was all orchestrated to entrap him for a crime and was put together by the government through the informant. It was an unconstitutional act by the government

and it violated the due process rights of the Applicant. There was not a rebuttal of the evidence of entrapment by the government by any witnesses or other evidence. The government cannot rest on the fact that the alleged drugs were in Applicant's possession after having knowledge that they were given to the Applicant by the government informant agent. The case was brought at the instigation of the government which violated the rights of the Applicant. And the prior record of the Applicant alone is insufficient to establish that the defendant was predisposed to sell illegal drugs. See U.S. v. Brooks, 215 F.3d 842 (8th Cir. 2000) and Sherman v. United States, 356 U.S. 369 (1958). Applicant moves that this court alter its findings of facts and conclusions of law to find that trial counsel was deficient for not fully informing the Applicant of all of the facts of the case and, in addition, failing to adequately inform the Applicant of the available defenses. Applicant further moves that this court find that Applicant was prejudiced by these deficiencies since the Applicant would have raised these defenses at a jury trial and he would not have pled guilty had he been properly advised of his legal defenses..

Applicant testified that trial counsel informed him that he could be facing a Life Without Parole sentence if he did not accept the plea offer. However, there was never a notice to seek Life Without Parole served on the defendant or his counsel by the State. Also, the charges to which Applicant pleaded did not carry the possibility of life without parole. Trial counsel was deficient in advising the Applicant this wrong information and that deficiency prejudiced the Applicant since he would not have pled guilty but for this erroneous advice. "If a petitioner successfully proves his or her guilty plea was based on inaccurate sentencing advice from counsel, the deficiency prong has been satisfied." Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). Under the second step of the inquiry, the prejudice prong "focuses on whether counsel's constitutionally

ineffective performance affected the outcome of the plea process." Hill v. Lockhart, 474 U.S. 52, 59 (1985). "In other words, in order to satisfy the 'prejudice' requirement, the [petitioner] must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id. To meet this burden, the petitioner need only testify that had plea counsel not misinformed him of the potential sentence, he would not have pled guilty. Alexander, 303 S.C. at 543, 402 S.E.2d at 485-86. In the instant case, Applicant testified that he would not have pled guilty if he had been informed correctly of the potential sentence. Therefore, the Applicant was prejudiced by plea counsel's misinformation. Applicant moves that this court alter its findings of facts and conclusions of law to find that trial counsel was deficient for misinforming the Applicant that he was facing life without parole when he was not. Applicant further moves that this court find that Applicant was prejudiced by these deficiencies since the Applicant would not have pled guilty if he had not been misinformed about a life without parole sentence.

The trial judge at the probation hearing failed to properly warn the Applicant of the dangers of proceeding pro se in his probation violation hearing. Applicant moves that this court alter its findings of fact and conclusions of law on this matter since the probation violation court did not inquire into the defendant's background to understand the dangers of self-representation. In the case cited in the order of this court, the appellate court ruled that amongst several factors affecting the probationers understanding of the dangers of self representation, one factor was that she had signed a probation form that had specific warnings about legal representation. State v. Bryant, 383 S.C. 410, 680 S.E.2d 11 (2009). In the present case, there is no evidence of a document advising the Applicant about legal representation. A defendant may waive his right to counsel and proceed pro

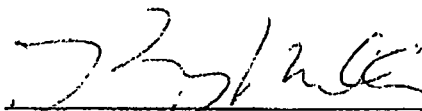
se. State v. McLauren, 349 S.C. 488, 493, 563 S.E.2d 346, 348 (Ct. App. 2002); see also Faretta v. California, 422 U.S. 806, 817 (1975) ("[F]orcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so."). The waiver, however, must be made knowingly and intelligently. McLauren, 349 S.C. at 493, 563 S.E.2d at 348. The defendant must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. Id. at 493, 563 S.E.2d at 348-49. "[T]he record [must] establish [the defendant] knows what he is doing and his choice is made with eyes open." Faretta, 422 U.S. at 835 (internal quotation marks omitted). Thus, "[t]he ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is not the [circuit court's] advice, but the defendant's understanding." McLauren, 349 S.C. at 493, 563 S.E.2d at 348 (citation and internal quotation marks omitted). Applicant further moves that this court find that Applicant was prejudiced by these failure of the probation court since the Applicant was denied his Sixth Amendment constitutional right to legal representation.

Therefore, Applicant moves that this court alter its findings of fact and conclusions of law consistent with the above argument and find that Applicant received ineffective assistance of trial counsel due to the deficiencies of trial counsel. Applicant further moves that this court alter its findings of fact and conclusions of law to be consistent with the above arguments and find that Applicant was prejudiced by the deficient performance of trial counsel and that he is entitled to a new trial due to the ineffectiveness of trial counsel. Furthermore, Applicant moves that this court alter its findings of fact and conclusions of law consistent with the above argument and find that the trial judge failed to properly warn the Applicant of the dangers of proceeding without counsel and that the Applicant was prejudiced by this failure and that he is entitled to a new probation violation

hearing due to this failure.

Applicant respectfully requests a hearing on this matter.

I SO MOVE:



Robert W. Mills
Attorney for the Defendant
1728 Main Street
Columbia, SC 29201
803-252-9648

Date: 6-12-15
Columbia, SC

ETHA A. CARRIGG
CLERK OF COURT
JUL 12 2015

2015 JUL 12 PM 12:31

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

2009-CP-32-4821

James Livingston SCDC #226920)
)
Applicant,)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

CERTIFICATE OF SERVICE

I certify that I have on June 12, 2015 served a copy of the attached Motion to Alter Judgment Pursuant to SCRCP 59(e) upon the State by depositing it in the U.S. Mail in an envelope with sufficient postage affixed, addressed to:

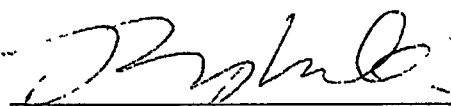
Walt Whitmire
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Mary Williams Leddon
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

JEFF A. CARRIG
CLERK OF COURT
JUN 12 2015

2015 JUN 12 PM 12:31

FILED



Robert W. Mills
Attorney for the Applicant
1728 Main Street
Columbia, SC 29201
803-252-9648

Date: 6-12-15
Columbia, SC

STATE OF SOUTH CAROLINA

FILED

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

2 PM 12:32

2009-CP-32-4821

James Livingston SCDC #226920

MOTION FOR A NEW TRIAL

PURSUANT TO SCRCP 59(a)

Applicant,

v.

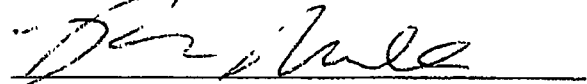
State of South Carolina,

Respondent.

The above captioned Applicant, through his undersigned attorney, hereby moves for a new trial pursuant to SCRCP Rule 59 (a). Applicant's Attorney received the Order of Dismissal in this case on June 2, 2015. Applicant moves that this court order a new trial for Applicant in this case for the following grounds:

The Applicant in this matter has ordered the transcript of the PCR hearing and has discovered and alleged to the undersigned counsel that the transcript is lacking much of the matters that were presented at the hearing. Therefore, Applicant moves for a new trial (PCR hearing) in this case due to the discrepancy in the transcript that the Applicant himself has found. Applicant respectfully requests a hearing on this matter.

I SO MOVE:



Robert W. Mills

Attorney for the Defendant

1728 Main Street

Columbia, SC 29201

803-252-9648

Date: 6-12-15

Columbia, SC

STATE OF SOUTH CAROLINA

FILED

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JUN 12 PM 12:32

2009-CP-32-4821

James Livingston SCDC #226920

ETHEL A. CARRIGG

CLERK OF COURT

Applicant,

v.

CERTIFICATE OF SERVICE

State of South Carolina,

Respondent.

I certify that I have on June 12, 2015 served a copy of the attached Motion for a New Trial Pursuant to SCRC P 59(a) upon the State by depositing it in the U.S. Mail in an envelope with sufficient postage affixed, addressed to:

Walt Whitmire
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Mary Williams Leddon
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211



Robert W. Mills
Attorney for the Applicant
1728 Main Street
Columbia, SC 29201
803-252-9648

Date: 6-12-15
Columbia, SC

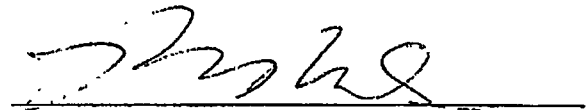
FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) 2009-CP-32-4821
IN THE COURT OF COMMON PLEAS)
JAMES LIVINGSTON SCDC #226920)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

The above captioned Applicant, through his undersigned attorney, hereby moves for Relief from Judgment or Order pursuant to SCRPC Rule 60(b)(1) and (2). Applicant moves that this court relieve Applicant from the judgment in this case for the following grounds:

The Applicant in this matter has ordered the transcript of the PCR hearing and has discovered and alleged to the undersigned counsel that the transcript is lacking much of the matters that were presented at the hearing. Therefore, Applicant moves for relief from the Order of Dismissal in this case due to 1) mistake, inadvertence, surprise, or excusable neglect; and/or (2) newly discovered evidence. Applicant respectfully requests a hearing on this matter.

I SO MOVE:



Robert W. Mills
Attorney for the Defendant
1728 Main Street
Columbia, SC 29201
803-252-9648

Date: 6-12-15
Columbia, SC

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

) IN THE COURT OF COMMON PLEAS
) 12 PM 12:32

2009-CP-32-4821

James Livingston SCDC #226920

Applicant,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I certify that I have on June 12, 2015 served a copy of the attached Motion for Relief from Judgment or Order pursuant to SCRPC Rule 60(b)(1) and (2) upon the State by depositing it in the U.S. Mail in an envelope with sufficient postage affixed, addressed to:

Walt Whitmire
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Mary Williams Laddon
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211



Robert W. Mills
Attorney for the Applicant
1728 Main Street
Columbia, SC 29201
803-252-9648

Date: 6-12-15
Columbia, SC



ALAN WILSON
ATTORNEY GENERAL

February 1, 2016

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street
Suite 146
Lexington, SC 29072-3557

Re: James M. Livingston, #226920 v. State of South Carolina
2009-CP-32-04821

Dear Ms. Carrigg:

Enclosed please find the original **Return to Applicant's 60 (b) Motion** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Patrick Schmeckpeper
Assistant Attorney General

PS/lg

~~cc: Robert W. Mills, Esquire~~

[illegible]

2009-CP-32-4821

Applicant,

**RETURN TO APPLICANT'S
60(b) MOTION**

Respondent.

I.

II.

Page 1 of 3

Applicant's allegation is extremely vague, to the point that it does not raise any specific issue to this Court. Respondent submits a hearing in this matter is therefore not necessary. Accordingly, this motion should be dismissed.

Respondent would further note that this pleading does not comply with Rule 11, SCRCP, and should therefore be dismissed. Under Rule 11, "[e]very pleading, motion or other paper of a party represented by an attorney shall be signed . . . by at least one attorney of record." Id. "The . . . signature of an attorney . . . constitutes a certificate by him that he has read the pleading, motion or other paper" and "that to the best of his knowledge, information and belief there is good ground to support it." Id. Concerning the present motion, the alleged transcript discrepancies come from Applicant's knowledge, not counsels. See also Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client).

III.

Respondent also submits that a motion for relief from judgment or order pursuant to Rule 60(b) does not toll the time period for filing a Notice of Appeal. Rule 203, SCACR (2015).

IV.

WHEREFORE, Respondent asks the Court to deny Applicant's motion for relief from judgment or order.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

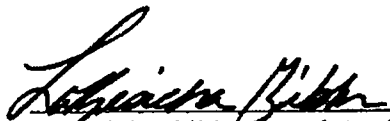
January 29, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2009-CP-32-4821
JAMES M. LIVINGSTON,	)	
	)	
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 to Applicant's 60 (b) Motion** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Robert William Mills, Esquire
1728 Main St., Ste. 213
Columbia, SC 29201

DATED this 1st day of February, 2016.


 Lakesicha Gibbs, Legal Assistant
 For Respondent



ALAN WILSON
ATTORNEY GENERAL

February 1, 2016

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street
Suite 146
Lexington, SC 29072-3557

Re: James M. Livingston, #226920 v. State of South Carolina
2009-CP-32-04821

Dear Ms. Carrigg:

Enclosed please find the original **Return to Applicant's Motion for New Trial** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Patrick Schmeckpeper
Assistant Attorney General

PS/lg

~~cc: Robert W. Mills, Esquire~~

[illegible]

2009-CP-32-4821

Applicant,

RETURN TO APPLICANT'S MOTION FOR A NEW TRIAL

Respondent.

new trial may be granted in a trial without a jury for any reasons for which rehearings have been granted in the courts of South Carolina. Rule 59(a) SCRPC (2015). Applicant has failed to raise any rule, case, or statute which would allow a new hearing for the reason he has submitted. Moreover, Applicant's allegation is extremely vague, to the point that it does not raise any specific issue to this Court. Respondent submits a hearing in this matter is therefore not necessary. In any event, even if what Applicant alleges is true, the proper remedy is not to grant a new trial. See State v. Ladson, 373 S.C. 320, 324, 664 S.E.2d 271, 273 (Ct. App. 2007) ("the inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal"). A new trial would be appropriate only if Applicant can establish that "the incomplete nature of the transcript prevents the appellate court from conducting a 'meaningful appellate review.'" Id. at 325, 644 S.E.2d at 274. No such allegation has been made in this case. Accordingly, this motion should be dismissed.

Respondent would further note that this pleading does not comply with Rule 11, SCRPC, and should therefore be dismissed. Under Rule 11, "[e]very pleading, motion or other paper of a party represented by an attorney shall be signed . . . by at least one attorney of record." Id. "The . . . signature of an attorney . . . constitutes a certificate by him that he has read the pleading, motion or other paper" and "that to the best of his knowledge, information and belief there is good ground to support it." Id. Concerning the present motion, the alleged transcript discrepancies come from Applicant's knowledge, and counsel has no firsthand knowledge of their existence. See also Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client.

III.

WHEREFORE, Respondent asks the Court to deny Applicant's motion for a new trial.

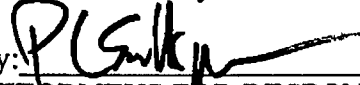
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 29, 2016

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

JAMES M. LIVINGSTON,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

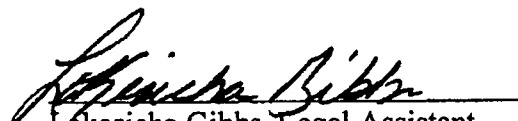
2009-CP-32-4821

AFFIDAVIT OF SERVICE BY MAIL

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

Robert William Mills, Esquire
1728 Main St., Ste. 213
Columbia, SC 29201

DATED this 1st day of February, 2016.


Lakesicha Gibbs, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

February 1, 2016

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street
Suite 146
Lexington, SC 29072-3557

Re: James M. Livingston, #226920 v. State of South Carolina
2009-CP-32-04821

Dear Ms. Carrigg:

Enclosed please find the original **Return to Applicant's Motion to Alter or Amend** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Patrick Schmeckpeper
Assistant Attorney General

PS/lg

cc: Robert W. Mills, Esquire

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2009-CP-32-4821

**RETURN TO APPLICANT'S
MOTION TO ALTER OR AMEND**

State of South Carolina,

Respondent.

I.

II.

Page 1 of 2

Respondent submits that this Court properly ruled on all issues presented at the post-conviction relief hearing, and Applicant's motion should be denied.

III.

WHEREFORE, Respondent asks the Court to deny Applicant's motion for reconsideration. Respondent further asks the Court to strike those portions of the motion, including attachments, that attempt to introduce new information that was not timely presented at the evidentiary hearing.

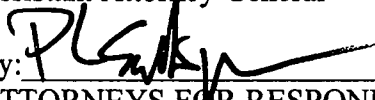
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 29, 2016

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

JAMES M. LIVINGSTON,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

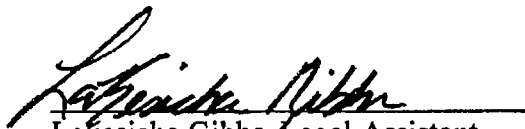
2009-CP-32-4821

AFFIDAVIT OF SERVICE BY MAIL

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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 to Applicant's Motion to Alter or Amend** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Robert William Mills, Esquire
1728 Main St., Ste. 213
Columbia, SC 29201

DATED this 1st day of February, 2016.


Lakesicha Gibbs, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
James Livingston, # 226920,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2009-CP-32-4821

ORDER

FILED
CLERK OF COURT
LEXINGTON, SC
JUN 18 2015
JUN 18 2015

This matter comes before this Court by way of a post-conviction relief (PCR) application filed by James Livingston (Applicant) on June 12, 2009. An evidentiary hearing into the matter was convened on August 16, 2013, at the Lexington County Courthouse. Applicant was present at the hearing and was represented Robert W. Mills, Esquire. Respondent was represented by Assistant Attorney Mary S. Williams, Esquire. This Court issued an Order dated May 13, 2015, and filed May 19, 2015, denying the application for post-conviction relief.

Applicant filed a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure on June 2, 2015, in which he asks this Court to alter or amend its order dismissing his PCR application. He also filed motions pursuant to Rule 59(a) and Rule 60(b) requesting a new trial and relief from judgment or order. Respondent made its return to these motions, requesting that each be denied.

Motion to Alter or Amend

Based upon careful reconsideration of the evidence in this case, including Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend its judgment. This Court further finds a hearing would not aid in the

ORIGINAL

reconsideration of the original judgment. The Order of Dismissal issued by this Court contains the required findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2015) and Rule 52(a) of the South Carolina Rules of Civil Procedure. As a result, this motion is denied and dismissed.

Motion for a New Trial

In his motion for a new trial, Applicant asks this Court to grant a new trial because "Applicant . . . has ordered the transcript . . . and has discovered and alleged [to his PCR counsel] that the transcript is lacking much of the matters that were presented at the hearing." This Court finds that Applicant has failed to present a sufficient reason for granting a new trial. A new trial may be granted in a trial without a ~~jury~~ ^{transcript} for any reasons for which rehearings have been granted in the courts of South Carolina. Rule 59(a) SCRCP (2015). Applicant has failed to raise any rule, case, or statute which would allow a new hearing for the reason he has submitted. Moreover, Applicant's allegation is extremely vague, to the point that it does not raise any specific issue to this Court. This Court finds that a hearing in this matter is therefore not necessary. In any event, even if what Applicant alleges is true, the proper remedy to an incomplete ^{transcript} is not to immediately grant a new trial. See State v. Ladson, 373 S.C. 320, 324, 664 S.E.2d 271, 273 (Ct. App. 2007) ("the inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal"). A new trial would be appropriate only if Applicant can establish that "the incomplete nature of the transcript prevents the appellate court from conducting a 'meaningful appellate review.'" Id. at 325, 644 S.E.2d at 274. No such allegation has been made in this case. Accordingly, this motion is denied and dismissed.

This Court further note that this pleading does not comply with Rule 11, SCRPC, and must therefore be dismissed. Under Rule 11, “[e]very pleading, motion or other paper of a party represented by an attorney shall be signed . . . by at least one attorney of record.” Id. “The . . . signature of an attorney . . . constitutes a certificate by him that he has read the pleading, motion or other paper” and “that to the best of his knowledge, information and belief there is good ground to support it.” Id. Concerning the present motion, the alleged transcript discrepancies come from Applicant’s knowledge, and counsel has no firsthand knowledge of their existence. See also Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client).

Relief from Judgment or Order

Applicant’s motion for relief from judgment or order is based on the same ground as his motion for a new trial. Accordingly, it is denied and dismissed for the same reasons.

IT IS THEREFORE ORDERED that each of Applicant’s post-hearing motions be denied and dismissed.

AND IT IS SO ORDERED this 9th day of March, 2016.


EDGAR W. DICKSON
Presiding Judge
Eleventh Judicial Circuit

Deangelis, South Carolina

FILED
2016 MAR 18 2:12 PM
CLERK OF COURT
ELEVENTH JUDICIAL CIRCUIT
COLUMBIA, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

JAMES LIVINGSTON)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-32-4821

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Robert William Mills, Bar No. 3999
Address:
1728 Main St. Suite 213 Columbia, SC 29201
Phone: (803)252-9648 Fax _____
E-mail: robertmillsc@aol.com Other: _____

Defendant's Attorney:
Patrick Schmeckpeper, Bar No. 102100
Address:
Post Office Box 11549 Columbia, SC 29211-1549
Phone: (803)734-3737 Fax _____
E-mail: pschmeckpeper@scag.gov Other: _____

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

SECTION I: Hearing Information

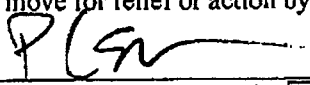
Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

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


Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted _____

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

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

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP3204821**

James Morris Livingston
#226920

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

3/21/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on March 21, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Robert William Mills 1728 Main St., Ste. 213 Columbia, SC
29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

JAMES LIVINGSTON)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-32-4821

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Robert William Mills, Bar No. 3999

Address:

1728 Main St. Suite 213 Columbia, SC 29201

Phone: (803)252-9648 Fax _____

E-mail: robertmillsc@aol.com Other: _____

Defendant's Attorney:

Patrick Schmeckpeper, Bar No. 102100

Address:

Post Office Box 11549 Columbia, SC 29211-1549

Phone: (803)734-3737 Fax _____

E-mail: pschmeckpeper@scag.gov Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☒ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

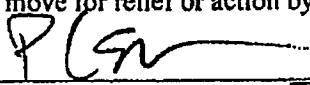
Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

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


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted _____

SECTION III: Motion Fee

☐ **PAID - AMOUNT:** \$ _____

☒ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED:** \$ _____

☐ **CONTESTED - AMOUNT DUE:** \$ _____

COUNTY OF Lexington
STATE VS.
James Morris Livingston
AKA:
Race: B Sex: M Age: 37
DOB: 11/11/70 SS#: 123456789
Address: PO Box 866
Columbia SC 29202
DL#: 007558315 SID#: SC00935828

15-30 years and/or = \$5000
INDICTMENT CASE#: 2006GS3200170
A/W#: 1030172
Date of Offense: 2/17/2005
S.C. Code § 44-53-0375(B)(3)
CDR Code #: 3039

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Distribution of Cocaine Base -- 3rd or subsequent offense

in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST:

[Signature] 69479 [Signature] [Signature] 7453
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 14 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

☐ set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 35.13 (Public Def/Prob)	\$500 \$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$ <u>100.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$
§ 90.11 TP (SCCJA Surcharge)	\$5 \$ <u>5.00</u>

TOTAL \$ 520.00

Boeth A. Carrington
Clerk of Court Deputy Clerk

Court Reporter: C. Pratsani

PRESIDING JUDGE [Signature]

Judge Code: 0117

Sentence Date: 4/13/07

GS-32-00170

ARREST WARRANT

J-030172

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

THE STATE

against

LIVINGSTON, JAMES MORRIS

Address: 1512 HOLMES ST
WEST COLUMBIA SC 29169

Phone: 803-000-0000 SSN:

Sex: M Race: B Height: 601 Weight: 170

DL State: SC DL#:

DOB: Agency ORI #: SC0320500

Prosecuting Agency: WCPD

Prosecuting Officer: CHRIS BAILEY

Offense: CRACK COCAINE / DISTRIBUTION 1ST

Offense Code:

Code/Ordinance Sec. 44-53-375 (B)(1) 3014

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of

WEST COLUMBIA The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant JAMES MORRIS LIVINGSTON

on Oct 14, 2005
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

MARDI MCKINNON

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of
WEST COLUMBIA)

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 018

Personally appeared before me the affiant BAILEY, CHRIS who
being duly sworn deposes and says that defendant LIVINGSTON, JAMES MORRIS
did within this county and state on 02/17/2005 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE:

CRACK COCAINE / DISTRIBUTION 1ST - 44-53-375 (B)(1)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
IN THAT ON OR ABOUT FEBRUARY 17, 2005 WHILE AT 1512 HOLMES STREET LOCATED IN THE CITY OF WEST
COLUMBIA, COUNTY AND STATE AFORESAID, ONE JAMES M. LIVINGSTON DID DISTRIBUTE A QUANTITY OF
CRACK COCAINE TO AN INFORMANT OF THE WEST COLUMBIA POLICE DEPARTMENT. AGENTS WERE
CONDUCTING CONTINUOUS ELECTRONIC SURVEILLANCE DURING THE TRANSACTION; ALL OF WHICH
CONSTITUTES THE CRIME OF DISTRIBUTION OF CRACK COCAINE AND IS IN VIOLATION OF THE SOUTH
CAROLINA CODE OF LAWS OF 1976, AS AMENDED. THE FOREGOING IS BASED ON THE INVESTIGATION OF THE
WEST COLUMBIA POLICE DEPARTMENT.

CASE #0503262

Signature of Affiant

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of
WEST COLUMBIA)

Affiant's Address: 200 N 12TH ST
WEST COLUMBIA SC 29169
Affiant's Telephone: 803-794-0721

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 02/17/2005 defendant LIVINGSTON, JAMES MORRIS
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of WEST COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE:

CRACK COCAINE / DISTRIBUTION 1ST - 44-53-375 (B)(1)

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

Sworn to and subscribed before me

on 02/24/05
Mardi McKinnon (S.S.)
Signature of Issuing Judge

Judge Code: 6415

Judge's Address: 200 N 12TH STREET
WEST COLUMBIA SC 29169

Judge's Telephone: 803-794-0721

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

*73
to add m.*

WITNESSES

WCPD
Chris Bailey

DOCKET NO 2006-GS-32-170

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

vs.

James Morris Livingston

A-2005-32-03568

12/19/2005 11:45 AM

ARREST WARRANT NUMBER

J030172

TRUE BILL
ACTION OF GRAND JURY

Bay Lucas
Foreperson of Grand Jury
Date: *9 Jan 06*

VERDICT

CDR# 0114

Indictment for

Manufacture, Distribution, etc., ice, crank, ✓
crack cocaine 3rd or subsequent offense

§44-53-375(B)(3)

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

COUNTY OF Lexington
STATE VS.
James Morris Livingston
AKA:
Race: B Sex: M Age: 32
DOB: SS:
Address: 1000 Drive
Gaston SC 29053
DL# SID# SC00935828

15-30 years and/or \$25000
INDICTMENT CASE# 2008GS3202647
AW# 1846542
Date of Offense: 2-27-2008
S.C. Code 44-53-0370(a)(2)(d)
CDR Code = 0288

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Distribution of Cocaine -- 3rd or subsequent offense

in violation of 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code = 0185
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) 17-25-45 w/minor 1st or Lewd Act

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

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

ATTEST:

Solicitor SC Bar# 69479 Defendant Attorney for Defendant SC Bar# 70453

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 183 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code 17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

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

Payment Terms: Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning

Recipient: Substance Abuse Counseling Random Drug/Alcohol testing

*Fine: \$ Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

14-1-206 (Assessments 107.5 %) \$
14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
14-1-211(A)(2) (DUI Surcharge) \$100 \$

56-5-2995 (DUI Assessment) \$12 \$
56-1-286 (DUI Breath Test) \$25 \$
35.13 (Public Def Prob) \$500 \$

33.1B TP (Law Enforce Funding) \$25 \$525.00
33.1B TP (Drug Court Surcharge) \$100 \$100.00
50-21-114(B) (Breath Test Fee) \$50 \$

56-5-2942(J) (Vehicle Assessment) \$40 ea \$
3% to County (if paid in installments) \$
90.11 TP (SCCJA Surcharge) \$5 \$5.00
TOTAL \$530.00

Clerk of Court Deputy Clerk
Court Reporter: Clerk of Court Deputy Clerk

PRESIDING JUDGE Judge Code: Sentence Date: 4/15/09

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF LEXINGTON) Manufacture, Distribution, etc., ice, crank, crack cocaine
) 3rd or subsequent offense

§44-53-375(B)(3)

At a Court of General Sessions, convened on JANUARY, 2006, the Grand Jurors of Lexington County present upon their oath:

That James Morris Livingston did in Lexington County on or about February 17, 2005, knowingly and intentionally, willfully and unlawfully sell, distribute, cultivate, manufacture, 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, posses with intent to distribute or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of Crack Cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-375(B)(3), Code of Laws of South Carolina, 1976, as amended. Such being the third or subsequent offense.

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


ASSISTANT SOLICITOR

ARREST WARRANT

J-846542

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Lexington

THE STATE

against

James Morris Livingston

Address 3111 Highway 6

Gaston SC 29053-

Phone _____ SSN _____

Sex M Race B Height 6 Weight 160

DL State SC Dr # 07558 315

DOB _____ Agency ORI # SC LFD0000

Prosecuting Agency State Law Enforcement Division

Prosecuting Officer Eric Smith - 00001

Offense Drugs / Trafficking in cocaine powder, 200 g or more, but less than 400 g

Offense Code 0288

Code/Ordinance Sec 44-53-0370(c)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Affiant

Date

RETURN

A copy of this arrest warrant was delivered to defendant

on

Signature of Authorized Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant Eric Smith

being duly sworn deposes and says that defendant James Morris Livingston

did within this county and state on or about 02/27/2008

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington

DESCRIPTION OF OFFENSE Drugs / Trafficking in cocaine powder, 200 g or more, but less than 400 g

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

That on Wednesday, February 27, 2008, one James Morris Livingston did knowingly, intentionally and willfully traffic in a quantity of cocaine powder more than 200 grams but less than 400 grams. This offense occurred at 3111 Highway 6, Lexington County, South Carolina 29053. This affiant knows this to be true because on February 27, 2008, James Morris Livingston delivered a quantity of an off white powder substance represented as eight and one fourth ounces (8 1/4 ounces) approximately (230 grams) of cocaine powder (a schedule II controlled substance) for \$1,625.00 to a confidential informant undercover SLED. The informant was searched prior to transaction and fitted with audio devices. Informant was under surveillance during transaction when the defendant delivered the cocaine powder. Afterwards evidence was secured and submitted to SLED for analysis. The affiant and the other witnesses will testified to same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address P. O. Box 21398

Columbia 29210-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/27/2008 defendant James Morris Livingston

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Lexington) as set forth below

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine powder, 200 g or more, but less than 400 g

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

Sworn to and subscribed before me

on 04/29/2008

Signature of Issuing Judge

Rebecca L. Adams

Judge Code: 5057

Judge's Address 111 Linck Creek Drive

Columbia, SC 29212-2201

Judge's Telephone (803) 781-7581

Issuing Court ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES

SLED

Eric Smith

Law Enforcement Case # 25 08-34

SCB

ARREST WARRANT NUMBER

J846542

ACTION OF GRAND JURY

TRUE BILL

Donal L. Looch
Foreperson of Grand Jury
Date: 8-11-08

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-32-2647

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2008

THE STATE

vs.

James Morris Livingston

CDR #: 0288

Indictment for

TRAFFICKING COCAINE → Dist (100: 3rd/subs)

§ 44-53-0370(e)(2)(d)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
TRAFFICKING COCAINE

§ 44-53-0370(e)(2)(d)

At a Court of General Sessions, convened on AUGUST 2008, the Grand Jurors of Lexington County present upon their oath:

That **James Morris Livingston** did in Lexington County, South Carolina on or about February 27, 2008, knowingly and intentionally, willfully and unlawfully sell, cultivate, manufacture, 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 was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of two hundred (200) grams or more but less than four hundred (400) grams , in violation of § 44-53-370 (e)(2)(d), Code of Laws of South Carolina, 1976, as amended.

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


ASSISTANT SOLICITOR

COUNTY OF Lexington
STATE VS.
James Morris Livingston
AKA:
Race: B Sex: M Age: 32
DOB: S#:
Address: Holmes Street
West Columbia, SC 29169
DL#: SID#: SC00935828

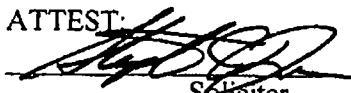
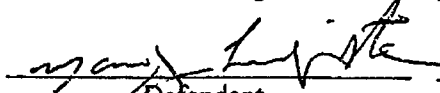
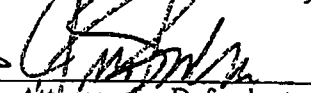
15-30 years and/or <=\$5000
INDICTMENT/CASE#: 2006GS3200172
A/W#: J030174
Date of Offense: 3/12/2005
S.C. Code § 44-53-0375(B)(3)
CDR Code #: 3039

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Distribution of Cocaine Base -- 3rd or subsequent offense

in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST:  69479 Solicitor
 Defendant
 Attorney for Defendant
70453 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections/ ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 14 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

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

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

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

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

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

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

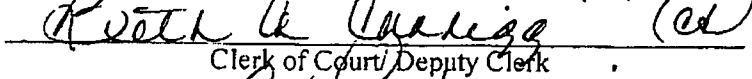
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

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

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

TOTAL \$ 530.00

 Clerk of Court/Deputy Clerk

Court Reporter: 

CA217 (03/2009)

175

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

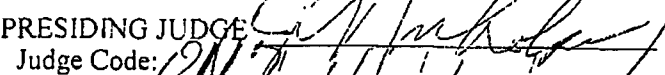
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE 

Judge Code: 2117

Sentence Date: 4/16/09

ARREST WARRANT

J-030174

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

THE STATE

against

LIVINGSTON, JAMES MORRIS

Address: HOLMES ST
WEST COLUMBIA SC 29169

Phone: 803-000-0000 SSN

Sex: M Race: B Height: 601 Weight: 170

DL State: SC DL#: 007558315

DO: Agency ORI #: SC0320500

Prosecuting Agency: WCPD

Prosecuting Officer: CHRIS BAILEY

Offense: CRACK COCAINE / DISTRIBUTION 1ST

Offense Code:

Code/Ordinance Sec. 44-53-375 (B)(1)

3014

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of

WEST COLUMBIA

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

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant JAMES MORRIS Livingston
on Oct 10 2005

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

MARDI MCKINNON

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of
WEST COLUMBIA)

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618Personally appeared before me the affiant BAILEY, CHRIS who
being duly sworn deposes and says that defendant LIVINGSTON, JAMES MORRIS
did within this county and state on 03/12/2005 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE:

CRACK COCAINE / DISTRIBUTION 1ST - 44-53-375 (B)(1)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts.
IN THAT ON OR ABOUT MARCH 12, 2005 WHILE AT 1512 HOLMES STREET LOCATED IN THE CITY OF WEST
COLUMBIA, COUNTY AND STATE AFORESAID, ONE JAMES M. LIVINGSTON DID DISTRIBUTE A QUANTITY OF
CRACK COCAINE TO AN INFORMANT OF THE WEST COLUMBIA POLICE DEPARTMENT, AGENTS WERE
CONDUCTING CONTINUOUS ELECTRONIC SURVEILLANCE DURING THE TRANSACTION; ALL OF WHICH
CONSTITUTES THE CRIME OF DISTRIBUTION OF CRACK COCAINE AND IS IN VIOLATION OF THE SOUTH CODE
OF LAWS OF 1976, AS AMENDED. THE FOREGOING IS BASED ON THE INVESTIGATION OF THE WEST
COLUMBIA POLICE DEPARTMENT.

CASE #0504868

Signature of Affiant

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of

WEST COLUMBIA)

Affiant's Address 200 N 12TH ST
WEST COLUMBIA SC 29169

Affiant's Telephone 803-794-0721

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/12/2005 defendant LIVINGSTON, JAMES MORRIS
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of WEST COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE:

CRACK COCAINE / DISTRIBUTION 1ST - 44-53-375 (B)(1)

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

Sworn to and subscribed before me)

on 08/24/05)

Signature of Issuing Judge

Judge Code 6415)

Judge's Address 200 N 12TH STREET
WEST COLUMBIA SC 29169

Judge's Telephone 803-794-0721

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

WITNESSES

WCPD
Chris Bailey

DOCKET NO. 2006 -GS-32- ~~172~~ ~~174~~ ¹⁷²

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

vs.

James Morris Livingston

A-2005-32-03568

12/19/2005 11:48 AM

ARREST WARRANT NUMBER

J030174

ACT OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury

Date: 9 Jan 06

VERDICT

Foreperson of Petit Jury

Date:

CDR# 0114

Indictment for

Manufacture, Distribution, etc., ice, crank,
crack cocaine 3rd or subsequent offense ✓

§44-53-375(B)(3)

DONALD V. MYERS, SOLICITOR

GS-32-00172

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
)
)

INDICTMENT FOR
Manufacture, Distribution, etc., ice, crank, crack cocaine
3rd or subsequent offense

§44-53-375(B)(3)

At a Court of General Sessions, convened on JANUARY, 2006, the Grand Jurors of Lexington County present upon their oath:

That James Morris Livingston did in Lexington County on or about March 12, 2005, knowingly and intentionally, willfully and unlawfully sell, distribute, cultivate, manufacture, 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, posses with intent to distribute or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of Crack Cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-375(B)(3), Code of Laws of South Carolina, 1976, as amended. Such being the third or subsequent offense.

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


ASSISTANT SOLICITOR

05-32-1921

1. Arrest Warrant
approved by
Judge General
Jan 17-13-160
Arch 15, 1978

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Probation

ARREST WARRANT

Indictment Number 05-GS-32-02325, 05-GS-32-01921

Warrant Number W-32-09-0165

State Identification No. (SID) 00935828

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF LEXINGTON, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that JAMES MORRIS LIVINGSTON, did on the 29 day of April, 2009 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Probation violation pursuant to Section 24-21-450 in that the defendant herein named has violated the conditions of his probation sentence as imposed by Judge Dennis at the October 5, 2005 term of General Sessions holden in Lexington County, Lexington, SC.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JAMES MORRIS LIVINGSTON before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at LEXINGTON, S. C. this 29 day of April, 2009.

Michelle Whitlock (L.S.)
Signature of Probation and Parole Agent

County of LEXINGTON

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Michelle Whitlock, who, first being duly sworn, deposes and says that JAMES MORRIS LIVINGSTON did within this County and State on the 29 day of April, 2009, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Probation violation pursuant to Section 24-21-450 in that the defendant herein named has violated the conditions of his probation sentence as imposed by Judge Dennis at the October 5, 2005 term of General Sessions holden in Lexington County, Lexington, SC.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

James M. Livingston has violated his probation by failing to refrain from the violation of Federal, State, or local laws by being found guilty of Manufacturing/Distribution Crack Cocaine-3rd or Subsequent Offense on 3/30/09, Indictment 2008-GS-32-2647, for which he was sentenced to 18 years (already serving time at SCDC). This constitutes a willful violation of condition 6 of the original probation order dated 10/5/05.

Sworn to and Subscribed before me
this 29 day of April, 2009.

Michelle Whitlock
Affiant

Karen G. Barker (L.S.)
Signature of Notary Public

8-18-2018
My Commission Expires

Address: 605 West Main Street
Suite 104
LEXINGTON, SC 29072
LEXINGTON
USA
(803) 359-2551

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Lexington
STATE vs.INDICTMENT#: 2005 -GS- 32 - 1921
Probation/C/W#: W-32-09-0165James Morris LivingstonName of Original Offense: Poss. Crack

AKA: _____

Original A/V#: H-080299Race: B Sex: MDate of Original Offense: 11-15-04

DOB: _____

Conviction S.C. Code #: 44-53-375

SSN: _____

Conviction CDR Code #: 3 / 0 / 0 / 1SID#: 935828Original Sentence: 2 yrs. SS 4 yrs. probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 10/5/05 in the Court of General Sessions of Lexington County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 4-29-09, as set forth in the attached warrant(s) or citation(s) dated 4-29-09. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 2 months/years, the remainder of the original sentence, and/or pay \$ _____
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:

Terminate
Termination

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

- ☒ The defendant has previously served 0 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 22 day of MAY, 2009.Lexington, SCPresiding Judge Eleventh Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, at _____ SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Lexington
STATE VS.

INDICTMENT#: 2005 -GS- 32 - 2325
Probation C/W#: W-32-09-0165

James Morris Livingston

AKA: _____
Race: B Sex: M
DOB: _____
SSN: _____
SID#: 935828

Name of Original Offense: PWID Powder Cocaine
Original A/W#: H-800560
Date of Original Offense: 3-17-05
Conviction S.C. Code §: 44-53-370(b)(1)
Conviction CDR Code #: 0 / 1 / 8 / 3
Original Sentence: 12 yrs. SS 4 yrs. probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 10/5/05 in the Court of General Sessions of Lexington County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 4-29-09, as set forth in the attached warrant(s) or citation(s) dated 4-29-09. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 12 months/years, the remainder of the original sentence, and/or pay \$_____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Additional Conditions ordered by the Court:

100 current
Time Waiver

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- ☒ The defendant has previously served 0 months/years on this sentence.
(split sentence time and/or prior partial revocation time)
- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 29 day of May, 2009
Lexington, SC

Don M. T. T. T.
Presiding Judge
Eleventh Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, _____ at _____, SC.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

VS.

AKA:

Race: B Sex: M Age:DOB: SS#: C

Address:

City, State, Zip

DL#

SID#

2005

INDICTMENT/CASE#:

-GS-

32

2325

A/W#:

STRAIGHT

Date of Offense:

3/17/05

S.C. Code §:

44-53-375(B)(3)

CDR Code #:

11183

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Poss. powder cocaine - 1stin violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 11183☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Shannon Heath
SolicitorJames Morris Livingston
DefendantJosh Hendrix
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 4months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$100.00
\$50	\$
\$40/ea	\$
\$	\$
\$	\$225.00

PTUP

80 days(hours) Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Lexington
STATE VS.INDICTMENT#: 2005-GS-32-1921
Probation C/W#: W-32-C9-0165James Morris LivingstonName of Original Offense: Poss. Crack

AKA: _____

Original A/W#: H-080299Race: B Sex: MDate of Original Offense: 11-15-04

DOB: _____

Conviction S.C. Code §: 44-53-375

SSN: _____

Conviction CDR Code #: 3101019SID#: 935828Original Sentence: 2 yrs. SS 4 yrs. probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 10/5/05 in the Court of General Sessions of Lexington County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 4-29-09, as set forth in the attached warrant(s) or citation(s) dated 4-29-09. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 2 months/years, the remainder of the original sentence, and/or pay \$_____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:

concurrent
Terminate

A TRUE COPY

FILED

Lex. Court Clerk, CLERK

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☒ The defendant has previously served 0 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 22 day of MAY, 2009,
Lexington, SC

Eleventh Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, at _____ SC

Josh Hendrix

WITNESSES

WCPD
Dove, B.

DOCKET NO 2005-GS-32 2325

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

June TERM 2005

THE STATE

vs.

James Morris Livingston

A-2005-32-01521

6/16/2005 1:47 PM

ARREST WARRANT NUMBER

STRAIGHT

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury

Date:

Possession with intent to distribute crack cocaine 1st

CDR# 0114

Indictment for

Possession with intent to distribute crack
cocaine 3rd or subsequent offense

§44-53-375(B)(3)

DONALD V. MYERS, SOLICITOR

I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT

James Morris Livingston
DEFENDANT

12-4-05

DATE

Josh Hendrix
WITNESS

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

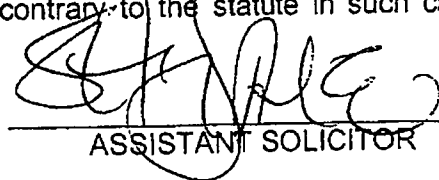
INDICTMENT FOR
Possession with intent to distribute crack cocaine 3rd or
subsequent offense

§44-53-375(B)(3)

At a Court of General Sessions, convened on June, 2005, the Grand Jurors of Lexington County present upon their oath:

That James Morris Livingston did in Lexington County on or about March 17, 2005, knowingly and intentionally, willfully and unlawfully sell, distribute, cultivate, manufacture, 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, posses with intent to distribute or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of Crack Cocaine, , a controlled substance under provisions of § 44-53-110; et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-375(B)(3), Code of Laws of South Carolina, 1976, as amended. Such being the third or subsequent offense.

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


ASSISTANT SOLICITOR

ALBANY COPY
2009
LEXINGTON COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Probation

ARREST WARRANT

Indictment Number 05-GS-32-02325, 05-GS-32-01921

Warrant Number W-32-09-0165

State Identification No. (SID) 00935828

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF LEXINGTON, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that JAMES MORRIS LIVINGSTON, did on the 29 day of April, 2009 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Probation violation pursuant to Section 24-21-450 in that the defendant herein named has violated the conditions of his probation sentence as imposed by Judge Dennis at the October 5, 2005 term of General Sessions holden in Lexington County, Lexington, SC.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JAMES MORRIS LIVINGSTON before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at LEXINGTON, S. C. this 29 day of April, 2009.

Michelle Whitlock (L.S.)
Signature of Probation and Parole Agent

County of LEXINGTON

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Michelle Whitlock, who, first being duly sworn, deposes and says that JAMES MORRIS LIVINGSTON did within this County and State on the 29 day of April, 2009, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Probation violation pursuant to Section 24-21-450 in that the defendant herein named has violated the conditions of his probation sentence as imposed by Judge Dennis at the October 5, 2005 term of General Sessions holden in Lexington County, Lexington, SC.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

James M. Livingston has violated his probation by failing to refrain from the violation of Federal, State, or local laws by being found guilty of Manufacturing/Distribution Crack Cocaine-3rd or Subsequent Offense on 3/30/09, Indictment 2008-GS-32-2647, for which he was sentenced to 18 years (already serving time at SCDC). This constitutes a willful violation of condition 6 of the original probation order dated 10/5/05.

Sworn to and Subscribed before me
this 29 day of April, 2009.

Michelle Whitlock
Affiant

Karen G. Barker (L.S.)
Signature of Notary Public

Address: 605 West Main Street
Suite 104
LEXINGTON, SC 29072
LEXINGTON,
USA
(803) 359-2551

8-18-2018
My Commission Expires

RETURN

STATE OF SOUTH CAROLINA
COUNTY OF
 LEXINGTON

THE STATE
 against

JAMES MORRIS LIVINGSTON

 Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

James M. Livingston

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section:

Date: 4/29/2009

Officer and Agency: SC Department of Probation,
 Parole and Pardon Services

Michelle Whitlock

Disposition _____

Sentence _____

Co-Defendants _____

INFORMATION ON DEFENDANT

Name JAMES MORRIS LIVINGSTON

Address 3111 Hwy 6 (but incarcerated at SCDCI)
 LEXINGTON, SC 29073

Phone (803) 000-0000

Sex Male Race Black Height 501

Weight 165 Birth date _____

Social Security Number _____

INFORMATION ON WITNESSES

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

PRELIMINARY HEARING held by

Magistrate _____

on _____

with _____

Attorney for the Defendant.

Decision _____

BAIL

Date Set _____

Magistrate _____

Amount _____

Surety _____

This Warrant is certified for service in [County of warrant
 Certification] County. The accused is to be arrested and brought
 before me to dealt with according to law.

(L.S.)

Signature of Judge

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 12/11/09
 OMCOMITA RELEASE DATE SCREEN C023981
 SCDC# > 226920 LOC: MCCORMICK
 LIVINGSTON, JAMES M. SCDC CLASSIFICATION..: NON-VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS.....: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION.....
 CURRENT SENTENCE: 018-00-000 CONSECUTIVE SENTENCE ...: N
 018-00-000 CURRENT SENT START DATE: 03/30/2009
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 08/15/2025 CURRENT EWC .: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC .: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000024 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ..: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 000251

 PFKEYS: 5:HISTORY OF DATE CHANGES
 4-© 1 Sess-1 167.7.50.33 SCDC1468 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 12/11/09

C0239

LIVINGSTON, JAMES M. FBI # 333925UA9 SID# SC00935828 SCDC # 226920

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION .: MCCORMICK CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 18 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...:

DORM.....: F10287B

RACE...: B SEX...: M

PROJ MAXOUT DATE: 08/15/2025

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 33 DATE OF BIRTH...:

PREVIOUS NUMBERS:

Y00226920

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			V/NV	CATEGORY
	YRS	MOS	DYS		START				
COCAINE POSS INT/DISTR	12	0	0	LEXINGTON	5/22/20	9	N	2	
POSS METH/COC BASE 1ST	2	0	0	LEXINGTON	5/22/20	9	N	2	
MANU/DIST CRACK-3RD,SUB.	18	0	0	LEXINGTON	3/30/20	9	N	3	
MDP NARC SCHED-3RD,SUBSE	18	0	0	LEXINGTON	3/30/20	9	N	3	

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE			COUNTY	SENTENCE			V/NV	CATEGORY
	YRS	MOS	DYS		START				
CRACK DISTRIBUTION	0	18	0	LEXINGTON	5/15/20	2	N	2	
CRACK DISTR PROX SCHOOL	0	18	0	LEXINGTON	5/15/20	2	N	2	

PRIOR COMMITMENTS OVER 90 DAYS:

8/28/95 *VOLUNTARY MANSLAUGHTER 6 YRS 0 MOS 0 DYS

1/24/95 CRACK COCAINE POS INT/DIS 6 YRS 0 MOS 0 DYS

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

10/16/97 POSSESSION OF A WEAPON DROPPED MAJOR

NON-ASSAULTIVE DISCIPLINARIES:

10/26/ 2 REFUSING OR FAILING OBEY CONVICTED MINOR

8/28/ 2 POSSESSION OF CONTRABAND CONVICTED MAJOR

8/28/ 2 REFUSING TO WORK CONVICTED MAJOR

8/26/ 2 OUT OF PLACE OTHER

8/20/ 2 REFUSING OR FAILING OBEY OTHER

2/25/98 OUT OF PLACE CONVICTED MAJOR

12/ 3/97 DAMAGE, DESTROY, PROP, VALU CONVICTED MAJOR

10/16/97 SAFETY REGULATIONS CONVICTED MAJOR

8/18/97 INCITING/CREATING A DIST OTHER

7/10/97 OUT OF PLACE DROPPED CHARG

7/10/97 USE OBSCENE, VULGAR, PROFA DROPPED CHARG

7/10/97 REFUSING OR FAILING OBEY DROPPED CHARG

2/10/97 FALSE STATEMENT TO HARM CONVICTED MAJOR

2/10/97 FALSE STATEMENT TO HARM CONVICTED MAJOR

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
5/22/ 9	MCCORMICK	INCARCERATED	RETURN FROM COURT
5/22/ 9	LEXINGTON CO	AUTH ABSENCE (AWL)	TO COURT
5/ 4/ 9	MCCORMICK	INCARCERATED	ADMINISTRATIVE
4/15/ 9	KIRKLAND	INCARCERATED	NEW ADMISSION
5/10/ 3	UNK	RELEASE	EXPIRATION OF SENTENCE
5/ 9/ 3	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
9/10/ 2	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
8/ 2/ 2	MANNING	INCARCERATED	ADMINISTRATIVE

LIVINGSTON, JAMES M. FBI # 333925UA9 SID# SC00935828 SDC # 224920 (CONTINUED)
7/ 3/ 2 KIRKLAND INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
WARDKEEPER ASSISTANT	02/28/03	5/10/ 3	RELEASED/PAROLED	2F5
WARDKEEPER ASSISTANT	10/11/02	2/27/ 3	MI ELIGIBLE FOR LEVEL 2	3F5
FOOD SERVICE AIDE	08/06/02	8/28/ 2	PLACED IN ST/SP CUSTODY	2F5
FOOD SERVICE AIDE	04/01/98	8/31/98	LATERAL TRANSFER	5F5
HORTICULTURIST (GRND	02/05/98	2/27/98	UNSAT JOB PERFORM	5F5
HORTICULTURIST (GRND	01/16/98	2/ 4/98	CUSTODY REVIEW	3F5
SEWING MACHINE REPAI	05/06/97	9/15/97	UNSAT JOB PERFORM	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
LVL 2 - FULL TIME(NO EWC)	08/17/01	9/14/ 1	RELEASED/PAROLED
LVL 2 - FULL TIME(NO EWC)	08/13/01	8/16/ 1	MI ELIGIBLE FOR LEVEL 2
LVL 2 - FULL TIME(NO EWC)	05/16/96	11/25/96	INSTIT TRANSFER
LVL 2 - FULL TIME(NO EWC)	09/19/95	3/19/96	DISCIPLINARY/LOCK-UP

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

STATE OF SOUTH CAROLINA

County of Lexington
STATE VS.James Morris Livingston
AKA: _____Race: B Sex: M

DOB: _____

SSN: _____

SID#: 435828

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#:

2005 -GS- 32 - 2325
Probation CMW#: W-32-09-0165Name of Original offense: PWID Powder CocaineOriginal A/W#: H-800560Date of Original Offense: 3-17-05Conviction S.C. Code §: 44-53-370(b)(1)Conviction CDR Code #: 011813Original Sentence: 12 yrs. SS 4 yrs. probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 10/5/05 in the Court of General Sessions of Lexington County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 4-29-09, as set forth in the attached warrant(s) or citation(s) dated 4-29-09. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 12 months/years, the remainder of the original sentence, and/or pay \$_____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Additional Conditions ordered by the Court:
on current
Terminate

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- ☒ The defendant has previously served 0 months/years on this sentence.
(split sentence time and/or prior partial revocation time)
- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 22 day of MAY, 2009,
Lexington, SCEleventh Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, _____, at _____ SC

STATE OF SOUTH CAROLINA

County of Lexington
STATE VS.James Morris Livingston

AKA: _____

Race: B Sex: M

DOB: _____

SSN: _____

SID#: 935828

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#: 2005-GS-32-1921
Probation C/W#s: W-32-09-0165Name of Original Offense: POSS. Crack Coc
Original AWW#: H-080299
Date of Original Offense: 11-15-04
Conviction S.C. Code #: 44-53-375
Conviction CDR Code #: 310019
Original Sentence: 2 yrs. SS 4 yrs. probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 10/5/05 in the Court of General Sessions of Lexington County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 4-29-09, as set forth in the attached warrant(s) or citation(s) dated 4-29-09. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 2 months/years, the remainder of the original sentence, and/or pay \$_____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court:concurrent
Terminate

- ☒
- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

- ☒
- The defendant has previously served
- 0
- months/years on this sentence.
-
- (split sentence time and/or prior partial revocation time)

- ☐
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 22 day of MAY, 2009
Lexington, SCPresiding Judge Eleventh Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, _____, at _____, SC

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
STATE VS.
James Morris Livingston
AKA:
Race: B Sex: M Age: 33
DOB: SS#:
Address: PO Box 866
Columbia, SC 29202
DL#: SID#: SC00935828

IN THE COURT OF GENERAL SESSIONS
10-30 years and/or = \$5000
INDICTMENT/CASE#: 2006GS3200170
A/W#: J030172
Date of Offense: 2/17/2005
S.C. Code §: 44-53-0375(B)(3)
CDR Code #: 3039

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Distribution of Cocaine Base -- 3rd or subsequent offense
in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:
[Signature] 69479 [Signature] [Signature] 74453
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient:	
Fine:	\$
14-1-206 (Assessments 107.5 %)	\$
14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
14-1-211(A)(2) (DUI Surcharge)	\$100 \$
56-5-2995 (DUI Assessment)	\$12 \$
56-1-286 (DUI Breath Test)	\$25 \$
35.13 (Public Def/Prob)	\$500 \$
73.3, 1B TP (Law Enforce. Funding)	\$25 \$ 25.00
33.7, 1B TP (Drug Court Surcharge)	\$100 \$ 100.00
50-21-114(BUI Breath Test Fee)	\$50 \$
56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
% to County (if paid in installments)	\$
90.11 TP (SCCJA Surcharge)	\$5 \$ 5.00
TOTAL	\$ 220.00

_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning: _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Clerk of Court Deputy Clerk
Court Reporter: [Signature]
193 02/17 (03/2009)

PRESIDING JUDGE [Signature]
Judge Code: 0107
Sentence Date: 4/13/09

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.
James Morris Livingston
AKA:
Race: B Sex: M Age: 32
DOB: SS#:
Address: Leland Drive
Gaston, SC 29053
DL#: SID#: SC00935828

IN THE CC T OF GENERAL SESSIONS

15-30 years and/or <= \$50,000
INDICTMENT/CASE#: 2008GS3202647
A/W#: J846542
Date of Offense: 2/27/2008
S.C. Code § 44-53-0370(e)(2)(d)
CDR Code #: 0288

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Distribution of Cocaine -- 3rd or subsequent offense

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST:
Solicitor 69479 SC Bar# Defendant Attorney for Defendant 70453 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 183 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____ days/hours Public Service Employment

☐ set by SCDPPPS
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 35.13 (Public Def/Prob)	\$500 \$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$ 100.00
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
% to County (if paid in installments)	\$
§ 90.11 TP (SCCJA Surcharge)	\$5 \$ 5.00
TOTAL	\$ 530.00

Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Clerk of Court Deputy Clerk
Court Reporter: _____

PRESIDING JUDGE
Judge Code: 0117
Sentence Date: 4/13/09

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2016-000823

RECEIVED

APR 13 2017

S.C. SUPREME COURT

James Livingston Petitioner

v.

State of South Carolina.....Respondent

PROOF OF SERVICE

I certify that I have served the APPENDIX on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 13, 2017 addressed to the attorney of record, Jessica Kinard, Office of the Attorney General, P.O. Bo 11549, Columbia, South Carolina 29211-1549.

April 13, 2017



Robert W. Mills
1728 Main Street
Columbia, SC29201
(803)252-9648
Attorney for Petitioner