

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Diane Goodstein, Circuit Court Judge

Case No. 2016-CP-02-1894

Kenneth Bryant Evans II, #308918, Appellant,

v.

State of South Carolina, Respondent.

APPENDIX

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S.C. SUPREME COURT

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2 COUNTY OF AIKEN
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CIRCUIT COURT
2016-GS-02-00018, -19 & -21

4 STATE OF SOUTH CAROLINA,
5 -vs-
6 KENNETH EVANS,
7 Defendant.
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TRANSCRIPT OF RECORD

9 Heard on Thursday, April 14, 2016
10 Aiken, South Carolina
11

12 BEFORE:
13 THE HONORABLE DOYET A. EARLY, III
14

15 APPEARANCES:
16 Counsel on Behalf of the State:
17 Elizabeth B. Young, Esq.
18
19 Counsel on Behalf of the Defendant:
20 M. Bradley McMillian, Esq.
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22
23
24
25

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
Aiken, SC 29804-5232

1 ON THURSDAY, APRIL 14, 2016 AT 11:36 A.M.

2 MS. YOUNG: Kenneth Evans.

3 (Defendant placed under oath.)

4 MS. YOUNG: Your Honor, this is Kenneth
5 Evans. He's before the Court to plead guilty to
6 the following true-billed indictments: 2016-GS-
7 02-00018, trafficking methamphetamine 28 to 100
8 grams second offense; 2016-GS-02-00019,
9 possession of a pistol with an obliterated serial
10 number; and 2016-GS-02-00021 harassment in the
11 first agreement. He's pleading guilty to the
12 lesser included harassment in the second degree.
13 We're asking for a jail sentence.

14 The victim is here and would like to
15 address the Court at the appropriate time on the
16 harassment charge.

17 THE COURT: Would you please tell me
18 whether Mr. Evans has a record.

19 MS. YOUNG: He does, Your Honor. He has a
20 conviction in 2001.

21 THE COURT: Hold on one second for me,
22 please.

23 Well, obviously he's got a record if that
24 trafficking is a second offense.

25 MS. YOUNG: It is.

1 THE COURT: The record, please.

2 MS. YOUNG: 2001 simple possession of
3 marijuana; 2003, CDV first offense.

4 THE COURT: CDV one?

5 MS. YOUNG: Yes, sir. 2003, simple
6 possession of marijuana and drug paraphernalia;
7 2004, DUI second, use of vehicle without
8 permission; and 2005, pointing and presenting and
9 PWID methamphetamine which he received a
10 five-year sentence for.

11 THE COURT: That's it?

12 MS. YOUNG: Yes, sir.

13 THE COURT: How much methamphetamine are we
14 talking about?

15 MS. YOUNG: Your Honor, he had 32.49 grams.

16 THE COURT: Do that again.

17 MS. YOUNG: 32.49.

18 THE COURT: And that's -- trafficking
19 offense is 10 to what?

20 MS. YOUNG: Carries seven to 30. And it's
21 serious, violent, 85 percent.

22 THE COURT: Yes, ma'am. All right.

23 Mr. McMillian, you represent Mr. Evans on all
24 three indictments that were called?

25 MR. McMILLIAN: I do, Your Honor.

1 THE COURT: As to the possession of a
2 pistol with an obliterated serial number, that
3 carries up to five years and a fine of up to
4 2000. Have you advised him of those charges and
5 the possible sentence?

6 MR. McMILLIAN: I have.

7 THE COURT: He was indicted for harassment
8 in the first degree. They're allowing him to
9 plead to second degree harassment. That carries
10 30 days or 200. Have you have advised him of
11 that charge and the possible sentence?

12 MR. McMILLIAN: I have, Judge.

13 THE COURT: Obviously the more serious
14 situation is the trafficking. He's charged and
15 indicted with the offense of trafficking in
16 methamphetamine, between 10 grams and --

17 MS. YOUNG: 28 to 100.

18 THE COURT: Strike that. Between 28 grams
19 and 100. This is a second offense. Have you
20 advised him of those charges?

21 MR. McMILLIAN: I have.

22 THE COURT: Have you advised him that it
23 carries a mandatory minimum -- is that
24 suspendable, ma'am?

25 MS. YOUNG: It is not.

1 THE COURT: A nonsuspendable seven years to
2 30 years and a \$50,000 fine.

3 MR. McMILLIAN: I have, Judge.

4 THE COURT: Have you advised him that this
5 is a no parole, 85-percent sentence, and whatever
6 sentence that he receives he'll do 85 percent of
7 it, and be released to a community supervision
8 program?

9 MR. McMILLIAN: Yes, sir, Your Honor.

10 THE COURT: Have you advised him it's
11 classified as violent and will have some effect
12 and how and where he is housed in the Department
13 of Corrections?

14 MR. McMILLIAN: We have talked about that,
15 Judge.

16 THE COURT: Now he had a PWID. That was --
17 was that a serious?

18 MS. YOUNG: No, sir.

19 THE COURT: Have you advised him it's
20 classified as serious and from his rap sheet it
21 looks like it's his first strike under South
22 Carolina's three strikes law and what that
23 means?

24 MR. McMILLIAN: We've talked about that,
25 too, Judge.

1 THE COURT: In your opinion does he
2 understand all of that?

3 MR. McMILLIAN: He does.

4 THE COURT: Have you advised him of his
5 right to trial by jury?

6 MR. McMILLIAN: I have, Your Honor.

7 THE COURT: And how does he indicate to you
8 he wishes to plead, not guilty or guilty?

9 MR. McMILLIAN: He wishes to plead guilty.

10 THE COURT: Do you agree with that
11 decision?

12 MR. McMILLIAN: After reviewing everything
13 thoroughly, Judge, I do.

14 THE COURT: Mr. Evans, good morning.

15 THE DEFENDANT: Good morning.

16 THE COURT: You've got two charges.
17 Possession of a pistol with an obliterated serial
18 number, that carries up to five years and/or
19 \$2000 fine. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Harassment. The State's
22 allowing you to plead to the lesser-included
23 offense of harassment second. That's a 30-day
24 sentence or 200. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Obviously the major charge is
2 the trafficking in methamphetamine. This is your
3 second offense. Do you understand that charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that I have
6 to incarcerate you for a minimum of seven years?
7 The law gives me the discretion to sentence you
8 up to 30 years and a \$50,000 fine.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you aware and have you been
11 advised this is what is known as a no-parole
12 sentence. Whatever sentence you may receive,
13 whether it be from seven to 30 or anything in
14 between, you will have to do 85 percent of that.
15 In other words, if you get a 10-year sentence
16 you'll have to do eight and a half years.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: It's a no-parole sentence. And
19 once you're released from incarceration, it will
20 be to a community supervision program.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you aware that it's
23 classified as violent and that may have -- and
24 will have some effect on where and how you're
25 housed in the Department of Corrections.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you're aware that it's
3 classified as serious? Are you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you understand that that
6 constitutes your first strike under South
7 Carolina's three-strike law which means that when
8 you are released from incarceration if you become
9 involved in any criminal activity classified as
10 serious or most serious two more times you would
11 have three strikes, and that would subject you to
12 being put in jail for the rest of your life
13 without the possibility of parole. Do you
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any questions
17 concerning anything that you're charged with, the
18 potential sentences, the classifications that
19 we've been over?

20 THE DEFENDANT: No, sir.

21 THE COURT: Understanding all of that, sir,
22 how do you wish to plead to these charges, not
23 guilty or guilty?

24 THE DEFENDANT: Guilty.

25 THE COURT: Do you understand, Mr. Evans,

1 that if you plead guilty you'll give up your
2 constitutional right to remain silent, you'll
3 have to admit to me your involvement in all three
4 indictments?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You will also give up your
7 right to a jury trial. Obviously if you pled not
8 guilty and demanded a jury trial the State would
9 provide one for you at which time you would have
10 the right to confront and cross-examine everyone
11 who testified against you. You would have the
12 right to present your defense, your side of the
13 story, by calling witnesses, introducing relevant
14 exhibits, and testifying and telling your side of
15 the story.

16 If you chose not to testify and exercise
17 your right to remain silent, then I would tell
18 the jury they could not hold the fact that you
19 did not testify against you in any manner
20 whatsoever. And I would instruct them that they
21 could not even consider the fact that you did not
22 testify when they deliberated your guilt or
23 innocence.

24 You would be presumed innocent throughout the
25 trial, and the State of South Carolina would have the

1 burden of proving you guilty beyond a reasonable doubt to
2 a jury of 12 people. And in order for the jury to
3 convict you all 12 jurors would have to unanimously agree
4 that you were in fact guilty. And even if you were found
5 guilty you would still have the right to an appeal.

6 Now, do you understand your rights to trial by
7 jury?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Understanding those rights do
10 you still wish to plead guilty?

11 THE DEFENDANT: I do.

12 THE COURT: Has anyone promised you
13 anything, held out any hope of reward, or
14 threatened you in any manner in order to make you
15 plead guilty?

16 THE DEFENDANT: Not to plead guilty, no,
17 sir.

18 THE COURT: Are you satisfied with your
19 lawyer, Mr. McMillian?

20 THE DEFENDANT: As good as I can be.

21 THE COURT: Do you have any complaints you
22 want to tell me about him?

23 THE DEFENDANT: No, sir, not.

24 THE COURT: Anything else you want him to
25 do for you today before I move forward other than

11

1 speak up on your behalf?

2 THE DEFENDANT: Just make sure that DUI got
3 kicked out. I told him I wanted that kicked out
4 to plead guilty.

5 MS. YOUNG: It's pending. It's not in our
6 court, Your Honor.

7 MR. McMILLIAN: It's in city court, Judge.

8 THE COURT: Well, these solicitors -- I
9 don't guess you have the right to do that.

10 MS. YOUNG: I haven't brought that charge
11 up. I didn't -- he hasn't asked me to, and I
12 haven't been asked to so I did not bring it up
13 with these charges.

14 THE COURT: I'm not going to hold it
15 against you. How about that?

16 THE DEFENDANT: All right.

17 THE COURT: And you haven't pled guilty to
18 it, you haven't been convicted of it. You're
19 presumed to be innocent until proven guilty. So
20 that does not enter into the picture. Fair
21 enough?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you today under the
24 influence of alcohol or drugs?

25 THE DEFENDANT: No, sir.

1 THE COURT: And are you pleading guilty of
2 your own free will?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Let's address June
5 5 here. Did you on June 5, 2015, have in your
6 possession in Aiken County, 28 grams, between 28
7 grams and 100 grams, I think it was some 32
8 grams, of methamphetamine?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You're pleading guilty because
11 you are guilty of that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: On that same date, sir, did you
14 have on your person a S&W .40 BB pistol, I'm not
15 sure what that is, where the original serial
16 number had been either removed or altered or
17 obliterated?

18 THE DEFENDANT: It wasn't on my person. It
19 was in the vehicle.

20 THE COURT: Same thing. That means
21 possession.

22 THE DEFENDANT: Uh-huh. Yes, sir.

23 THE COURT: You're pleading guilty to both
24 of those?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And then on the harassment
2 indictment did you, sir, on different times
3 between September 11 and October 16 of the year
4 2015, harass one Chelsea Evans which could or
5 would have caused her to suffer some type of
6 distress that you continued to contact her after
7 being told not to?

8 THE DEFENDANT: It did cause her distress.
9 Yes, sir.

10 THE COURT: I accept your plea. I find his
11 decision to plead guilty to all three indictments
12 to be freely, voluntarily and intelligently
13 made. He's had the representation of an
14 excellent lawyer, Mr. Bradley McMillian, with
15 whom he says he's satisfied. And I'll accept the
16 plea.

17 Mr. Evans, if you disagree with my sentence
18 or these pleadings you have 10 days from today's
19 date to file a notice of intent to appeal. Do
20 you understand that?

21 If you disagree with these proceedings you
22 still have the right, notwithstanding the fact
23 that it's a guilty plea, to file an appeal.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Thank you.

1 MS. YOUNG: Thank you, Your Honor. May it
2 please the Court.

3 On June 5th of 2015, around four o'clock in
4 the morning, Aiken Department of Public Safety
5 received a call to 1106 Laurens Street which is
6 within the City limits of Aiken. The caller
7 called about a suspicious vehicle that was in her
8 driving. She stated that the car was in her
9 driveway running with the lights on and that
10 there was a person inside. It was four o'clock
11 in morning.

12 The officer approached. When he approached
13 the vehicle he observed a white male who appeared
14 to be passed out in the driver's seat with the
15 engine running. The officer had to knock on the
16 window about three times to finally wake up the
17 driver and sole occupant who was the Defendant.
18 When he was able to finally speak to him he asked
19 him what he was doing parked in someone's
20 driveway. Mr. Evans told him he was waiting on a
21 friend. He asked him how he got there. He
22 stated that he drove there. He asked him where
23 he came from. He said, I came from Aiken but he
24 couldn't tell him where he currently was at that
25 point in time.

1 The officer got him out of the vehicle and
2 got his driver's license and it did identify him
3 as the Defendant. He observed that his speech
4 was slurred. His eyes were glazed over and
5 bloodshot, and he had some sort of fruity odor
6 that he noticed that was coming from the
7 vehicle. He did give him a variety or attempt to
8 give him sobriety tests, ultimately placed under
9 arrested for driving under the influence.

10 Before he initiated his sobriety testing he
11 was advised by another officer who had come to
12 assist that officer could -- was standing in
13 front of the driver's door and could see a gun on
14 the floorboard underneath the driver's seat.
15 After he was placed under arrest Officer
16 Bethlehem went and seized the gun. At that point
17 in time he noticed that the serial number had
18 been obliterated. He asked the Defendant where
19 it came from. He was not able to give him an
20 answer.

21 Inside the center console was a plastic
22 baggy with a large quantity of a clear,
23 crystal-like substance that they believed to be
24 methamphetamine. It was tested. It did come
25 back positive for methamphetamine. At the end of

1 his field testing the officer asked Mr. Evans if
2 he knew where he was and he told him he thought
3 he was somewhere in Saluda County.

4 He was arrested for those charges, Your
5 Honor, and kept in --

6 THE COURT: The weight was 32.49?

7 MS. YOUNG: 32.49, yes, sir. He was kept
8 in the detention center for a period of time and
9 ultimately I was approached by his attorney that
10 he wanted to potentially get out and assist law
11 enforcement. At the time he was given a bond, he
12 had a home detention requirement. So in August
13 of 2015 we agreed to lift the home detention so
14 that he could get out and assist law enforcement.

15 He began working with the local ATF task
16 force and providing them information. At some
17 point during that process it came to the
18 officer's attention that he did not in fact live
19 at the marital residence as he had told them to
20 the effect that he would have meetings with them
21 and they would tell him to go home and he would
22 appear to drive towards the home which in fact he
23 was not living in at the time. He and his wife,
24 she filed for divorce the day he got arrested for
25 the trafficking charge.

1 So he was not honest with law enforcement
2 and that came out during the course of this. And
3 she actually approached law enforcement,
4 Ms. Evans did. And that was how it came out that
5 he was not being truthful with them in terms of
6 working with them. And that was how ultimately
7 the harassment charge got filed.

8 He had done several things but the incident
9 in question to which he's pleading guilty to, on
10 October 16th of 2015, Ms. Evans had an
11 appointment at a hair salon here in Aiken County.

12 She arrived for her appointment. About 10
13 minutes after she got there and she was already
14 in the chair receiving services, the Defendant
15 came into the salon. He wouldn't have had any
16 way of knowing that she had an appointment
17 without following her in some manner because they
18 were not communicating.

19 While she was sitting there he approached
20 her and continued to ask her questions like,
21 quote, why are you being a dick to me, not
22 answering your phone and calling the police. She
23 could not get up to leave and she asked him to
24 leave. He continued to stand there for about
25 five to 10 minutes asking her questions, ignoring

1 her requests to leave and bothering her. She
2 does have a statement she would like to give to
3 the Court at the appropriate time.

4 Also I have several officers here with the
5 ATF task force. Ultimately they terminated their
6 relationship with him and, especially once -- the
7 time the harassment warrant was taken. And he
8 did not cooperate in turning himself in. They
9 had to bring in assistance and -- from SLED and
10 find him using his phone. And he was found at
11 the Lodge Motel in Batesburg. When he was found
12 in the motel -- he's not charged with this, but
13 it's just part of the reason I'm asking for a
14 lengthy prison sentence, Your Honor. When he was
15 found by the ATF task force he was attempting to
16 flush methamphetamine down the toilet. He had
17 almost \$2,000 in his possession, another firearm,
18 numerous mobile phones, et cetera. So apparently
19 he was continuing this lifestyle even after he
20 was trying to, quote, work with law enforcement,
21 Your Honor.

22 He gave information about being involved in
23 moving large quantities of methamphetamine. And
24 we had tried to negotiate a 15-year sentence. He
25 didn't take that negotiation. He's pleading

1 straight up but we would ask for a lengthy prison
2 sentence, and for Your Honor to hear from
3 Ms. Evans at the appropriate time.

4 MR. McMILLIAN: Thank you, Your Honor.

5 Mr. Evans is 32 years old. He's originally
6 from Clinton, South Carolina. He has two
7 children there and two children with his wife
8 who's the victim of the harassment. He graduated
9 Clinton High School in 2001 and came to Aiken and
10 got his welding certificate.

11 Judge, he tells me that he originally tried
12 methamphetamine while he was working at the AGY
13 Fiberglass plant. And that subsequent to that he
14 got -- it really took hold of him. He tells me
15 that he went and got clean until he had a car
16 wreck in 2013 that led to massive reconstruction
17 surgery of his hip. He tells me at that point,
18 Judge, that somebody brought some methamphetamine
19 and he spent an entire night in his garage
20 looking at it on the table and ultimately fell
21 back into an old way.

22 THE COURT: Well, it sounds like it's more
23 than use, just using it. Sounds like it's moving
24 quite a good bit of it around.

25 MR. McMILLIAN: It's certainly a lot, Judge.

1 THE COURT: I don't think you could use
2 that much of it for a while.

3 MR. McMILLIAN: In the interim while he was
4 out on bond, Judge, he tells me that he in fact
5 was allowed to move back home. That he moved
6 back in with her, and he got an under-the-table
7 job at a tire shop here in Aiken, worked there.
8 He tells me that he wanted to do everything he
9 could to help law enforcement.

10 THE COURT: Under-the-table job?

11 MR. McMILLIAN: He got paid under the
12 table, Judge. He was paid in cash.

13 THE COURT: Did he do anything legal?

14 MR. McMILLIAN: Well, Judge, he tells me it
15 was because he was filing for disability.

16 THE COURT: Go ahead.

17 MR. McMILLIAN: Judge, he tells me that he
18 did try and help law enforcement. There were
19 obviously friends and family that he didn't want
20 to completely bury. And he understands that that
21 was part and parcel of the deal. It's landed him
22 back here.

23 Your Honor, I would just offer, for what
24 it's worth, about the harassment and contact with
25 the victim, they do have two children together.

1 They are going through what seems to be a very
2 messy divorce. I have talked with both his
3 family court attorney and hers. It seemed as if
4 once he was locked up for the harassment, she was
5 all the way on the verge of having the divorce
6 granted, no contest, until he finally was able to
7 obtain a family court attorney who's now trying
8 to achieve some division of the assets.

9 He understands that he's going to have some
10 prison time to do, but would like to be able to
11 start over when he gets out. He'd like to be
12 able --

13 THE COURT: Well, he could start over when
14 he got out from doing the five-year sentence for
15 drugs. Sounds like to me he kept going down the
16 same path.

17 MR. McMILLIAN: And, Judge, that's why I
18 offered to the Court, he says that he got clean
19 and that he was clean until he had the 2013
20 accident.

21 We would ask Your Honor to consider the
22 minimum sentence. He has done 164 days since
23 being incarcerated on the harassment. There
24 would obviously be a little time before that.
25 We'd ask Your Honor to consider giving him --

1 THE COURT: How can I consider that when,
2 in light of the fact that he's out trying to
3 help, he's back up there in a motel in Batesburg,
4 obviously indications that he's continuing to
5 deal in the drugs, \$2,000 in cash, multiple
6 funds, flushing drugs down the toilet, hiding,
7 not turning himself in.

8 MR. McMILLIAN: What he tells me, Judge, is
9 he did move back in with her and when he didn't
10 go to rehab that was the breaking point and that
11 they separated again.

12 THE COURT: We'll, that's not answering my
13 question.

14 MR. McMILLIAN: Judge, he would like to
15 speak at the appropriate time.

16 THE COURT: He certainly may. Be glad to
17 hear from you, sir. What's going on?

18 THE DEFENDANT: The drugs I had, I was
19 about -- I was clean up until I had -- it was a
20 couple weeks before I got locked up that me and
21 my wife, she had asked me to leave the house or
22 whatever. And when I left, you know, I was about
23 to turn myself in and I really wasn't caring
24 about life all that much. And I had got that
25 dope and I was just about to start back on it.

1 THE COURT: Start back, what?

2 THE DEFENDANT: The money I had is from
3 where I sold my personal belongings, you know, my
4 tools and stuff. The way I had, you know, money
5 to pay for a room and get something to eat and
6 whatnot. I, you know, I don't have much left at
7 all, you know. I wasn't out there running, like,
8 around like that. I was, really, I know I done,
9 I done messed up and I done, I done, you know, I
10 was on seven months. I had got back on that.
11 And I just, during that seven months I got, I got
12 in trouble. It's been a rocky road and I've lost
13 everything.

14 THE COURT: I understand that. That's what
15 it does to people. When people sell it to other
16 people, it gets them in the same situation. I
17 don't know of any way to get it off the streets
18 other than put people away who are involved in
19 the moving of it. And you've had one opportunity
20 where you got a relatively minor sentence and
21 you're back right in the middle of it with a
22 substantial amount this time. And I don't know
23 what to do.

24 THE DEFENDANT: Well, I come back --
25 whenever I got in trouble a little, a while ago

1 when I come home I was doing really well, you
2 know. I worked 90, 100 hours a week. And I was
3 against -- I'm still against -- it's a devil I
4 have in my back, you know, and I have a real,
5 I've got a bad habit with it.

6 THE COURT: I understand. Thank you.

7 WOMAN SPEAKER: My name's Chelsea Evans,
8 E-V-A-N-S.

9 THE COURT: Ms. Evans, speak up for me,
10 please so I can hear you.

11 MS. EVANS: Okay.

12 All right. Kenneth Evans' drug involvement
13 put our children and myself in danger and through
14 a living nightmare. After only about two years
15 of our marriage -- we got married in 2010, so
16 approximately 2012 everything became a lie.
17 That's when he --

18 THE COURT: Speak up for me.

19 MS. EVANS: -- he began staying gone from
20 the house, coming and going all hours of the
21 night. He was disrespectful with his job,
22 refused to work, wouldn't contribute to the
23 bills. He was violent and abusive towards me and
24 in front of our children. He threatened my life
25 and gave specific details as to how he would

1 dispose of my body. He would threaten to take
2 our children while I was at work if I left him
3 and he refused to leave our home. I filed for
4 divorce the very day that he was arrested because
5 it was the first time that I felt like it was an
6 opportunity to get away and protect my children
7 at the same time.

8 Once he got out on bond without being on
9 the ankle monitor, that's when he began to follow
10 me and harass me. He was carrying out threats
11 that he had made to me before such as car
12 vandalism, specific threats and even being
13 accused of hiring someone to kill me. My whole
14 life was consumed with fear. I couldn't sleep.
15 I had to take several steps to protect myself and
16 his children.

17 I believed all of his threats because he is
18 very irrational. He's displayed a pattern that
19 shows no respect for authority of the law. He
20 continues to break the same laws.

21 I mean, there's really no words to describe
22 the amount of fear and anxiety that I have had
23 and experienced while living with him during the
24 time that he began on drugs around 2012, and when
25 he was harassing me.

1 THE COURT: Thank you.

2 MS. EVANS: Uh-huh.

3 THE COURT: Anything the officers want to
4 say?

5 THE OFFICER: Carlos Colindres.

6 THE COURT: Yes, sir. You're employed with
7 whom?

8 OFCR. COLINDRES: I'm with Aiken Department
9 of Public Safety and I'm a member of the ATF task
10 force.

11 THE COURT: Be glad to hear from you
12 regarding this matter.

13 OFCR. COLINDRES: Yes.

14 THE COURT: How big a player is he?

15 OFCR. COLINDRES: Pretty big, Your Honor.
16 That's all the information I can give on that.

17 THE COURT: I understand.

18 OFCR. COLINDRES: The issue that we had was
19 that we did find -- during the process of the
20 harassment complaints that Ms. Evans was giving
21 was during the time that he was supposed to be
22 cooperating with us. Those harassment warrants
23 came out and we actively went going, looking for
24 him.

25 Some of the places where he was hiding was

1 actually involved in a drug raid not too long
2 ago. On Edisto Avenue is one of places that we
3 did confirm that he was hiding there and they
4 were hiding him. We had to exhaust all kinds of
5 federal and state resources in looking for him.
6 He hasn't been trustworthy up to this point.

7 THE COURT: Thank you. All right.

8 AS TO THE TRAFFICKING SECOND OFFENSE, THE
9 SENTENCE OF THE COURT IS YOU BE COMMITTED TO THE
10 DEPARTMENT OF CORRECTIONS FOR 16 YEARS.

11 AS TO THE PISTOL, THAT'S FIVE.

12 AS TO THE HARASSMENT, THAT'S 30 DAYS.

13 THEY ALL RUN CONCURRENT. YOU'LL BE GIVEN
14 CREDIT FOR YOUR TIME SERVED. Good luck.

15 MS. YOUNG: Thank you, Your Honor.

16 END OF CASE: 12:05 P.M.

17 ***

18 CERTIFICATE OF REPORTER

19 STATE OF SOUTH CAROLINA)

20 COUNTY OF AIKEN)

21 I, Cheri L. Young, Registered Professional Reporter
22 and Official Court Reporter for the State of South
23 Carolina, Second Circuit-At Large, do hereby certify that
24 the foregoing proceedings were written stenographically
25 by me using computer-aided translation; further, that

1 the foregoing is a true, accurate and complete record, to
2 the best of my skill and ability, of all the proceedings
3 had and evidence introduced in the hearing of the
4 captioned case, relative to appeal, in the Court of
5 General Sessions for Aiken County, on the 14th day of
6 April, 2016.

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

9 I have hereunder set my hand this Friday, the 22nd
10 day of July, 2016.

11
12
13
14 _____
15 Cheri L. Young, RPR
16 Official Court Reporter
17
18
19
20
21
22
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24
25

2015A02201 00546
2015A02201 00547

FORM 5

2016G0201894

29

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Kenneth Bryant Evans II SCDC #00308918)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

FILED 8.22.16
IN THE COURT OF COMMON PLEAS

Chris Hodard
J.C.P. & G.S.
Chris Hodard
Judge Clerk

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Aiken General Sessions, Aiken, SC
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016GS0200019
 - (b) 2016GS0200018
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/14/2016 -- 5 yrs adult-straight sentence
 - (b) 4/14/2016 -- 16 yrs adult-straight sentence

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (b) after a plea of not guilty No
- (c) after a plea of nolo contendere No
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. Dismissal
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 30th, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appellate Case No. 2016-000920
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/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) My attorney advised me to enter a plea based on an informal meeting in chambers with the solicitor and judge. I was advised the judge gave an advanced indication of sentencing, and that I would receive a sentence of more than 7, but less than 15 yrs. My attorney advised me I would likely receive 8 or 9 years. At the plea, the judge sentenced me to 16 yrs for trafficking, and 5 years for firearm possession. This sentence did not conform with the judge's advance indication. My attorney did not object, or move for reconsideration or withdrawal of the plea contemporaneously, or within 10 days after sentencing.

(b) My attorney did not properly prepare my defense, and spent little time with me until he advised me I needed to plead guilty or the solicitor would call the case to trial. I had asked for copies of discovery and they were not provided to me. I did not see or hear from my attorney for months, and only spoke with him briefly on the phone, after I'd call and ask to see him. I was told the state had not provided discovery, but later learned, when I did finally receive copies of some of the discovery, after sentencing, that my attorney had in fact received the discovery.

(c) My attorney did not file a motion to suppress evidence, although he had grounds to do so, and I requested that he do so.

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. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

- i. N/A
 - ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? n/a
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Michael Bradley McMillian, Esq.
Aiken County Public Defender Office
P. O. Drawer 2247
Aiken, SC 29802
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea Hearing
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:

For the convictions to be vacated

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

No

34

STATE OF SOUTH CAROLINA)

VERIFICATION

35

County of RICHLAND)

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

Kenneth Evans

SWORN to and subscribed before me this 18th
day of AUGUST, 2016.

RR [Signature] (L.S.)
Notary Public

My Commission Expires: 3-31-2021

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

36

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

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

Kenneth Louis
Applicant

SWORN or affirmed to and subscribed before me this
18th day of AUGUST, 2016.

RN [Signature]
Notary Public

My Commission Expires: 3-31-2021

Thuss Law Office LLC

Robert Rutland Thuss, Esq.
7001 St. Andrews Rd. #193
Columbia, SC 29212
Rob@ThussLawOffice.com

August 22nd, 2016

Aiken County Clerk of Court
P.O. Box 583
Aiken, SC 29802

RE: Kenneth Bryant Evans II
PCR Application
Notice of Representation

I am representing Mr. Evans for his PCR. He is incarcerated in the South Carolina Department of Corrections and currently housed at Broad River Correctional. He is indigent, and I am undertaking representation of his PCR pro bono.

Respectfully,

Rob Thuss



38

ARREST WARRANT

2015A0220100546

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

15-39728

THE STATE
against

Kenneth Bryant Evans, II

Address 102 N Holland St.
Clinton, SC 29832

Phone _____ SSV _____

Sex M Race W Height 6 Weight 252

DL State SC DL # _____

DOB 1983 Agency ORI # SC0020100

Prosecuting Agency Aiken Public Safety

Prosecuting Officer Brandon C. Bethmann

Offense TRAFFICKING IN METHAMPHETAMINE

Offense Code 0450

Code/Ordinance Sec 44-53-370

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.)

Date

RETURN

A copy of this arrest warrant was delivered to

defendant Kenneth Evans

on 6/5/15 at 1000 AM

Sgt. Solano

Signature of Officer

Signature of Judge

Signature of Clerk

Signature of Sheriff

Signature of District Attorney

Signature of County Clerk

Signature of Municipal Clerk

Signature of Court Clerk

Signature of Court Reporter

Signature of Court Officer

Signature of Court Marshal

Signature of Court Bailiff

Signature of Court Bailor

Signature of Court Bailor's Agent

Signature of Court Bailor's Agent's Agent

Signature of Court Bailor's Agent's Agent's Agent

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STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

AFFIDAVIT

Form Approved
F. J. Anthony Green
April 27, 2003
SCC45-5

Personally appeared before me the affiant Brandon C. Bethmann who

being duly sworn deposes and says that defendant Kenneth Bryant Evans, II

did within this county and state on 06/05/2015 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Aiken)

in the following particulars:

DESCRIPTION OF OFFENSE: TRAFFICKING IN METHAMPHETAMINE

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:

Upon information and belief, the defendant, Kenneth Evans, II, did on 06/5/2015, commit the offense of Trafficking Methamphetamine. The defendant did have in his possession a quantity of Methamphetamine exceeding fifteen grams without the lawful authority to do so. The quantity of Methamphetamine was located in the center console of the vehicle Mr. Evans was driving. This occurred at 1106 Laurens Street NW, which is within the city limits of Aiken, and in violation of South Carolina 1976 Code of Laws, as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Affiant's Address 251 Laurens St

Aiken, SC 29801

Affiant's Telephone (803) 642-7620

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 06/05/2015 defendant Kenneth Bryant Evans, II

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of City of Aiken) as set forth below:

DESCRIPTION OF OFFENSE: TRAFFICKING IN METHAMPHETAMINE

I hereby certify that there is probable cause and the above affiant, who appeared before me, you are authorized and directed to arrest the said defendant at the time and place set forth in this Arrest Warrant and to bring him to the court of this State, or as

Signature of Affiant

Signature of Judge

Signature of Clerk

Signature of Sheriff

Signature of District Attorney

Signature of County Clerk

Signature of Municipal Clerk

Signature of Court Clerk

Signature of Court Reporter

Signature of Court Officer

Signature of Court Marshal

Signature of Court Bailiff

Signature of Court Bailor

Signature of Court Bailor's Agent

Signature of Court Bailor's Agent's Agent

Signature of Court Bailor's Agent's Agent's Agent

Signature of Court Bailor's Agent's Agent's Agent's Agent

Signature of Court Bailor's Agent's Agent's Agent's Agent's Agent

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Signature of Court Bailor's Agent's Agent's Agent's Agent's Agent's Agent's Agent

Signature of Court Bailor's Agent's Agent's Agent's Agent's Agent's Agent's Agent's Agent

Affiant's Address

Affiant's Telephone

Issuing Co. ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

Judge W. D. B.
on 6-5-15
Type and Amount for \$50,000
Name of Surety _____

PRELIMINARY HEARING held by

Judge _____
or _____
Defendant Attorney _____
Decision _____

DISPOSITION before

Judge _____
or _____
by _____
(indicate jury trial, bench trial, plea, not pros, etc.)
Disposition _____
Sentence _____

JURORS

WITNESSES

Name _____
Address _____
Telephone _____
Name _____
Address _____
Telephone _____
Name _____
Address _____
Telephone _____
Name _____
Address _____
Telephone _____
Name _____
Address _____
Telephone _____
Name _____
Address _____
Telephone _____
Name _____
Address _____
Telephone _____

CODEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Aiken

VS.

Kenneth Bryant Evans II

AKA:

Race:

Sex: M

Age: 32

DOB:

1983

SS#:

Address: 2112 Honors Cir

City, State, Zip: Warrenville, SC 29851

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 2nd offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS0200018

A/W#: 2015A0220100546

Date of Offense: 6/5/2015

S.C. Code § : 44-53-0375(C)(2)(b)

CDR Code #: 0389

SENTENCE SHEET

7-30 years
and \$50,000

in violation of § 44-53-0375(C)(2)(b)

of the S.C. Code of Laws, bearing CDR Code #

0389

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-23-45The 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.

Young, Elizabeth "Betty Ann"

73947

SC Bar#

Defendant

M.B. McMillan

Attorney for Defendant

100586

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

16 days/months/years or

☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____

; provided that upon the service of _____

days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on;☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain 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: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(I) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

\$

TOTAL

\$

\$ 288.40

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Shannon D. Rosenkrantz
Cheri Young

Presiding Judge

Judge Code:

Sentence Date:

T. McMillan
0756
April 14, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE

§ 44-53-0375(C)(2)(b)

At a Court of General Sessions, convened on January 4, 2016, the Grand Jurors of Aiken County present upon their oath:

That **KENNETH BRYANT EVANS II** did in Aiken County on or about June 5, 2015, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly, actually or constructively possess or did knowingly attempt to become in actual or constructive possession of at least 28 grams but less than 100 grams of Methamphetamine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

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


for J. STROM THURMOND, SOLICITOR

42

WITNESSES

Aiken Department Of Public Safety

B C Bethmann

Law Enforcement Case #: 15-38728

DOCKET NO. 2016GS0200018

The State of South Carolina

County of Aiken

BAY

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

JANUARY TERM 2016

2015A0220100546

FILED 4 January 2016

Liz Hodard
D.C.P. & G.S.
Shannon A. Rosenkrantz
Deputy Clerk

THE STATE
vs.

KENNETH BRYANT EVANS II

ACTION OF GRAND JURY

TRUE Bill

Gerald Wiscory
Foreperson of Grand Jury

Date: January 4, 2016

Gerald Wiscory

VERDICT

CDR #: 0389

Indictment for

TRAFFICKING METHAMPHETAMINE

§ 44-53-0375(C)(2)(b)

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury

Date:

43

ARREST WARRANT

2015A0220100547

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

15-39728

THE STATE
against

Kenneth Bryant Evans, II

Address 2112 Honors Circle

Graniteville, SC 29829

Sex: M Race: W Height: 6' 1" Weight: 232

DL State: SC DL #: 011187973

DOB: 8/3 Agency ORI #: SC0020100

Prosecuting Agency: Aiken Public Safety

Prosecuting Officer: Brandon C. Bethmann

Offense: POSS FIREARM WITH OBLITERATED SERIAL

Offense Code: 3424-2364

Code/Ordinance Sec: 16-23-0500(A) CC 30

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to
defendant: Kenneth Evanson 6/5/15 at 1000 AMSgt. Bob G13

RETURN WARRANT TO:

Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

AFFIDAVIT

Affirmation
S.C. Judiciary, 2007
Apr. 29, 2007
VCDP 216Personally appeared before me the affiant Brandon C. Bethmann who
being duly sworn deposes and says that defendant Kenneth Bryant Evans, II
did within this county and state on 06/05/2015 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Aiken)
in the following particulars:

DESCRIPTION OF OFFENSE:

POSS FIREARM WITH OBLITERATED SERIAL NUMBER

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:Upon information and belief, the defendant Kenneth Evans II, did on 06/5/2015 commit the offense of Possession of a
Pistol with Obliterated Serial Number. The defendant did have in his possession, located underneath the driver's seat, of
a vehicle driven by him, an S&W 40VE Pistol with an obliterated serial number. This occurred at 1106 Laurens Street
NW, which is within the city limits of Aiken, and in violation of South Carolina 1976 Code of Laws, as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Affiant's Address 251 Laurens St

Aiken, SC 29801-

Affiant's Telephone (803)642-7620

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 06/05/2015 defendant Kenneth Bryant Evans, II

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of City of Aiken as set forth below

DESCRIPTION OF OFFENSE:

POSS FIREARM WITH OBLITERATED SERIAL NUMBER

Having found probable cause and the above affiant having sworn before me, you are a constable or other officer of the State of South Carolina or as
may hereafter be designated by the State or County of Aiken. This Arrest Warrant shall be served on the defendant at the time of arrest or as
soon thereafter as practicable.

Subscribed and sworn to before me

Judge Code 005

Judge's Address

Judge's Telephone

Issuing Court

☐ Magistrate☐ Municipal

County

ORIGINAL

B.M. set by
Judge _____
on 6-5-15
Type and Amount \$23 \$5000
Name of Surety _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant's Attorney _____

Decision _____

DISPOSITION before

Judge _____
on _____
by _____
(no date jury trial bench trial plea not pros, etc.)

Disposition _____
Sentence _____

JURORS

WITNESSES

Name _____
Address _____
Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____
Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

Name _____

Address _____

Telephone _____

CODEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS.Kenneth Bryant Evans II

AKA:

Race: Sex: M Age: 32DOB: 1983 SS# [REDACTED]Address: 2112 Honors CirCity, State, Zip: Warrenville, SC 29851DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Possession of a Pistol with an Obliterated Serial Number

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS0200019A/W#: 2015A0220100547Date of Offense: 6/5/2015S.C. Code §: 16-23-0030CDR Code #: 2364

SENTENCE SHEET

☐ CONVICTED OF or☒ PLEADS 0-5 years and/or not more than \$200in violation of § 16-23-0030of the S.C. Code of Laws, bearing CDR Code # 2364☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.Elizabeth B. Young 73947
Young, Elizabeth "Beth" SC Bar#

Defendant

Attorney for Defendant

M.B. H.M.O.
100386
SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain OED ☐

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: _____

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

\$

Proviso 47.9 (Public Def Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$

5.00

3% to County (if paid in installments)

\$

\$

3.90

TOTAL

\$

133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

MTD East
0156
April 14, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
POSSESSION OF A PISTOL WITH AN
OBLITERATED SERIAL NUMBER

§ 16-23-0030

46

At a Court of General Sessions, convened on January 4, 2016, the Grand Jurors of Aiken County present upon their oath:

That **KENNETH BRYANT EVANS II** did in Aiken County on or about June 5, 2015, knowingly and unlawfully have in his possession a pistol, to wit: a S & W 40VE Pistol, from which the original serial number had been removed or obliterated. All in violation of §16-23-30 of the Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

47

WITNESSES

Aiken Department Of Public Safety

B C Bethmann

Law Enforcement Case #: 15-38728

DOCKET NO. 2016GS0200019

The State of South Carolina

County of Aiken

BAY

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

JANUARY TERM 2016

2015A0220100547

FILED 4 January 2016

Lisa Hedland
CC P & S
Shannon D. Roach (County)
Deputy Clerk

THE STATE
vs.

KENNETH BRYANT EVANS II

ACTION OF GRAND JURY

True Bill

Gerald Ussery
Foreperson of Grand Jury
Date: January 4, 2016

CDR #: 2364

Indictment for

VERDICT

POSSESSION OF A PISTOL WITH AN
OBLITERATED SERIAL NUMBER

§ 16-23-0030

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Kenneth Bryant Evans II, #308918,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

2016-CP-02-1894

RETURN

FILED 12/19 2016
J. L. Dillard
Clerk of Court
12:30

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on August 22, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted by the January 2016 term of the Aiken County Grand Jury for Trafficking Methamphetamine (2016-GS-02-00018) and Possession of a Pistol with an Obliterated Serial Number (2016-GS-02-00019). Applicant was represented on these charges by Michael Bradley McMillian, Esquire. On April 14, 2016, Applicant pled guilty as indicted to both charges. Applicant was sentenced by the Honorable Doyet A. Early, III, without negotiations or recommendations, to sixteen years' imprisonment for trafficking methamphetamine and five years' imprisonment for possession of a pistol with an obliterated serial number, to run concurrently. Applicant did not appeal his guilty plea or his sentence.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea,

and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel

- a. Attorney advised Applicant to take plea based on informal meeting with solicitor and judge indicating that he would receive a sentence of more than seven but less than fifteen years. Attorney failed to object to sixteen year sentence.
- b. Attorney did not properly prepare a defense and spent little time with Applicant.
- c. Attorney failed to file a motion to suppress evidence after Applicant requested he do so.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 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, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, 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, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, 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).

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

IV.

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

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

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

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

[Signature page to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

 JULIE A. COLEMAN
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

_____, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Kenneth Evans, II, #308918)

Plaintiff,)

vs.)

State of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

53

CASE NO.: 2016-CP-02-1894

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:
Robert Thuss, Bar No. _____
Address:
P.O. Box 589 Springfield, SC 29160
Phone: _____ Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Julie A. Coleman, Bar No. 102214
Address:
PO Box 11549 Columbia, SC 29211-1549
Phone: 803-734-3737 Fax 803-734-4113
E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Plaus & SC
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

December 16, 2016
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

FILED

12/19/2016
12:30
[Signature]

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

KENNETH EVANS, II, #308918)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2016-CP-02-1894

AFFIDAVIT OF SERVICE BY MAIL

FILED 12/19 2016
Shirley L. Laddard
Chandra E. Young
 12:30

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

Robert Thuss, Esquire
 P.O. Box 589
 Springfield, SC 29160

DATED this 16th day of December, 2016.

Chandra E. Young
 Chandra E. Young, Legal Assistant
 For Respondent

1 State of South Carolina)

In the Court
Of Common Pleas

2 County of Aiken)

3
4 Docket No: 2016CP0201894

5
6 Kenneth Evans III,)
Applicant,)

7
8 vs.)

Transcript of Record

9
10 State of South Carolina,)
Respondent.)

11
12
13 May 26, 2017
Aiken, South Carolina

14
15 B E F O R E:

16 The Honorable Diane S. Goodstein, Judge.

17
18 A P P E A R A N C E S:

19 Robert R. Thuss, Esquire
20 Attorney for the Applicant

21 Julie A. Coleman, Assistant Attorney General
22 Attorney for the Respondent

23
24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

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POST CONVICTION RELIEF

1 MS. COLEMAN: And we are going to begin with
2 Kenneth Evans.

3 THE COURT: All right.

4 MS. COLEMAN: And this is with Mr. Thuss here.

5 THE COURT: Good morning.

6 MR. THUSS: Good morning, Your Honor.

7 MS. COLEMAN: And we don't have him in here at the
8 moment.

9 We'll see if we can get him out here.

10 THE COURT: That will be good.

11 (There was a pause in the proceedings.)

12 (Mr. Evans was brought into the courtroom.)

13 THE COURT: All right. Mr. Evans has joined us and
14 Mr. Thuss, are you prepared?

15 MR. THUSS: Yes, Your Honor.

16 Can I have one minute to just --

17 THE COURT: Sure, of course.

18 MR. THUSS: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. THUSS: I did want -- we filed the initial
21 application for the PCR. I listed two Indictments,
22 2016GS0200018.

23 THE COURT: Uh-huh.

24 MR. THUSS: And 19.
25

1 THE COURT: Uh-huh.

2 MR. THUSS: This is a PCR of a guilty plea.

3 THE COURT: Right.

4 MR. THUSS: Mr. Evans had also had two other
5 indictments nol proded, and there was a harassment, a third
6 indictment, where he was sentenced to 30 days. It had been
7 reduced to a lesser included and he was sentenced to 30
8 days. I just asked the attorney general whether those
9 other three indictments should be included in this PCR, and
10 we think that they should be.

11 So I'd like to amend the PCR application to include
12 those other three indictments.

13 THE COURT: All right. And do you have the
14 numbers?

15 MR. THUSS: I -- I think I have the indictment -- I
16 think I do.

17 THE COURT: All right. And before you give me
18 those numbers, Ms. Coleman, is there an objection?

19 MS. COLEMAN: There's no objection. And I believe
20 that they're -- it's automatically -- you know, if the
21 guilty plea is vacated, then all charges go back.

22 THE COURT: That's right. That would be connect.

23 MR. THUSS: Okay.

24 THE COURT: And the only one that there would be, I
25 guess, some discussion about would be the one -- would be

1 the harassment, if there was a sentence imposed and it was
2 not included. But I agree with you with regards to the no1
3 pros, they would come back.

4 MS. COLEMAN: Because they are dismissed as a
5 result of this plea.

6 THE COURT: That's correct. That's correct. And
7 so in an abundance of caution, do you wish to publish those
8 Indictment Numbers, Mr. Thuss and include them?

9 MR. THUSS: I can, Your Honor.

10 THE COURT: Okay.

11 MR. THUSS: That would include 2016GS0200021,
12 2016GS02000017, and 00020.

13 THE COURT: Thank you. All right. Ms. Coleman,
14 you may introduce the case for us now.

15 MS. COLEMAN: Yes, Your Honor. May it please the
16 Court?

17 THE COURT: Yes, ma'am.

18 MS. COLEMAN: This is Kenneth Evans versus the
19 State of South Carolina, Docket Number 2016CP021894.
20 Applicant is presently confined in the South Carolina
21 Department of Corrections pursuant to orders of commitment
22 of the Aiken County Clerk of Court. Applicant was indicted
23 by the January 2016 term of the Aiken County Grand Jury for
24 trafficking methamphetamine and possession of a pistol with
25 an obliterated serial number, as well as the indictments

1 that he has just added to this application. 60

2 Applicant was represented on these charges by
3 Michael Bradley McMillian, Esquire. On April 14th, 2016,
4 applicant pled guilty as indicted to both charges and the
5 resulting of that, these were nol prossed as a result of the
6 guilty plea. Applicant was sentenced by the Honorable
7 Doyet A. Early, III without negotiations or recommendations
8 to 16 years imprisonment for trafficking methamphetamine
9 and 5 years imprisonment for possession of a pistol with an
10 obliterated serial number to run concurrent.

11 Applicant did not appeal his guilty plea or his
12 sentence.

13 Applicant filed a timely application for post
14 conviction relief on August 22, 2016, alleging that he was
15 being held in custody unlawfully based on the following
16 allegations: Ineffective assistance of counsel, attorney
17 advised applicant to take plea based on informal meeting
18 with solicitor and judge indicating that he would receive a
19 sentence of more than 7 but less than 15 years; attorney
20 failed to object to the 16 year sentence; attorney did not
21 properly prepare a defense and spent little time with the
22 applicant; and attorney failed to file a motion to suppress
23 evidence as applicant requested he do so.

24 The State filed its return on December 16th, 2016
25 and he is present today and represented by Robert Thuss.

1 THE COURT: Thank you, so much. 61

2 Mr. Thuss, would you please call your first
3 witness.

4 MR. THUSS: Thank you, Your Honor. And I would
5 like to add that that harassment -- I don't know if it --
6 that harassment charge was also included in the --

7 THE COURT: In the sentence.

8 MR. THUSS: -- in the sentence.

9 THE COURT: In other words, he pled to three
10 indictments, the third being harassment and was sentenced
11 to 30 days.

12 MR. THUSS: Yes, Your Honor.

13 THE COURT: Very well.

14 MR. THUSS: Thank you. I'd like to call Kenneth
15 Evans.

16 THE COURT: All right.

17 KENNETH EVANS,

18 having been duly sworn, testified as follows:

19 THE CLERK: Please take a seat in the witness box
20 and state your full name for the court.

21 THE COURT: Kenneth Evans?

22 THE WITNESS: Hi.

23 THE COURT: E-V-A-N-S?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: And you're the second?

1 THE WITNESS: Yes, ma'am, I am.

2 THE COURT: Your witness, Mr. Thuss.

3 MR. THUSS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. THUSS:

6 Q Good morning, Mr. Evans. We're going to review
7 some of the things that occurred regarding your plea in
8 this court last year on April -- I believe April 14th,
9 2016. I'd like to start out by asking you when were you
10 arrested?

11 A June 3rd, 2015.

12 Q And following your arrest, did you receive a bond
13 or you -- what happened.

14 A I got a bond, I got put on house arrest.

15 Q Okay. How long were you on house arrest?

16 A About three months.

17 Q Okay. Then what happened?

18 A Me and my brother, you know, we was living together
19 and whatever and my sister-in-law, you know what I mean,
20 we'd argue a little bit and my brother -- well, anyway, I
21 got locked back up, but went back to the County and when I
22 got back to the County, I was there for probably about a
23 week and I got released off house arrest back out on bond.

24 Q Okay. Now, after you were arrested, did you ask
25 for an attorney to be appointed?

62

Kenneth Evans - Direct Examination by Mr. Thuss

63

1 A Yes, sir.

2 Q And who was appointed to be your attorney?

3 A Bradley McMillian.

4 Q When was the first time that you met Mr. McMillian?

5 A The day I went to court -- well, the day before I
6 went to court to get off that house arrest.

7 Q Okay. And did Mr. McMillian assist you in getting
8 off house arrest?

9 A Well, we -- he went -- he represented me -- he
10 spoke for me when we went in there.

11 Q Okay. And you were taken off house arrest and when
12 was that?

13 A August 17th, 16th, 17th.

14 Q Okay. Of 2015?

15 A Yes, sir.

16 Q Okay. At that time, had you had any discussions
17 with Mr. McMillian about your case?

18 A No, sir.

19 Q It was confined to the bond?

20 A Yeah, it was just the bond.

21 Q Okay. After August 15th, what occurred next
22 related to -- to these proceedings?

23 A I went -- I left there and I went -- I went home an
24 everything and I tried to make things right with my wife
25 and whatnot and I guess she just wasn't seeing it through

1 or -- like, I guess she done met somebody else apparently
2 and when I -- she just wasn't wanting me there, so, you
3 know. And I realized, you know, I was probably about to go
4 to prison because my charge carried some time and I was
5 trying to fix my family and stuff before I went, you know,
6 to try to take advantage of the time I had while -- before
7 I went and faced my trouble.

8 And she didn't want -- she didn't want me around
9 so, like, she had made some police reports about me trying
10 to be -- talk to her or see my kids. And I didn't have no
11 idea that any of those reports were made until they served
12 me with an arrest paper and there was papers there saying,
13 you know, it was like four or five incidents where -- and,
14 like, they locked me up for harassment.

15 Q Okay. When did that occur.

16 A They locked me up November 3rd.

17 Q Okay. Between August and November, did you have
18 any contact or discussions with Mr. McMillian?

19 A No, sir, I didn't.

20 Q Okay. Did you -- after November 3rd, did you speak
21 with Mr. McMillian?

22 A Yeah, I called him and told him that I went up and
23 they didn't give me a bond on that harassment and I asked
24 him if he could help me get a bond.

25 Q Okay. What did he tell you?

1 A He told me it shouldn't be a problem, you know, and
2 we were -- I -- I thought he had me a bond hearing set up,
3 but instead of it being a bond hearing, in which he told me
4 it was, we went for the bondsman off bond and they reset my
5 bonds, which I'd already talked to the bonds, and so I
6 didn't see it -- you know, I thought I was going over there
7 to get a bond and go home, because, you know, I gave the
8 bondsman \$4 more thousand.

9 And when I got over there, they told me it was just
10 for bondsman off bond and they hadn't put in for me a bond
11 hearing. So when I went -- I was in this holding tank over
12 here, he come through and he -- he told me that, you know,
13 he was about to take care of it and get me a bond. And
14 when I went up -- when I went -- he didn't even take me in
15 front of the judge. So I felt they didn't even give me an
16 opportunity to speak because I told him if I'd went in
17 there, I'd a just asked him to give me a bond on that
18 harassment or whatever, you know. And he didn't, he didn't
19 take me in there and let me even speak to them.

20 Q Okay. So after November 3rd, did you remain in the
21 Aiken County Detention Center?

22 A Yes, sir, I did.

23 Q Okay. We're going to move forward in time until we
24 come up to the time prior to you coming to court for the
25 plea. That was in April of 2016?

1 A Yes, sir.

2 Q Can -- kind of tell me what discussions you had
3 with Mr. McMillian concerning a plea?

4 A He -- my -- the whole time during this, I was
5 trying to mainly talk to him about just getting me a bond,
6 right? And he explained to me about a plea or just taking
7 a plea and dealing with it. At first he told me I was
8 looking at three years, you know, and I was like, well, I
9 didn't really feel like they had just cause to go in my
10 truck to begin with, you know, so I just told him that I
11 really just want to get a bond.

12 And the whole time I was talking to him, I was
13 talking about getting a private attorney, you know, because
14 I'd been capable of affording one if I'd been at home, you
15 know. And then he -- he -- they called me up over here and
16 he -- I thought I was going for a bond hearing, but when I
17 got over here, he told me that they put me -- they brought
18 me over two days early and I thought I was -- you know, I
19 was like, well, maybe he got me in early, you know.

20 So I get over here and he tells me that they went
21 and put me on the trial list and that the solicitor offered
22 me -- was offering 15 years. And, you know, I told him, I
23 was like, I ain't -- just get ready to go to trial because
24 I -- you know, might as well have been the 25 or 30 or
25 whatever the cap was on my sentence.

1 So I told him, I was like, that would be my kids
2 whole life, you know, every one of them, you know, went
3 through a whole life graduated school and all. And I was
4 like -- in a day, that's what life's about, you know.

5 And I was -- I didn't know how to take it at that
6 time because I was like, you know, man, you know they're
7 trying to railroad me, you know. And I told him, I felt
8 like that they was trying to railroad me. So that day I
9 was sitting over here, he told me that -- he spoke with the
10 judge and the solicitor in the judge's chambers and that I
11 had the judges word that he would -- ain't no way in the
12 world he'd give me 15 years, you know, what the solicitor
13 was asking for.

14 And I was like, good because, you know, I was like
15 I'm not really -- I was like, that might as well be a life
16 sentence. And he was like, well, he told me he was like,
17 him and the judge and the solicitor was in there and the
18 judge told him that he would give me significantly less
19 than 15 but more than 7 and I told him -- I told him I was
20 like more than 7, he was like -- he figured like 8 or 9.
21 And I told him, I was like, well, if you can get me 7, then
22 I'll go with it.

23 And he told me that the judge -- he said that my
24 wife and the law enforcement was out there and the judge
25 was ready for me to take the plea and that -- I really

1 didn't want to piss the judge off, you know, because he
2 said if I didn't take the plea that he would make sure we
3 come back next term and make sure he seen my case. So then
4 that kind of put me in a jam, like, well, I got to take
5 this time, you know. So I was like, well, see if you can
6 get him on the 7 years and I'll go ahead and sign that.

7 During that time McMillian had come over there and
8 he had brought me a plea paper over to the jail and I -- I
9 signed it because I was asking him I wanted something in
10 writing. And he wouldn't say that -- based on -- he told
11 me the paper was like a open plea, but based on what he was
12 telling me was that, you know, it wasn't an open plea, that
13 wouldn't, you know, I could not receive that 15, that I
14 would get the minimal since I got caught, you know, barely
15 over the minimal amount.

16 So when I -- I was like -- I was still nervous
17 about it, I was like they're trying something with me and
18 he's like no, it's -- it's going to work out. But when --
19 he told me that the solicitor wasn't going to back off that
20 recommendation of the 15, right. And he told me that --
21 and that the judge said that he wasn't going to give me
22 that. So -- but I needed to go ahead and I needed to take
23 the plea.

24 And so I -- I went over there thinking that, you
25 know, and then right when I got in this room over here was

1 the first time that my lawyer really spoke with me. He
2 said -- it was about 10 minutes and he asked me if I had a
3 job and where I went to school and all that. And he wrote
4 down on the top of his file. Well, then I come in here and
5 he read that right off the top of his file like, you know,
6 he just learned about me. And then he told me that -- and
7 then when I got in here, the solicitor started arguing my
8 case, like I was in trial.

9 And I was like, man, this ain't going right. So I
10 motioned right then and I told him, I was like, this ain't
11 going right. He just -- and he had told me previously in
12 that room over there to just sit back and we got -- he
13 explained the guilty plea to me and told me that I had to
14 go through the motions and when it was said to me in here
15 if I been offered anything, he told me to say no because
16 the judge wouldn't be able to accept my plea. And
17 considering, you know, his legal expertise that I was --
18 you know, I was going with what he said because he knows
19 better than I do, you know.

20 So then I got in here and then my wife had a paper
21 that she done wrote up and she's reading word for word off
22 of it and I felt like the judge judged me based on what her
23 and the law enforcement said because right after she got
24 off, the law enforcement come up here and -- like, to my
25 knowledge wasn't none of that supposed to happen. She

1 wasn't supposed to be able to speak, the solicitor wasn't
2 going to say nothing, the law enforcement -- I didn't even
3 know the law enforcement or my wife was going to be in
4 here. I just -- you know, he told me that the first time
5 that she was in here and I thought she was just going to be
6 here to see me sentenced or whatnot, you know, nothing more
7 than that.

8 So then I got up here and the judge went and did
9 that and I had told my lawyer, you going to do anything
10 and, you told me you was going to fix this is what you
11 said. When you walked out of here -- me and you walked
12 over there, you said I can fix this. I can pull that paper
13 and we'll draw your plea right now and we go through it.
14 And I was like, well, just do that. And to my knowledge
15 that's what I thought was going to happen.

16 And so then I get back to the County and I'm
17 calling the whole time and I can't get in touch with him.
18 And I'm asking his secretary if he's withdrawing my plea or
19 did a reconsideration or whatnot, you know, because I
20 didn't have but 10 days to do that. And she's telling me
21 that he did. Well, you know, and when I -- when I got to
22 Kirkland and I got the paper, you know, for the appeal, he
23 said in the paper that he didn't withdraw my plea or file a
24 reconsideration. I didn't understand why he didn't do it.
25 So I felt like they just traded me out for somebody when I

1 got up here.

2 Q Let me ask you -- let me stop you for a -- you
3 covered a lot of ground, but let me ask you: What did --
4 what were you sentenced? What was your sentence from the
5 trial court?

6 A 16 years.

7 Q Okay. And you testified that Mr. McMillian told
8 you that the judge gave his word that it would be more than
9 7 but significantly less than 15. Is that true?

10 A Yes, sir. He told me he figured it would be around
11 8 or 9.

12 Q Okay. After -- at the sentencing, after the judge
13 sentenced you to 16 years, did Mr. McMillian object?

14 A No, sir. He told me he was.

15 Q Okay. Did he stop the proceedings and try to have
16 a side bar with the judge and the solicitor?

17 A No, he was flabbergasted by what my wife was
18 saying, really. He was kind of stuck, loss for words.

19 Q Okay. Did the -- and did you ask him to move to
20 withdraw the plea?

21 A Yes, sir.

22 Q And to your knowledge, did he do that?

23 A He didn't. I thought he was, but he didn't.

24 Q Mr. Evans, you mentioned that you wrote a letter to
25 the clerk of court?

1 A I did. When I got back to the detention center,
2 there was somebody telling me that they did him the same
3 way and he felt like the lawyer had sided up and, like,
4 kind of sold him out. So he told me I needed to write the
5 judge or the clerk of court and tell them that I want a
6 reconsideration or withdraw my plea. So at that time, you
7 know, I was feeling really -- just something about Aiken.
8 So I wrote Aiken and the Supreme Court.

9 MR. THUSS: May it please the Court, may I
10 approach?

11 THE COURT: Yes.

12 BY MR. THUSS:

13 Q I'm going to show you a document here and ask you
14 if you recognize it?

15 A Yeah, I recognize it.

16 Q Can you tell me what that is?

17 A It is letter I wrote the Aiken County Clerk of
18 Court.

19 Q All right.

20 MR. THUSS: And, Your Honor, I'd like to enter this
21 as Exhibit Number 1.

22 MS. COLEMAN: No objection.

23 THE COURT: Very well.

24 (Petitioner's Exhibit Number 1 was marked and
25 entered into evidence.)

1 MR. THUSS: Petitioner's 1.

2 THE COURT: Are you going to have him read it?

3 MR. THUSS: Or Your Honor.

4 THE COURT: Pass it up.

5 (The Court was reading the document.)

6 THE COURT: Thank you. Okay.

7 BY MR. THUSS:

8 Q I'd like you to -- ask you to read this into the
9 record, please.

10 A It says Ms. Godard or the Assistant Clerk of Court,
11 I'm writing concerning receiving a sentence reconsideration
12 for my guilty plea --

13 THE COURT REPORTER: A little bit slower.

14 THE WITNESS: All right.

15 -- receiving sentence reconsideration for my guilty
16 plea in Aiken County Court, General Sessions on April 14th,
17 2016 in front of the Honorable Judge Early of the Second
18 Judicial Court. I would like to have this request
19 documented, but I'm requesting to file this motion for
20 sentence reconsideration, can I get a post conviction
21 relief application. I'd also like a motion of discovery of
22 all evidence and my sentencing sheet.

23 I'd also like a copy of all my transcripts as well.
24 Sincerely, Kenneth Evans. I put p.s., I would put a case
25 number on it, but I don't have any of my legal information.

1 I'd also like to receive a copy of all indictments as well.

2 BY MR. THUSS:

3 Q Thank you, Mr. Evans, and can you -- what date was
4 this received by the clerk of court?

5 A April 19th, 2016.

6 Q Okay. And you were sentenced on the 14th?

7 A Yes, sir.

8 Q Okay.

9 A And just for the record, I had -- I had asked for
10 -- for a motion to suppress my evidence and I felt like if
11 they had did that, there wouldn't have been no drugs or a
12 gun involved. And I thought I had a good grounds on it and
13 he felt like he didn't have time or, you know, whatever was
14 necessary for him to do that. He didn't do it. And I did
15 ask him -- I didn't get my motion of discovery until I got
16 to Kirkland after I'd been sentenced.

17 And if I'd had that before I went to court. I
18 could have clearly showed him in the discovery where
19 they're putting the gun in one place on the incident report
20 for the gun and then with the trafficking, they placed it
21 somewhere -- completely -- where I said it was, under the
22 seat. So, you know, I didn't feel like they had a reason
23 to go in my vehicle at all, you know. And he didn't do
24 that. And I don't understand because he give me his word
25 and then he -- he had told me I had the judge's word and

1 you know, at that time, all -- I trusted my life with him.

2 Q Yes. You knew that -- that -- based on what you
3 knew, your expectation was that you could not be sentenced
4 to more than 15 years?

5 A Yes. I if I had thought otherwise, I wouldn't have
6 went in there at all. I'd rather went to trial. I'd took
7 my -- I'd took my chances. Because, like I said, it's the
8 same sentence, you know.

9 Q You talked about discovery briefly a few minutes
10 ago. Had you requested copies of discovery from Mr.
11 McMillian?

12 A Yes, sir, I had.

13 Q Do you know when that was?

14 A Really, the whole time I was there, I had some guys
15 in the County that was willing to look over everything and
16 plus that would give me something to read and see if I
17 could actually help, you know, because I was there, you
18 know. It was my case, my arrest. I'd like to have went --
19 I'd have liked to be able to study what they had because it
20 was -- you know, it's in black and white. And, like, I
21 don't know.

22 Q You said that you eventually got the discovery?

23 A Yeah, when I got to Kirkland.

24 Q Did Mr. McMillian ever provide you with discovery?

25 A When I got there, like after.

1 Q When you got to Kirkland, not prior to --

2 A Yes, sir.

3 Q -- not prior to entering the plea?

4 A No, sir. It -- I got -- no, sir, they didn't.

5 Q Okay. And initially you -- you thought you'd been
6 charged with a lesser trafficking charge?

7 A Yes, sir.

8 Q But you were indicted for trafficking 28 to 100
9 grams?

10 A Yes, sir.

11 Q What was it -- do you know what the alleged weight
12 was?

13 A 32.2 grams.

14 Q What about the motion to suppress? Did you ask Mr.
15 McMillian -- you said -- did you ask him to file a motion
16 to suppress?

17 A Yeah, and during that time he said he went and
18 looked at a truck similar to mine and I couldn't understand
19 why he didn't go look at the truck just like mine because I
20 had the brand new Chevrolet truck they set on the front of
21 the dealerships and any day you could go look at them. I
22 didn't...

23 Q Did he discuss -- well, but then at some point it
24 seems like you were expecting to come to court for a bond
25 hearing and then --

1 A That's what I thought I was coming to court for was
2 a bond hearing.

3 Q Had there been a motion for a bond hearing made?

4 A Yeah, yes, sir.

5 Well, for -- I asked for months and he told me the
6 report wasn't in. And he kept saying that the report
7 wasn't ready. And he was asking me what the report was.
8 Which I guess was the motion of discovery or whatnot. And
9 in March whenever he did file for it, and, you know, that's
10 what I thought I was going for was a bond. And then when
11 he called me two days earlier, I just thought that maybe
12 they -- I slid a couple spots up and was going for a bond.
13 Then when I got over here, that's when they told me, you
14 know, that I been put on the trial list or whatnot. And...

15 Q Did you understand that your -- that you were going
16 in court on an open plea?

17 A I thought that I was going in to get what he had
18 negotiated with the judge and the solicitor.

19 Q Because --

20 A I --

21 Q You took him at his word?

22 A Yes, sir.

23 Q All right. Ken, your sentence was 16 years on the
24 trafficking?

25 A Yes, sir.

1 Q 5 years on --

2 A The pistol --

3 Q -- on one of the pistol charges. The pistol with
4 an obliterated serial number?

5 A Yes, sir.

6 Q The charge of -- of having a pistol during a
7 violent crime was not prosed?

8 A Yes, sir.

9 Q And on the harassment, you received a conviction of
10 harassment second which was -- your sentence was 30 days --

11 A Or a \$200 fine.

12 Q And the other charge was not prosed?

13 A Yes, sir.

14 Q Do you understand that if the Court grants your
15 relief and orders that new trial, you understand that
16 you'll be exposed to all of these charges and that all of
17 the charges will be -- you'll be facing all of the charges
18 that you were facing before the plea?

19 A Yes, sir.

20 Q All right. And knowing that, you still wish for
21 this Court to reverse the conviction and order a new trial?

22 A Yes, sir.

23 Q To your knowledge -- there was -- again, there was
24 no motion made -- there were no objections on the record
25 made by Mr. McMillian during the plea while you were in

Kenneth Evans - Direct Examination by Mr. Thuss

1 court?

2 A No.

3 Q And there were no post-trial motions to reconsider
4 or withdraw the plea?

5 A No, sir. He wrote it in the letter of appeal that
6 he didn't file for the reconsideration or to withdraw my
7 plea.

8 Q Okay. But he did file a notice of appeal?

9 A Yes, sir, because it was paper stated that he
10 legally had to if I asked.

11 Q Okay. Did Mr. McMillian discuss with you what the
12 solicitor would present at the plea?

13 A He said the solicitor wasn't going to present
14 nothing. The solicitor was supposed to not say nothing at
15 all. I thought I was just going to go in there and just go
16 through the motions like he said and they was just going to
17 file -- you know, do my guilty plea and I really thought I
18 was getting like 7 years and going to jail, really.

19 MR. THUSS: That's all I have, Your Honor.

20 THE COURT: Mr. Thuss, what was the result of the
21 motion to reconsider?

22 MR. THUSS: There was none filed.

23 THE WITNESS: He didn't file it.

24 MR. THUSS: Your Honor, there was no motion to
25 reconsider filed, there was no motion to withdraw the plea

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1 filed.

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2 THE COURT: Let me see the -- let me see Exhibit 1.

3 THE WITNESS: Well, I got that -- a letter back
4 from the clerk of court --

5 MR. THUSS: Wait, wait.

6 THE WITNESS: Oh.

7 (There was a pause in the proceedings.)

8 MR. THUSS: May it please the Court?

9 THE COURT: Let me see -- Ms. Coleman, let me see
10 you, please. Mr. Thuss.

11 (There was a bench conference out of the hearing of
12 the court reporter.)

13 THE COURT: And it's my understanding that the
14 clerk's response to Mr. Evens's letter of the 19th of April
15 2015 is going to by consent, remain an exhibit; is that
16 correct?

17 MR. THUSS: Yes, Your Honor.

18 THE COURT: All right. It will be Applicant's 2.
19 That's correct? Ms. Coleman?

20 MS. COLEMAN: Excuse me, what was the question?

21 THE COURT: That's all right. No, no. Just the
22 response from the clerk of court back to Mr. Evans in
23 response to his letter to the clerk dated April 19, 2016,
24 that the clerk's response will be made Applicant's Exhibit
25 2.

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1 MS. COLEMAN: Yes, no objection.

2 THE COURT: Thank you.

3 MS. COLEMAN: Thank you.

4 (Petitioner's Exhibit Number 2 was marked and
5 entered into court.)

6 MS. COLEMAN: Your Honor, may we approach?

7 THE COURT: Yes.

8 (There was a bench conference out of the hearing of
9 the court reporter.)

10 (Court's Exhibit Number 1 was marked for evidence.)

11 THE COURT: Yes, sir?

12 BY MR. THUSS:

13 Q After -- at the time you were sentenced to 16
14 years, it was in this courtroom and you went back to the
15 holding cells, did Mr. McMillian speak with you then?

16 A He come back in there and he told me that he could
17 fix this, he could fix it now. He said, I don't know why
18 they did this to you, but I can fix it. And we wasn't in
19 the holding cell, we was in the room across from the
20 holding cell over there, right there at that first little
21 desk.

22 And I was like, well go fix it. And he run in
23 there -- out of there like he was in a hurry to go fix it,
24 you know, and you know, he told me he was going to withdraw
25 my plea. And that's what I thought he was going to do, but

1 he never -- he never did that.

2 Q Okay.

3 MR. THUSS: Your Honor, that's it for us.

4 THE COURT: Thank you so much, Mr. Thuss.
5 Cross-examination.

6 MS. COLEMAN: Thank you, Your Honor.

7 THE COURT: Yes.

8 CROSS-EXAMINATION

9 BY MS. COLEMAN:

10 Q Mr. Evans, it sounds like your only problem here is
11 with your sentence; is that right?

12 A Yes.

13 Q You're not happy with the sentence you got?

14 A No, ma'am.

15 Q So there's no question that you're guilty of these
16 crimes?

17 A I didn't come here to plead my guilt or my
18 innocence. I come here to plead, you know, that I wasn't
19 justly or rightfully done during the plea.

20 Q But you told the judge that you were guilty of
21 these crimes, right?

22 A I told him that, you know, I was there. And I'm
23 not here to plead my guilt or my innocence.

24 Q Okay. Do you recall the guilty plea before the
25 judge? Well, we've been talking about it today, obviously

Kenneth Evans - Cross-examination by Ms. Coleman

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1 you recall it.

2 Do you remember waiving you constitutional rights
3 like your right to a jury trial and your right to remain
4 silent?

5 A Yes, ma'am.

6 Q Do you recall telling the plea judge that you were
7 satisfied with your attorney's services?

8 A I did, because that's what Mr. McMillian told my I
9 had to do in order for him to accept my plea.

10 Q But you had no problems with him at the time
11 because you hadn't gotten your sentence yet, right?

12 A Because I thought that I was going to receive what
13 he told me I was.

14 Q Okay. Do you remember telling the judge that
15 nobody was promising you to plead guilty?

16 A Yes, ma'am.

17 Q Do you remember telling him that you were indeed
18 guilty of these crimes?

19 A I said that because I was told I had to.

20 Q Do you recall agreeing with the facts that the
21 solicitor presented at the plea hearing?

22 A No, ma'am, I don't.

23 Q Okay.

24 MS. COLEMAN: And, Your Honor, that's on page 8, at
25 line 24, just for your records.

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1 THE COURT: Okay.

2 BY MS. COLEMAN:

3 Q Do you remember when the Court -- the plea judge
4 told you that he could sentence you up to 30 years for
5 these crimes?

6 A He -- I just went through the motions like Mr.
7 McMillian told me, you know. He explained that they was
8 going to go through all that, but he told me I just -- just
9 say no and we -- you know, because if I said -- if we had
10 an agreement or anything of that nature that the judge
11 wouldn't accept my plea. So I -- I just -- I did as he
12 told me.

13 Q Were you listening to the judge when he was talking
14 to you?

15 A Yeah. I had a lot of things going through my mind
16 at that time, you know.

17 Q Okay.

18 MS. COLEMAN: And, Your Honor, I'm on page 7,
19 starting at line 5 there.

20 BY MS. COLEMAN:

21 Q And I'll just read this. The Court asks: Do you
22 understand that I have to incarcerate you for a minimum of
23 7 years and the law gives me the discretion to sentence you
24 up to 30 years and a \$50,000 fine and you responded yes,
25 sir. Do you remember that?

Kenneth Evans - Cross-examination by Ms. Coleman

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- 1 A (Witness nodded head.)
- 2 Q Okay. Did your --
- 3 A Yes, ma'am.
- 4 Q -- attorney promise you that you would get a
- 5 sentence of 8 to 9 years?
- 6 A Well, before we went in there, he promised me it
- 7 would be more like 7, you know, but he -- that's the reason
- 8 I went in there. I wouldn't have went in there otherwise.
- 9 I wouldn't have.
- 10 Q So he didn't tell you that you could get up to 30
- 11 years?
- 12 A No, ma'am. He told me that -- there's no way, I
- 13 had the judge's word.
- 14 Q Did you ask him to withdraw your guilty plea?
- 15 A Yes, ma'am, I did.
- 16 Q When did you do that?
- 17 A From here to that room over there.
- 18 Q So after the proceeding was over?
- 19 A Yes, ma'am.
- 20 Q Okay. Did you ask him to file a motion for
- 21 reconsideration?
- 22 A Yes, ma'am.
- 23 Q When did you do that?
- 24 A Well, I got to the -- well, I asked him in that
- 25 room over there I wanted to withdraw my plea or

1 reconsideration, whatever. I didn't know legally the
2 process or what you had to do. All I knew was that -- it
3 didn't go the way it was explained to me how it was going
4 to go and I really -- I felt like they was just taking my
5 life and when I got under their, I just -- I asked him to
6 do, you know, whenever it is, withdraw the plea or get it
7 reconsidered, you know.

8 And he told me he was because I -- that's not -- he
9 said that -- you know, him and the judge had agreed to
10 something totally different that I wasn't going to get it.
11 And if I wasn't going to take the 15 years, I don't know
12 what in the world makes you think I'd agree to 16 years,
13 you know. I wouldn't.

14 Q Did you ask him to file a notice of appeal and to
15 appeal your case?

16 A Yes, ma'am.

17 Q And did he do that?

18 A He did that and the paper said because he legally
19 -- if I asked, he had to.

20 Q Okay.

21 MS. COLEMAN: And I believe, Your Honor, he'd made
22 that a court's exhibit 1, that's the notice of intent to
23 appeal which was filed on April 19th of 2016.

24 BY MS. COLEMAN:

25 Q Do you still want a trial on these charges knowing

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Kenneth Evans - Redirect Examination by Mr. Thuss

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1 you could get 30 years or more?

2 A Yes, ma'am, I don't feel like what's happened to me
3 is right and I feel like I got a chance to fight it.

4 Q Okay.

5 MS. COLEMAN: Thank you. Nothing further, Your
6 Honor.

7 THE COURT: All right. Redirect?

8 MR. THUSS: Just briefly, Your Honor.

9 THE COURT: Sure.

10 REDIRECT EXAMINATION

11 BY MR. THUSS:

12 Q Ms. Coleman asked you about whether the judge asked
13 you whether you were satisfied with your attorney?

14 A Yes, sir.

15 Q Do you recall what you said in court?

16 A I told them I was because at that point in time
17 before they sentenced me, you know, I was happy because he
18 told me he was going to go in there and get what he asked
19 and what -- that and they was going to do exactly as he
20 said it was going to do. So, you know, I felt like he had
21 -- you know, just going off his word, he did all he could
22 do and I was happy with it, you know, because I was.

23 Because I felt like he did all he could do, you know.

24 Q Do -- in the transcript, and I think it's on?

25 MR. THUSS: Pardon me, Your Honor, I'm trying to

1 find this again.

2 BY MR. THUSS:

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3 Q Page 10 of this transcript. Mr. Evans, can you
4 look at lines 18 and 19?

5 A Yes, sir.

6 Q And -- and on line 18 and 19, the Court asked you:
7 Are you satisfied with your lawyer, Mr. McMillian. And
8 what was your response?

9 A As good as I can be.

10 Q Yes, sir. But you didn't have any complaints
11 against him at that time?

12 A No, sir, I was happy because at first I thought,
13 you know, I was looking at 3 and then, you know, they upped
14 it, but that was out of his control, you know. But I was
15 -- I felt like --

16 Q If you had been sentenced between 7 and 15 years,
17 which is what you -- that was what you were relying on,
18 would you have had an issue with the sentencing at your
19 plea?

20 A If I'd got around what he told me that we was going
21 to do, then I wouldn't have had no -- I couldn't have had a
22 problem because then I'd agreed to what happened when I
23 walked in there. But I -- since it didn't go that way, I
24 don't -- I didn't agree and I've got a big problem with it.

25 Q Thank you.

Bradley McMillian - Direct Examination by Ms. Coleman

1 THE COURT: Yes, recross examination?

2 MS. COLEMAN: No recross. Thank you.

3 THE COURT: All right. If you'll come back down to
4 counsel table please.

5 All right. Yes, sir, call your next witness.

6 MR. THUSS: That's all, Your Honor.

7 THE COURT: Very well.

8 Ms. Coleman?

9 MS. COLEMAN: The State would call Brad McMillian.

10 THE COURT: All right.

11 BRADLEY MCMILLIAN,

12 having been duly sworn, testified as follows:

13 THE CLERK: Please take a seat in the witness box
14 and state your full name.

15 THE WITNESS: Michael Bradley McMillian.

16 THE COURT: Your witness.

17 MS. COLEMAN: Thank you.

18 DIRECT EXAMINATION

19 BY MS. COLEMAN:

20 Q Good morning, Mr. McMillian.

21 A Good morning.

22 Q How long have you been practicing law?

23 A Five years next week.

24 Q Congratulations.

25 Were you appointed in this case?

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1 A I was.

2 Q And do you recall when you were appointed?

3 A Looking at my file here, our office has a practice
4 of stamping it on here. I was appointed in July 20th of
5 2015.

6 Q And how many times did you meet with the client
7 before his guilty plea?

8 A It's hard to say exactly, but looking at these --
9 Defender Data has journal entries. If you'll give me just
10 a second.

11 Q Sure.

12 (There was a pause in the proceedings.)

13 THE WITNESS: According to the journal entries, it
14 would look like two to three times in person. I'm sure
15 it's more than that. I don't enter one of these note
16 entries for every time I visit them at the jail or talk to
17 them by the phone. It does look like we talked several
18 times by phone from the jail as well.

19 BY MS. COLEMAN:

20 Q And what did you speak about with the applicant
21 during these meetings?

22 A Initially, you know, as he testified to earlier, I
23 think he was arrested, released on home detention. He had
24 several phone calls to our office trying to get that, that
25 bond amended. After talking with the solicitor, Beth Ann

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Bradley McMillian - Direct Examination by Ms. Coleman

1 Young, ultimately we came to a consent order where that
2 provision would be lifted. That was really the extent of
3 most of our early discussions was that he really wanted to
4 get that bond condition lifted. It came to me that he was
5 actually -- they were willing to consent to that condition
6 being lifted because he'd agreed to assist ATF and some
7 narcotic officers in a larger scale operation.

8 After he was arrested the second time, again, most
9 of our discussions revolved around getting bond, trying to
10 get out of the detention center. Once I received the
11 discovery in that, I filed for bond in February. He and I
12 met again. Over the course of several terms of court, I
13 say several, it may have been two or four, I think, his
14 case did appear on the trial list and then we started
15 talking about the case that we had and what it looked like
16 going to trial. We did meet one lengthy time to discuss
17 the likelihood of succeeding on a motion to suppress the
18 evidence.

19 Q And what were your discussions about that motion to
20 suppress?

21 A The situation with -- with where the gun was and
22 what drugs were in the vehicle, I did explain to him that
23 -- that I'd gone out, a guy in our office actually had a
24 similar model Chevrolet 1500 truck, extended cab, and we
25 went out and I -- both of our investigators at the time are

1 former law enforcement, so they kind of explained the
2 process and how they approach a car from the A pillar and
3 the B pillar and explained that maybe they could see the
4 gun and maybe they couldn't. 92

5 He and I talked about that. I explained to him
6 that, you know, unless he got up there, testified, you know
7 -- and even then, the judge could still accept the
8 officer's word over his, and very likely would. We talked
9 about the fact that he was being asked out of the vehicle
10 to take field sobriety tests and he was ultimately arrested
11 for DUI.

12 I explained that once he was arrested for DUI,
13 they're going to impound the vehicle and search it, do an
14 inventory search and at that point they would likely find
15 the gun, they would find the drugs, and this evidence would
16 be coming in against him anyway. He and I talked prior to
17 -- I apologize, I'm looking back at some of these notes.
18 This has been some time.

19 He and I met back in March, I think it's March 7th.
20 Ms. Young and I had discussed what she was indicting the
21 case for, how it would go forward at trial. I think at the
22 time Mr. Evans was under the impression that he was going
23 to be tried for trafficking first offense, when in fact he
24 had a prior enhance able conviction and Ms. Young intended
25 to use that at trial.

Bradley McMillian - Direct Examination by Ms. Coleman

1 So he and I discussed that at length that day and 93
2 he indicated he didn't want to do mandatory jail time. I
3 went back and discussed that with Beth Ann a little further
4 and she indicated that she wasn't willing to come off the
5 mandatory sentence.

6 At some point, she and I discussed a negotiated
7 offer of 15 years. I took -- I took that to Mr. Evans, and
8 he was not willing to accept that. Beth Ann and I talked
9 again about whether or not she would allow him to plea
10 without negotiations or recommendations. She indicated
11 that she would and then -- I think she was prepared to try
12 the case the week that he ultimately pled guilty.

13 And on April 13th, she and I did speak with the
14 judge in chambers. He did indicate, based on the facts he
15 had at the time, which were essentially his priors and the
16 amount of methamphetamine that was in the truck, that he
17 would likely give him a sentence of more than 7, but less
18 than 15 years.

19 Q Did the judge promise you that he would sentence
20 between 7 and 15?

21 A He did not.

22 Q Okay. Did you promise your client that he would
23 get more than 7, but less than 15?

24 A Absolutely not.

25 Q Did you explain to him the potential sentencing

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1 outcomes of a guilty plea?

2 A Yes, ma'am. With every client, we go back and we
3 discuss the mandatory minimum, as well as the maximum. I
4 explained that it was a 85 percent no parole sentence, that
5 it was a violent offense. I am sure that I told him that
6 the judge indicated where he would be sentencing-wise, but
7 that that was in no way a promise. Certainly I think some
8 things came out at the plea that -- that hadn't been
9 conveyed in chambers: His issues with narcotic officers,
10 his wife and the aggravated nature of that harassment
11 certainly weren't conveyed in the back.

12 He was charged with harassment, he was pleading to
13 harassment, but that, that wasn't the real fish we were
14 there to fry, if you will. The trafficking was the offense
15 that we really needed to deal with.

16 Q And the wife as the victim of the harassment
17 charge, was she allowed -- was it proper for her to speak
18 at the guilty plea?

19 A He was pleading guilty to harassment and she's
20 entitled to tell the judge her piece.

21 Q Was it proper for the narcotics officers to testify
22 about their interactions with him?

23 A I believe so. As a condition to consenting to that
24 bond -- or part of the discussion was he agreed to assist
25 narcotics officers in this. He planned on living at a

1 specific place and then these officers had problems fir 95

2 him or getting him to actually cooperate. I didn't see any
3 problem with them addressing the Court and explaining their
4 dealings with him.

5 Q So was there any reason to object to either of
6 those?

7 A No, ma'am.

8 Q And the judge ended up giving him a 16 year
9 sentence for trafficking. Was that within the -- the
10 range, the statutory range of the sentence?

11 A Yes, ma'am.

12 Q Was there any reason to object to that?

13 A No, ma'am.

14 Q Do you believe an objection to that would have been
15 successful?

16 A I do not.

17 Q Did the applicant seem to understand your
18 discussions about the potential sentencing outcomes?

19 A Yes, ma'am.

20 Q Did he ask any questions about it or appear
21 confused in any way?

22 A At several points, I felt like he was getting
23 conflicting advice from Mr. Thuss. Mr. Thuss, at this time
24 was representing him on some family court related stuff.
25 Mr. Thuss -- he indicated to me several times that Mr.

1 Thuss was going to come in and represent him on the
2 criminal charge. I believe the week leading into trial I
3 spoke with Mr. Thuss and he indicated that he had no
4 intention of getting involved in the criminal trial.

5 I talked with Kenneth about that extensively. And
6 I explained, you know, this is my opinion, this is what I
7 believe the law is and he ultimately relied on it.

8 Q Uh-huh. And you explained all of the potential
9 sentencing outcomes, correct?

10 A Yes, ma'am.

11 Q Sorry, that was a leading question.

12 And did the judge explain the potential sentencing
13 outcomes at the guilty plea?

14 A Yes, ma'am.

15 Q And did he ask any questions or show any concern to
16 you about that?

17 A He didn't.

18 Q Okay. Did he ask you to stop the proceeding at any
19 time?

20 A He didn't.

21 Q Did he -- after the sentence was given, did he ask
22 you to withdraw his guilty plea?

23 A He did not. On our way out of the courtroom here,
24 he was -- he was upset and we spoke about it. And I asked
25 him if he wanted me to file his appeal, that he was

1 entitled to an appeal. He indicated that he wanted me
2 file that appeal, and I did. 97

3 Q And we looked at the Court's Exhibit today, the
4 notice of appeal. Was that filed on April 19th, 2016, to
5 your knowledge and recollection?

6 A I couldn't say without looking at it. I know that
7 I -- I spoke with my paralegal, I think the very next day.
8 It should have been filed that same week.

9 Q Did he ask you to file a motion for
10 reconsideration?

11 A No, ma'am. Some of the testimony earlier was about
12 a letter sent to the clerk of court. And I went through my
13 file and I don't have a copy of that.

14 Q Were you aware of that letter that he sent at the
15 time?

16 A I was not.

17 Q Okay. Did he ever ask anyone in your office for a
18 motion for reconsideration, to your knowledge?

19 A No, ma'am.

20 Q Did you review the applicant's constitutional
21 rights before the guilty plea?

22 A Absolutely.

23 Q And did he seem to understand that?

24 A Yes, ma'am.

25 Q Okay. Whose decision was it to plead guilty?

1 A It was his. You know, he and I talked about i
2 length the week leading up to trial. Probably that Mo. 98
3 morning of court he and I would have discussed proceeding
4 forward and that point and what the likelihood of success
5 was. And I let him weigh his options and make his own
6 choice.

7 Q And you testified earlier that he pled shortly
8 before he was about to go to trial; is that right?

9 A Yes, ma'am.

10 Q Were you prepared go to trial?

11 A Absolutely.

12 Q Did you have enough time to research the issues and
13 prepare your defense?

14 A Yes, ma'am.

15 Q And what was your defense going to be, if you had
16 gone to trial?

17 A I didn't believe there was a defense. He and I had
18 talked at length about that. He and I talked about whether
19 or not we could move to suppress this evidence and I
20 explained that we could certainly move to suppress it, but
21 the likelihood of success was near nothing.

22 Q Do you agree with his decision to plead guilty?

23 A I absolutely do.

24 Q Do you still agree with that?

25 A Absolutely.

Bradley McMillian - Cross-Examination by Mr. Thuss

1 Q Okay. Thank you. No further questions.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. THUSS:

5 Q Good morning, Mr. McMillian?

6 A Good morning.

7 Q I'm -- he was -- Mr. Evans was offered a
8 recommendation from the solicitor of 15 years?

9 A No, sir.

10 Q No?

11 A He was offered a negotiated sentence of 15 years.

12 Q Negotiated sentence of 15 years. And he rejected
13 that?

14 A Yes, sir.

15 Q And there was a conversation with the plea judge
16 with you and the solicitor?

17 A Yes, sir.

18 Q And -- and the plea judge in chambers said, he'd
19 likely get sentenced more than 7, but less than 15?

20 A Yes, sir.

21 Q And -- and that's the information that you passed
22 onto Mr. Evans?

23 A Yes, sir.

24 Q And was that his expectation going into the plea?

25 A I can't say what he expected.

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1 Q Was that your expectation going into the plea?

2 A It was.

3 Q When the judge sentenced him to 16 years,
4 contemporaneous with that, did you do anything to side bar
5 or object or anything along those lines?

6 A I did not. Several things were presented, I think
7 at the plea, that were circumstances the judge certainly
8 considered that could change his mind about what he'd
9 indicated to us in the back.

10 Q And -- and you weren't -- you and Mr. Evans then
11 disagree on whether or not he asked you to withdraw the
12 plea or move to reconsider?

13 A Yes, sir.

14 MR. THUSS: I don't have any further questions Your
15 Honor.

16 MS. COLEMAN: Nothing further from the State.

17 THE COURT: All right. Is this witness free to
18 leave?

19 MS. COLEMAN: No, he has one more case.

20 THE COURT: You are not free to go. Sorry.

21 In this one he's free.

22 MS. COLEMAN: He is.

23 THE COURT: So he gets to take a comfort break.

24 He's free to go for a little bit.

25 MS. COLEMAN: Yes.

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1 THE COURT: Very well.

2 MS. COLEMAN: And the State has no further
3 witnesses.

4 THE COURT: Okay. Would there be any rebuttal or
5 would there be any reply?

6 MR. THUSS: No, Your Honor.

7 THE COURT: All right. Thank you very much.

8 Counsel, I will certainly consider these matters
9 and let you know my decision.

10 MR. THUSS: Thank you.

11 THE COURT: Very well, all right.

12 MS. COLEMAN: Thank you, Your Honor.

13 MR. THUSS: Your Honor, would you like some case
14 law on the issue, or --

15 THE COURT: On which issue.

16 MR. THUSS: On the issue concerning the not
17 objecting contemporaneously or filing a motion to
18 reconsider or withdraw the plea?

19 THE COURT: Here's what concerns me: That's a
20 factual determination. In other words, I don't think the
21 case law would help me in that regard. In other words,
22 certainly, certainly, if there was a request made of
23 counsel, Mr. McMillian, to withdraw the plea or to
24 reconsider the plea and he failed to do that, that would be
25 one scenario.

1 The other scenario would be if those requests v. 102
2 directed onto the clerk of court rather than to Mr.
3 McMillian. And as I recall the testimony, and please you
4 all correct me if I am incorrect, but Mr. McMillian has
5 researched his file and he sees no copy of the letter that
6 was submitted the clerk of court. And his memory is that
7 he was not requested to make a motion to reconsider, make a
8 motion to withdraw the plea.

9 He was requested to file a notice of appeal, which
10 apparently he did do. And admitted that he was asked to do
11 that. So it seems to me that that that's a factual
12 determination. I don't know that the case law can help me
13 in that regard.

14 And Counsel is correct when she makes the statement
15 that in South Carolina we do not have hybrid representation
16 and therefore the -- the letter that was sent to the clerk
17 of court requesting that his sentence be reconsidered, that
18 letter, of course, being sent by Mr. Evans, what is clear
19 is that at that time he was still represented by Mr.
20 McMillian, because it was on that same date, April 19th,
21 2016 date that the notice of appeal was also sent. So it's
22 clear that at that moment that he was still represented by
23 Mr. McMillian.

24 And to reinforce that, when the clerk responded,
25 although the letter says January 19th, it was probably

1 April 19th because it would have been impossible for t 103
2 clerk's office to have responded in January to a letter
3 sent to them in April. So probably it was sent on April
4 19th to Mr. Evans, where the clerk said, you're represented
5 by counsel and this motion has to be made by your lawyer,
6 which reinforces the lack of hybrid representation.

7 I have to consider all that. You can see where my
8 mind was with regards to whether or not that motion to
9 reconsider that was attempted to be filed by your client,
10 whether or not that was something that was outstanding.

11 So -- and I'm a little reluctant, you know, I try
12 not to order busy work. Y'all got enough to do without me
13 adding work to your work. So I think it's probably
14 appropriate, rather than asking for proposed orders, just
15 ask y'all to hold off, let me make a determination and then
16 I will ask for the preparation of an order. All right?

17 MR. THUSS: All right. Thank you, Your Honor.

18 MS. COLEMAN: Thank you.

19 THE COURT: Mr. Thuss, do you have any additional
20 matters today?

21 MR. THUSS: No, Your Honor.

22 THE COURT: Very well, thank you so much.

23 * * * * * END OF TRANSCRIPT * * * * *
24
25

1 State of South Carolina)
2 County of Aiken) Certificate of Reporter. 104

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4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of Common Pleas in and for
12 the State of South Carolina on the 26th day of May, 2017.

13 I FURTHER CERTIFY that I am neither kin, counsel,
14 nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal at Aiken County, this 8th day of July 2018.

17
18
19
20
21 Brenda J. Sigwald
22 Brenda J. Sigwald,
23 Court Reporter and Notary Public
24 For the State of South Carolina
25 My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Kenneth Bryant Evans II, #308918,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2016-CP-02-1894

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 22, 2016. Respondent submitted its Return on December 16, 2016. An evidentiary hearing was convened on May 26, 2017, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Robert Thuss, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Michael Bradley McMillian, Esquire ("Plea Counsel") also testified. The Court had before it a copy of the plea transcript, the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted by the January 2016 term of the Aiken County Grand Jury for Possession of a Weapon During Commission of a Violent Crime (2016-GS-02-00017), Trafficking Methamphetamine (2016-GS-

02-00018), Possession of a Pistol with an Obliterated Serial Number (2016-GS-02-00019), Unlawful Carrying of a Pistol (2016-GS-02-0020), and Harassment, first degree (2016-GS-02-0021). Applicant was represented on these charges by Michael Bradley McMillian, Esquire. On April 14, 2016, Applicant pled guilty to Harassment, second degree, Trafficking Methamphetamine, 28-100 grams second offense, and Possession of a Pistol with an Obliterated Serial Number. The remaining charges were *nolle prossed* in exchange for his guilty plea. Applicant was sentenced by the Honorable Doyet A. Early, III, without negotiations or recommendations, to sixteen years' imprisonment for trafficking methamphetamine, five years' imprisonment for possession of a pistol with an obliterated serial number, and thirty days' imprisonment for harassment, to run concurrently.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal for Applicant's failure to provide a sufficient explanation for appealing a guilty plea as required by Rule 203(d)(1)(B)(iv) SCACR. The Remittitur was issued on July 20, 2016.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Attorney advised Applicant to take plea based on informal meeting with solicitor and judge indicating that he would receive a sentence of more than seven but less than fifteen years. Attorney failed to object to sixteen year sentence.
 - b. Attorney did not properly prepare a defense and spent little time with Applicant.
 - c. Attorney failed to file a motion to suppress evidence after Applicant requested he do so.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

IV. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified that he was arrested for these crimes on June 3, 2015. He stated that he got out on bond and was on house arrest, and he met Plea Counsel for the first time on the day he went to court to get off house arrest, August 17, 2015. He stated that he had some disputes with his wife in the family court during this time, and he did not have any contact with Plea Counsel between August and November of 2015.

Applicant testified that the Solicitor offered him a plea offer of a fifteen year sentence, but he rejected it because he would have rather risked the 25-30 years at trial than plead to fifteen years. He stated that he decided to plead guilty based on Plea Counsel's informal meeting in chambers with the plea judge and the Solicitor where the plea judge indicated that he would probably sentence Applicant more than seven years, but significantly less than fifteen years. He stated that he was actually sentenced to sixteen years, and his attorney did not object to the sentence. He stated that he did not know that the victim or law enforcement officers were going to speak at his guilty plea, and he did not think they were going to be there. He stated that if he had known he was going to get more than fifteen years, he would have gone to trial instead.

Applicant testified that immediately after he was sentenced, he asked Plea Counsel to file a motion to reconsider, and Plea Counsel did not do so. He stated that he sent a letter to the Aiken County Clerk of Court asking for reconsideration of his sentence, and it was filed on April 19, 2016, five days after the guilty plea. This letter was admitted into evidence as Applicant's Exhibit One. He stated that he asked Plea Counsel to make a motion to suppress the evidence against him, but he did not have time to file it.

Plea Counsel testified that Applicant was assisting law enforcement with other investigations after he was charged with these crimes. He stated that Applicant wanted him to

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move to suppress the evidence found in his vehicle, including the pistol with an obliterated serial number, but Applicant was later arrested for Driving Under the Influence, so he explained to Applicant that the evidence was going to come in regardless of his motion because of the DUI arrest and subsequent search.

Plea Counsel testified that he negotiated a plea offer with the Solicitor of a fifteen year sentence, but Applicant did not accept it. He stated that Applicant pled guilty without recommendations or negotiations. He testified that on April 13, 2016, he spoke in chambers with the plea judge and the Solicitor, and the judge indicated that he would likely give more than seven years but less than fifteen years. He stated that this indication was based on the information that Plea Counsel conveyed to the plea judge in chambers, which did not include the information that the narcotics officers and Applicant's wife, the victim, were going to testify at the plea. Plea Counsel stated that he believes the plea judge gave Applicant a higher sentence after he heard the victim and the narcotics officers speak at the plea. Plea Counsel stated that there was no reason to object to the plea court's sentence because it was within the statutory sentencing range and it was in the plea judge's discretion.

Plea Counsel testified that he did not promise Applicant any sentence, including the 7-15 year estimate the judge had indicated in chambers. He said he explained to Applicant what the judge told him in chambers, but he explained the minimum and maximum sentence and did not promise any particular sentence would be imposed. Plea Counsel stated that Applicant did not ask him to file a motion to reconsider. He stated that Applicant asked him immediately after the guilty plea to file an appeal, and he filed a notice of intent to appeal shortly after. Plea Counsel testified that he was prepared to go to trial, although there was no defense they could use. He

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stated that he did not believe they would have been successful if he had made a motion to suppress the evidence.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raises several allegations arguing that Plea Counsel was ineffective in his representation surrounding his trial. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). This Court finds that the testimony presented at the PCR hearing satisfies neither prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice, thus these allegations should be denied and dismissed with prejudice.

Promise of 7-15 year sentence

Applicant alleges that Plea Counsel was ineffective for advising him to plead guilty based on an in-chambers discussion where the plea judge indicated that he would sentence Applicant for a term of imprisonment between seven and fifteen years, and for failing to object when the plea judge actually sentenced him to sixteen years. This allegation is meritless.

Plea Counsel credibly testified that, although the plea judge did indicate that his sentence would be between seven and fifteen years, he explained to Applicant the minimum and

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maximum sentence possibilities and did not promise him that he would get any certain sentence. This Court finds Plea Counsel's testimony very credible. The plea court advised Applicant of the potential risks of pleading guilty on the record at the guilty plea. Tr. 7, line 5-9 ("THE COURT: Do you understand that I have to incarcerate you for a minimum of seven years? The law gives me the discretion to sentence you up to 30 years and a \$50,000 fine. THE DEFENDANT: Yes, sir."). The victim of the harassment charge and the narcotics officers who testified at the plea had a legal right to appear at the guilty plea and be heard. The fact that they changed the plea judge's position on sentencing was out of Plea Counsel's control, and he cannot be deficient for the plea judge's decision.

Furthermore, Plea Counsel cannot be ineffective for failing to object to the sixteen year sentence because there was no legal reason to object, and his objection likely would not have been successful. The sentence was within the statutory sentencing range, which was up to thirty years imprisonment. The sentence is within the plea judge's discretion, and the risk of a higher sentence was something Applicant was advised of before he entered his plea. Therefore, because Applicant has failed to prove that Plea Counsel was deficient or that he was prejudiced, this allegation is denied and dismissed with prejudice.

Failure to prepare a defense and meet with Applicant

Applicant alleges that Plea Counsel was ineffective for failing to prepare a defense for trial and spending little time with Applicant before his guilty plea. This allegation is meritless.

Plea Counsel credibly testified that he met with Applicant at least two or three times in person before his plea, possibly more. He further testified that he did not meet with Applicant for a period of time because Applicant was represented by another attorney in the family court, and he was waiting until those issues were resolved before they could proceed with the criminal

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harassment charge pressed by his wife. Plea Counsel also credibly testified that he was prepared for trial, but there was no successful defense for them to use, which factored into his advice to Applicant to plead guilty. Based on this testimony, this Court finds that Plea Counsel was not ineffective in this regard, and this allegation is denied and dismissed with prejudice.

Failure to file a motion to suppress

Applicant alleges that Plea Counsel is ineffective for failing to file a motion to suppress the evidence against him after he asked him to do so. This allegation is meritless.

Plea Counsel credibly testified that a motion to suppress would not have been successful in this case, and that he explained exactly why to Applicant. He stated that the pistol with an obliterated serial number that Applicant wanted to suppress was going to come into evidence regardless of his motion because it was discovered in a search conducted during Applicant's arrest for an unrelated charge of driving under the influence. This Court finds that Plea Counsel was not deficient in choosing not to file this motion, regardless of whether Applicant wanted him to. Furthermore, Applicant can show no prejudice resulting from the failure to file this motion because he has not proven that the motion would have been successful or that he would have gone to trial rather than plead guilty if this motion had been filed. Therefore, this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

VI. CONCLUSION

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

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

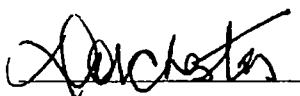
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22 day of June, 2017.



DIANE S. GOODSTEIN
Presiding Judge
Second Judicial Circuit

 South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Kenneth Bryant Evans II, #308918,	)	2016-CP-02-1894
	)	
Applicant,	)	
	)	
v.	)	NOTICE OF MOTION AND RULE 59(e)
	)	MOTION FOR RECONSIDERATION OF
State of South Carolina,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	

TO: Assistant Attorney General Julie Coleman, Esq.:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service or as soon thereafter as this matter may be heard, Kenneth Bryant Evans II will move before the Hon. Diane Goodstein at a location to be determined by the Court for an order altering or amending the Order of Dismissal dated June 22, 2017, and filed June 30th, 2017, per Rule 59(e), SCRCPP, on the following grounds:

An evidentiary hearing was held on May 26th, 2017 at the Aiken County Courthouse. At the conclusion of this hearing, Applicant's counsel asked the Court whether the Parties may submit memoranda and applicable law. The Court instructed the Parties not to make submissions. Thereafter, on or about June 8th, 2017, the Respondent submitted a proposed order. On July 22nd, 2017, the Court signed and adopted Respondent's proposed order, which was filed with the Aiken County Clerk of Court on June 30th, 2017. Therefore, Applicant now timely moves the Court for reconsideration, and an opportunity to be heard and for the Court to reconsider, and deliberate on this matter anew.

Mr. Evans would show that while the *Strickland* test provides a basic analytical framework, several United States Supreme Court, South Carolina Appellate decisions, and other

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Robert L. White Clerk
 C.C.P. & G.S.
Deborah M. Payne-Kuhn
 Deputy Clerk
 11:20

persuasive cases not cited nor considered may be applicable to the facts in this matter. Mr. Evans generally agrees with Respondent's recitation of facts. However, there are additional salient facts for the Court to consider; and Respondent's recitation as adopted by the Court should be amended to give clearer context to the relevant events as they occurred.

Mr. Evans would argue and show that the findings and conclusions warrant reconsideration and amendment. He specifically reserves the right to submit supporting memoranda, affidavits, and additional supporting argument prior to a hearing on this motion, upon direction and guidance of the Court.

Therefore, Mr. Evans moves for relief as set forth hereinabove.

Respectfully Submitted,



Robert R. Thuss, Esq.
Thuss Law Office LLC
7001 St. Andrews Rd. #193
Columbia, SC 29212
(803) 640-1000

July 10th, 2017

Lexington, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that a copy of the Notice of Motion and Defendant's Rule 59(e) Motion has been served upon counsel set forth below by mailing a copy of the same by U.S. Mail, postage prepaid, to the following address, on July 10th, 2017.

Julie A. Coleman, Esq.
S.C. Attorney General's Office
P. O. Box 11549
Columbia, SC 29211



Robert R. Thuss, Esq.
Thuss Law Office LLC
7001 St. Andrews Rd. #193
Columbia, SC 29212
(803) 640-1000

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Defendant.

Robert J. Korte Clerk
C.C.P. & G.S.
Ashleigh M. Payne-Kuhn
Deputy Clerk
11:20

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Kenneth Bryant Evans II, #308918,	)	2016-CP-02-1894
	)	
Evans,	)	
	)	
v.	)	EVANS'S MEMORANDUM IN
	)	SUPPORT OF MOTION FOR
	)	RECONSIDERATION
State of South Carolina,	)	
	)	
Respondent.	)	

Mr. Evans respectfully prays the court reconsider its order dismissing the action. Set forth below are the allegations in his petition, along with his statement of the facts, which are close to the State's recitation of testimony; but also include testimony not found in the State's recitation. Evans has two arguments. First, the State's proposed order, which was adopted by the Court, did not give weight to Evans' testimony in its findings and conclusions. Instead, the findings and conclusions only reference plea counsel's testimony, which are described as "very credible" or "credible." The relevant testimony is set forth by witness for consistency with the Order of Dismissal. Second, Evans will cite additional precedent that applies to these circumstances, and asks the Court to apply these cases to its analysis and conclusions.

Mr. Evans alleged ineffective assistance of counsel on the following grounds:

1. My attorney advised me to enter a plea based on an informal meeting in chambers with the solicitor and judge. I was advised the judge gave an advanced indication of sentencing, and that I would receive a sentence of more than seven, but less than fifteen years. My attorney advised me I would likely receive eight or nine years. At the plea, the judge sentenced me to sixteen years for trafficking, and five years for firearm possession. This sentence did not conform with the judge's advance indication. My attorney did not object, or move for reconsideration or withdrawal of the plea contemporaneously, or within 10 days after sentencing.

2. My attorney did not properly prepare my defense, and spent little time with me until he advised me I needed to plead guilty or the solicitor would call the case to trial. I had asked for copies of discovery and they were not provided to me. I did not see or hear from my

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attorney for months, and only spoke with him briefly on the phone, after I'd call and ask to see him. I was told the State had not provided discovery, but later learned, when I did finally receive copies of some of the discovery, after sentencing, that my attorney had in fact received the discovery.

3. My attorney did not file a motion to suppress evidence, although he had grounds to do so, and I requested that he do so.

APPLICABLE LAW

Evans adopts the general applicable law cited in the Order under the "Applicable Law" in Section III of the Order, but also requests the Court consider and apply precedent related to circumstances where a judge becomes involved in plea negotiations, as was the case in this matter. In July, 1981, in *Medlin v. State*, 276 S.C. 540, 280 S.E.2d 648 (1981), the South Carolina Supreme Court adopted rules that permit a judge to participate in plea negotiations, holding, at 648, "that a trial judge may participate in the plea bargaining process if he follows guidelines to minimize the fear of coercion." *Medlin* followed shortly after another 1981 case, *Harden v. State*, 276 S.C. 249, 277 S.E.2d 692 (1981), where the court, in a two to two decision as one Justice did not participate, discussed policy considerations related to a judge's participation in plea negotiations and introduced the standards it would adopt in *Medlin*. The rules set forth in *Medlin* relevant to this case are found at pages 648-9:

(c) When the parties are unable to reach a plea agreement, if the defendant's counsel and prosecutor agree, they may request to meet with the judge in order to discuss a plea agreement. If the judge agrees to meet with the parties, the judge shall serve as a moderator in listening to their respective presentations concerning appropriate charge or sentence concessions. Following the presentation of the parties, the judge may indicate what charge or sentence concessions would be acceptable or whether the judge wishes to have a preplea report before rendering a decision. The parties may thereupon decide among themselves, outside of the presence of the court, whether to accept or reject the plea agreement tendered by the court.

(d) Whenever the judge is presented with a plea agreement or consents to a conference in order to listen to the parties concerning charge or sentence concessions, the court may require or allow any person, including the defendant, the alleged victim, and others, to appear or to testify.

(e) Where the parties have neither advised the judge of a plea agreement nor requested to meet for plea discussion purposes, the judge may inquire of the parties whether disposition without trial has been explored and may allow an adjournment to enable plea discussions to occur.

(f) *All discussions at which the judge is present relating to plea agreements should be recorded verbatim and preserved*, except that for good cause the judge may order the transcript of proceedings to be sealed. Such discussions should be held in open court unless good cause is present for the proceedings to be held in chambers. Except as otherwise provided in this standard, the judge should never through word or demeanor, either directly or indirectly, communicate to the defendant or defense counsel that a plea agreement should be accepted or that a guilty plea should be entered. [Emphasis added].

(g) In cases where a defendant offers to plead guilty and the judge decides that the final disposition should not include the charge or sentence concessions contemplated by the plea agreement, the judge shall so advise the defendant and permit withdrawal of the tender of the plea. *In cases where a defendant pleads guilty pursuant to a plea agreement and the court, following entry of the plea, decides that the final disposition should not include the contemplated charge or sentence concessions, withdrawal of the plea shall be allowed if:*

(i) prior to the entry of the plea the judge concurs, whether tentatively or fully, in the proposed charge or sentence concessions; or [Emphasis added].

(ii) the guilty plea is entered upon the express condition, approved by the judge, that the plea can be withdrawn if the charge or sentence concessions are subsequently rejected by the court.

In all other cases where a defendant pleads guilty pursuant to a plea agreement and the judge decides that the final disposition should not include the contemplated charge or sentence concessions, withdrawal of the plea may be permitted in the discretion of the judge.

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Since *Medlin* was decided over thirty-five years ago, there has been little interpretive case law in South Carolina.¹ However, in *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (S.C. 1993), the Court wrote a short passage under a heading, "Appropriate Plea Procedures," at pages 348-9:

Today, the complexity of cases dictates that a reliable record exist containing the specific terms of any plea agreement. We hold, therefore, that effective with this decision, all plea agreements must be on the record and must recite the scope, offenses, and individuals involved in the agreement. We also hold that prospectively for all plea agreements entered after the filing of this opinion, we will limit our review of a plea agreement only to those terms which are fully set forth in the record.

In the past, the proper procedure to be utilized by a trial judge in accepting a guilty plea has been the subject of considerable debate within our Court. In a line of cases beginning with *State v. Cross*, 270 S.C. 44, 240 S.E.2d 514 (1977) and culminating in *Medlin v. State*, 276 S.C. 540, 280 S.E.2d 648 (1981), we attempted to set forth guidelines for the approval by the trial court of a guilty plea bargain between the defendant and the state and to set strict limits upon the trial judge's involvement in any negotiations leading to such a plea.⁸ One guiding principle which remained constant in all of these opinions was that the terms, conditions, and reasons for any plea agreement must be disclosed to the trial judge. Today, we underline the requirement of disclosure to the court of all aspects of the plea agreement and specifically add the requirement that such disclosure must be made on the record. *Adherence to this procedure is the shared responsibility of the trial judge and trial counsel for the state and the defendant.* [Emphasis added].

Note 8 reads: See also, *Beaver v. State*, 271 S.C. 381, 247 S.E.2d 448 (1978) and *Harden v. State*, 276 S.C. 249, 277 S.E.2d 692 (1981).

Also, there is precedent concerning plea agreements, where a judge's involvement are not at issue, that are relevant and should apply under these facts. In *Jordan v. State*, 297 S.C. 52,

¹ *Medlin* adopted new ABA Standards when it adopted "Standard 14-3-3, Pleas of Guilty, Responsibilities of the Trial Judge," with a final version published in 1980. The current ABA Standards have evolved and are modified as compared to the 1980 Standards, and can be accessed at: https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_guiltypleas_blk.htm l#3.3 Please See Footnote 9, below, concerning recent United States Supreme Court decisions related to effective assistance and plea bargaining.

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374 S.E.2d 52 (1988), the Court found ineffective assistance of counsel when plea counsel failed to withdraw a plea after the solicitor reneged on a plea agreement. In *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000), citing *Jordan*, the Court again found ineffective assistance for plea counsel's failure to object when the solicitor had agreed not to make a recommendation for a specific number of years, but then recommended the maximum sentence. The Court also found that Thompson's testimony that he would not have pled guilty sufficient to satisfy the prejudice prong and reasonable probability test. In *Rolen v. State*, 384 S.C. 409, 683 S.E.2d 471 (S.C., 2009), an ineffective assistance case where plea counsel was deficient for failing to move to withdraw a guilty plea, the Court stated the prejudice analysis does not fit squarely within the traditional guilty plea prejudice framework as set forth in *Hill*.² The court held "Petitioner was prejudiced by counsel's deficient performance because due to counsel's failure to make a motion, the plea judge was not able to exercise his discretion. Even if the plea judge had denied Petitioner's motion to withdraw his plea, Petitioner could have raised this issue on direct appeal." Also, our Courts have consistently held, far more than not, that to meet his burden to show prejudice, petitioner need only testify that had plea counsel not misinformed him, he would not have pled guilty.³ Finally, in *Smith v. State*, 413 S.C. 194, 775 S.E.2d 696 (S.C., 2015), our Supreme Court explained the proper remedy under circumstances where a plea is breached and

² The State cited *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366 (1985) standard under "Applicable Law."

³ *Alexander v. State*, 303 S.C. at 543, 402 S.E.2d at 485-86 (finding the petitioner's own testimony that he would have proceeded to trial but for counsel's misadvice as to sentencing was "the only evidence in the record on this point" and was sufficient to satisfy the prejudice prong of the *Strickland* test); *Jackson v. State*, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000) (citing *Alexander* with approval and finding the petitioner satisfied the prejudice prong by simply providing testimony that he would not have pled guilty, but for trial counsel's misadvice); *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) ("The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." (citing *Jackson*, 342 S.C. at 97-98, 535 S.E.2d at 927; *Alexander*, 303 S.C. at 543, 402 S.E.2d at 485-86)). But see *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) ("[The] prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial.").

plea counsel is ineffective for failing to object is a new trial, and not remand for resentencing, partly overruling *Jordan* and *Thompson*.

RELEVANT TESTIMONY

Evans testified that he had been arrested on June 3rd, 2015, and met his attorney briefly in August, 2015, when he appeared in court for his bond conditions to be modified. Thereafter, he did not speak to his attorney, Mr. McMillian, until after he was arrested for the harassment charge in November, 2015, when he asked McMillian to move for a court date for bond review on this new charge. Eventually, Evans was indicted for 32.49 grams (T. p. 3, l. 17), which is 4.49 grams above the statutory minimum of 28 grams, but within the statute's 28-100 gram range (T. p. 4, ll. 13-17).

Evans testified that when he was transported from the Aiken County Detention Center to the Aiken County Courthouse on April 12th, 2016, he believed he was being transported for a bond review hearing. Mr. McMillian told Evans that the Solicitor had added his case to the Trial Roster, and that the Solicitor offered a plea of fifteen years. Evans stated he rejected the fifteen years and would rather risk trial than take the fifteen year plea. Evans asked McMillian to negotiate for the minimum sentence of seven years, which he would accept.

Evans stated that McMillian met with him at the Aiken County Detention Center on the following day. Evans stated that McMillian told him that McMillian and the Solicitor had an informal meeting with the judge in chambers and discussed the case. Evans stated McMillian told him that the judge said he would sentence between seven and fifteen years, and that it would be more than seven but significantly less than fifteen. Evans stated McMillian told him the judge didn't have to go with the Solicitor's recommendation, and that the Solicitor agreed not to make a recommendation. Evans stated McMillian told him he would likely receive eight or nine years.

Evans stated McMillian also told him he had the judge's word, and if he did not plead guilty that term of court, he would upset the judge, and his case would be tried the next term of court scheduled the following week. Evans stated McMillian told him to "go through the motions" when the judge questioned him about the plea. Evans stated McMillian brought the sentencing sheet and he signed it.

On the following day, April 14th, Evans was transported to the courthouse for the plea. Evans testified that the judge sentenced him to sixteen years.⁴ Evans "went through the motions" during the plea colloquy with the trial judge, as reflected in the trial transcript. He stated that he did not know that the victim or law enforcement officers were going to speak at his guilty plea, and he did not think they were going to be there. He stated that when the judge sentenced him, McMillian did not object, move to withdraw the plea or move for reconsideration, or request a sidebar with the judge to remind the judge what the judge had indicated in chambers.

Evans stated that he left the courtroom and returned to the holding cell area, and a short time later McMillian came into that area and Evans confronted him and demanded McMillian "fix" this. Evans stated McMillian told him he would go back into court and address it immediately. Evans stated he asked McMillian to ask for reconsideration of, or withdrawal of, the sentence. Evans stated that if he had known he would be sentenced to more than fifteen years, he would have gone to trial instead. Evans stated that he immediately wrote letters to the Aiken County Clerk of Court and South Carolina Supreme Court requesting his sentence be reconsidered or withdrawn.⁵ Evans' letter to the Aiken County Clerk of Court requesting

⁴ Evans pled guilty to Trafficking Methamphetamine (2016-GS-02-00018), Possession of a Pistol with an Obliterated Serial Number (2016-GS-02-00019), and Harassment, first degree (2016-GS-02-00021). At the outset of Evans' PCR Hearing, Petitioner moved without objection to amend and add certain charges that were nulle prossed and/or not listed in his PCR Application: 2015A0220100545 (Indictment no. 2016GS0200017), 2015A0220100548 (Indictment no. 2016GS0200020), and 2015A0220101053 (Indictment no. 2016GS0200021).

⁵ Evans also asked the Clerk to provide him copies of discovery, and other records from the file.

reconsideration was admitted into evidence as Evans's Exhibit One, along with the Clerk's letter to Evans stating that his attorney would need to file the motion. However, the Clerk's letter did not advise Evans the Notice of Appeal had been filed. Evan's letter was stamped with a received date of April 19th, 2016. At the Court's request, Respondent's counsel provided a copy of the Clerk of Court's record that showed that Mr. McMillian filed a Notice of Appeal and Rule 203(B) Explanation that was also received by the Clerk of Court on April 19th, 2016. The Court took judicial notice of the filing of the Notice of Appeal on April 19th, 2016, and made it part of the record of these proceedings, as Court Exhibit One.

Evans also testified that he had requested McMillian file a motion to suppress evidence, but that his attorney had not done so. He also stated he had requested copies of discovery, but that he did not see discovery until after he was sentenced and that his attorney had not reviewed discovery with him.

Mr. McMillian testified that he negotiated a plea offer with the Solicitor of a fifteen year sentence, but that Evans did not accept it. He testified that on April 13, 2016, he spoke in chambers with the plea judge and the Solicitor, and the judge indicated that he would likely give more than seven years but less than fifteen years. He stated that this indication was based on the information that Plea Counsel conveyed to the plea judge in chambers, which did not include the information that the narcotics officers and Evans's wife, the victim, were going to speak at the plea. Plea Counsel stated that he believes the plea judge gave Evans a higher sentence after he heard the victim and the narcotics officers speak at the plea. Plea Counsel stated that there was no reason to object to the plea court's sentence because it was within the statutory sentencing range and it was in the plea judge's discretion.

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McMillian stated that Evans wanted him to move to suppress the evidence found in his vehicle, including the pistol with an obliterated serial number, but Evans was later arrested for Driving Under the Influence, so he explained to Evans that the evidence was going to come in regardless of his motion because of the DUI arrest and subsequent search. But, according to Evans' testimony, McMillian told him there was not enough time to file the motion.

McMillian testified that he did not promise Evans any sentence, including the 7-15 year estimate the judge had indicated in chambers. He said he explained to Evans what the judge told him in chambers, but he explained the minimum and maximum sentence and did not promise any particular sentence would be imposed. McMillan stated that Evans did not ask him to file a motion to reconsider. He stated that Evans asked him immediately after the guilty plea to file an appeal, and he filed a notice of intent to appeal shortly after. McMillian testified that he was prepared to go to trial, although there was no defense they could use. He stated that he did not believe they would have been successful if he had made a motion to suppress the evidence. McMillian testified that he had met with Evans two or three times in person, and had also spoken with him on the phone. When questioned about whether he expected Evans to be sentenced between seven and fifteen years, as indicated by the plea judge, he said yes.

RECONSIDERATION OF FINDINGS AND CONCLUSIONS

The findings and conclusions commence on Page 6 of the Order, under Section V, with three subparts addressing each of Evans' allegations, and with headings of Promise of 7-15 year sentence, Failure to prepare a defense and meet with Evans, and Failure to file a motion to suppress. Evans will not seek reconsideration on the third allegation. The first and second subparts will be briefly addressed.

Mr. Evans' argument has never been about promises: he is here about professional obligations owed by defense counsel, just like all the cases cited by the parties. According to Evans, Mr. McMillian told him about the open plea deal, and to go through the motions; but he also had told him the judge said he would likely give more than seven years but less than fifteen years, and McMillian vouched for the judge when he told Evans that he had the judge's word. While likely inadvertent, it nonetheless has a coercive effect,⁶ in light of McMillian's statements about upsetting the judge and threat, or promise, of trial the following term of court: and, at the least these statements misadvised Evans.⁷

But if Evans were to make an argument about promises, perhaps there was a promise, depending on how one hears "likely more than seven but [likely] less than fifteen;" or, is it "likely more than seven, but less than fifteen?" One can change the qualifier from "likely" to "probably," or similar words, but it will not change the meaning. Evans statements show his focus was on what was "significantly  and how much more than seven, and he stated McMillian said probably eight or nine. So, is it credible to believe that Evans believed that "less than fifteen" was not what "likely" referred to; and so, logically, the next question discussed was how much more did "likely more than seven" mean, which gives context and credibility to Evans' statement McMillian told him probably eight or nine. And when Evans testified about

⁶ *Medlin* broadened the coercion test set forth in *Beaver* and *Cross*, which as a matter of law held the plea was involuntary when the defendant's decision to plea was actually influenced by the judge. *Harden*, at 256-7, discusses this and that "[t]he Standard is designed to prevent both the fact and the appearance of the trial judge's becoming an advocate against the desires of the defendant or the State of a particular resolution." See also the concerns of the two dissenting Justices in *Medlin* commencing at Section II, on 650-1, which speak to the inherent coerciveness and question of fundamental fairness under the 14th Amendment, and conclude "a guilty plea predicated upon a judge's promise of a definite sentence by its very nature does not qualify as a free and voluntary act. The plea is so interlaced with the promise that one cannot be separated from the other."

⁷ See *Alexander*, Footnote 3, *supra*; *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) ("To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him."); See *Holden v. State*, 393 S.C. 565, 574-75, 713 S.E.2d 611, 616 (2011) (finding the thorough plea colloquy given before the court accepted the plea cured any alleged deficiency in plea counsel's sentencing misadvice). But *Holden* did not involve a judge's participation, and there was nothing on the record in this matter to give notice that there had been an informal meeting and plea concessions offered by the judge.

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these things, at some point he changed from saying "Mr. McMillian said" or "Mr. McMillian told me:" it became "you told me ... and you told me ... and you told me," and Evans was looking directly at Mr. McMillian. It was not an outburst, but feelings were spilling out.

Evans must have written the letter to the Clerk of Court almost immediately for it to be delivered on the 19th, and for him to do so, it can be inferred Evans had concerns about McMillian for Evans to pursue this on his own. When asked by the plea judge whether he was satisfied with McMillian, Evans response was, "as good as I can be." That question was asked before sentence was imposed.

Mr. McMillian's Rule 203(B) Explanation raises concern. Taking McMillian's testimony that Evans asked McMillian to appeal as credible, and that McMillian states in his Rule 203(B) explanation that "he does not have a good faith basis to believe that any issues are properly before the Court of Appeals, and the undersigned did not object to the sentence or file a motion to reconsider the sentence:" would McMillian not have had an obligation to advise Evans that direct appeal was fruitless, and that plea reconsideration or withdrawal would be proper? The Plea Transcript is clean and free from error, and McMillian so attested. That necessary discussion between attorney and client about options other than a groundless direct appeal is conspicuously absent!

Mr. McMillian was not credible, in Evans' view, when he excused not meeting with Evans for a period of time because Evans was represented by another attorney in the family court, and he was waiting for those issues to be resolved before they could proceed with the criminal harassment charge pressed by his wife. Whatever Evans' family court issues would have been, and regardless of the relatively minor sentence for the harassment charge, Evans was facing a Meth Trafficking Second charge that carried seven to thirty years, and these other issues

pale in comparison to this charge that carried a no parole, 85-percent sentence, and with a violent and serious offense classification.

The conclusion based on Mr. McMillian's opinion that the judge sentenced higher because Mr. Evans' wife and a law enforcement agent's testimony is based only on McMillian's speculation. But if this testimony was a factor, Plea Counsel was not prepared for it.⁸ The conclusion that this was out of Plea Counsel's control is based on only speculation, as is the conclusion that had McMillian brought the deviation to the judge's attention, his objection likely would not have been successful.

Under *Medlin*, a record must be made when a judge becomes involved in a plea. Because the record was not created contemporaneously during the informal meeting with the judge, one reason for bringing the sentence deviation to the judge's attention is to create a clear record; another reason to give the judge an opportunity to hear from the defendant, which is defense counsel's principal concern. Without creating a record, the transparency of the judicial process becomes clouded, and that reflects on the integrity and respect of the courts. The *Medlin* standard "is designed to prevent both the fact and appearance" of a judge's involvement and coercive influence. *Medlin* 276 S.C. at 257. The *Thrift* Court saw the need to emphasize that the responsibilities are shared by the judge and respective counsel.⁹ Mr. McMillian acknowledged he

⁸ The preplea report option provided under *Medlin* may have prevented the surprise of this testimony. But it appears, based on the pressures of the case being suddenly added to the trial roster, and threats of the case being called the following week, that a reasonable time for Evans to weigh a plea was shortened to a two day scramble.

⁹ *Judicial Participation in Plea Bargaining: A Dispute Resolution Perspective* provides a recent fifty-state survey of judicial participation, and after analysis, strongly recommends creating a record whenever a judge participates, under the heading "B. Recording," commencing at Page 589. Risha Raj Batra, *Judicial Participation in Plea Bargaining: A Dispute Resolution Perspective*, 76 Ohio St. L.J. 566 (2015). The author also comments on recent United States Supreme Court interest in ineffective assistance in plea bargaining, at Page 567, in his Footnote 5, points to *Lafler v. Cooper*, 132 S. Ct. 1376, 1383 (2012) (petitioner could attack his guilty plea based on ineffective assistance at the plea bargaining stage, even when followed by a "full and fair trial"); *Missouri v. Frye*, 132 S. Ct. 1399, 1404 (2012) (petitioner could attack a knowing guilty plea when attorney error caused a better plea to be unavailable); *Padilla v. Kentucky*, 130 S. Ct. 1473, 1476 (2010) (failure to inform about collateral consequences of deportation in plea bargain ineffective assistance). The author writes, at 570, "[i]n these decisions, the Supreme

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expected a sentence between seven and fifteen years, so his own understanding gave him a reason to speak up and question the sentence when it exceeded fifteen years. Granted, the plea ending quickly after the sixteen year sentence was announced. Still, there was a ten day window to gather composure and meet with the client, but McMillian immediately filed the Notice of Appeal. The Notice of Appeal, Rule 203(B) Explanation, and cover letter to the South Carolina Commission on Indigent Defense were all dated April 15th, 2016, the day after the plea. *See* Court Exhibit One.

Evans' testimony that he would not have pled guilty if he had know he would receive more than fifteen years is clearly supported by the fact that he had previously rejected a plea offer of fifteen years. This supported testimony satisfied the prejudice prong. Therefore, based on the foregoing, the court should reconsider its findings, reconsider the applicable law as argued by the Evans, find that Evans met his burden to show plea counsel was ineffective when he failed to object contemporaneously or move for reconsideration or withdrawal of the plea at sentencing, and/or when he failed to move for withdrawal or reconsideration in a post-trial motion.

Briefly addressing Evans' second allegation of ineffective assistance, which the Order addresses under the section headed, Failure to prepare a defense and meet with Evans, Evans has explained the state of preparation when he was transported to court two or three days before he pled. McMillian testified he met Evans two or three times, possibly more. One of those times was in August, 2015 at Evans' bond reduction hearing. McMillian did not meet with Evans for several months. The evidence only shows McMillian meeting Evans at the courthouse holding area, when Evans was surprised to learn he had not been transported for bond review, but that the

Court for the first time applied the protections of the Sixth Amendment right to effective assistance of counsel to the plea bargaining process."

case had been added to the trial roster and that the solicitor offered a fifteen year plea, which Evans rejected. The following day, McMillian met Evans at the Aiken County Detention Center and advised Evans about the informal meeting with the judge, as has been sufficiently discussed. Considering the seriousness of the charges, Evans has questioned McMillian's excuse about not seeing Evans because of a pending family court matter.

Evans also questions preparation in light of the surprise testimony of the wife and law enforcement officer, which the State conceded could have affected sentencing. Evans requested copies of discovery, which were only provided to Evans after he again requested copies following the plea. Also related to preparation, Evans asked McMillian to file a motion to suppress, which McMillian did not file. According to Evans, McMillian told him there was not time to do so. According to McMillian, he did not file the motion because it would not have been successful. But that is speculative. The prejudice from all this is that Evans was forced into the position of having to choose to plea or not to plea over a two to three day period, based on information McMillian gave him, without information Evans had previously requested, and with the threat of a trial to quickly follow. Because of plea counsel's failure to prepare and meet with Evans, Evans was forced to make a hasty decision, where he was not given a reasonable amount of time to do so.

In making its determination, Evans requests the court consider ABA Standards for Criminal Practice. In *State v. Blakely*, 402 S.C. 650, 742 S.E.2d 29 (Ct.App. 2013), application of ABA standards on an issue unrelated to the issues in this matter, summarized South Carolina court's reference to and application of the ABA standards,¹⁰ and while finding the standards are not controlling or dispositive, stated the ABA standards may be useful or may offer assistance in

¹⁰ American Bar Association, *Criminal Justice Standards for the Defense Function*, Fourth Edition: https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition.html.

the analysis of an issue.¹¹ The following relevant Standards for the Defense Function may be helpful, with emphasis added:

Standard 4-1.5 Preserving the Record

At every stage of representation, defense counsel should take steps necessary to make a clear and complete record for potential review. Such steps may include: filing motions, including motions for reconsideration, and exhibits; making objections and placing explanations on the record; requesting evidentiary hearings; requesting or objecting to jury instructions; and making offers of proof and proffers of excluded evidence.

Standard 4-3.3 Interviewing the Client

(b) Counsel should interview the client as many times as necessary for effective representation, which in all but the most simple and routine cases will mean more than once. Defense counsel should make every reasonable effort to meet in person with the client. Consultation with the client regarding available options, immediately necessary decisions, and next steps, should be a part of every meeting.

(c) As early as practicable in the representation, defense counsel should also discuss:

(i) and share with the client evidentiary materials relevant to the matter (consistent with the terms of any applicable protective order), and determine in depth the client's view of the facts and other relevant facts known to the client;

(d) When asking the client for information and discussing possible options and strategies with the client, defense counsel should not seek to induce the client to make factual responses that are not true. Defense counsel should encourage candid disclosure by the client to counsel and not seek to maintain a calculated ignorance.

Standard 4-3.9 Duty to Keep Client Informed and Advised About the Representation

(a) Defense counsel should keep the client reasonably and currently informed about developments in and the progress of the lawyer's services, including developments in pretrial investigation, discovery, disposition negotiations, and preparing a defense. Information should be sufficiently detailed so that the client can meaningfully participate in the representation.

¹¹ *Blakely*, 402 S.C. 654-5. The cases were summarized in Note 4, which read: *See Council v. State*, 380 S.C. 159, 172-73, 670 S.E.2d 356, 363 (2009) (noting that trial counsel's conduct fell below the standards set by the ABA for the appointment and performance of counsel in death penalty cases); *Ard v. Catoe*, 372 S.C. 318, 332, 642 S.E.2d 590, 597 (2007) (citing the ABA's standards for defense counsel's performance regarding investigation of a capital case in support of its decision to affirm the PCR court's finding of ineffective assistance of counsel); *Matter of Goodwin*, 279 S.C. 274, 277, 305 S.E.2d 578, 580 (1983) (noting the ABA standards' suggested procedure for a trial court's handling of a conflict between counsel and a criminal defendant client intending to commit perjury); *Harden v. State*, 276 S.C. 249, 253-56, 277 S.E.2d 692, 694-95 (1981) (finding the rationale in ABA standard 14-3.3 regarding whether to accept guilty pleas and plea agreements persuasive); *State v. Way*, 264 S.C. 280, 285, 214 S.E.2d 640, 642 (1975) (Bussey, J., dissenting) (referencing the ABA standards' provision regarding the function of the trial judge); *State v. Stanley*, 365 S.C. 24, 39, 615 S.E.2d 455, 463 (Ct.App.2005) (citing, among other authorities, the ABA Standards for Criminal Justice, § 6-1.1 (2d ed.1980), for the premise that a judge has a responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of criminal justice).

(b) Defense counsel should promptly comply with the client's reasonable requests for information about the matter and for copies of or access to relevant documents, unless the client's access to such information is restricted by law or court order. Counsel should challenge such restrictions on the client's access to information unless, after consultation with the client, there is good reason not to do so.

Standard 4-5.1 Advising the Client

(e) Defense counsel should provide the client with advice sufficiently in advance of decisions to allow the client to consider available options, and avoid unnecessarily rushing the accused into decisions.

(f) Defense counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case or exert undue influence on the client's decisions regarding a plea.

Standard 4-6.3 Plea Agreements and Other Negotiated Dispositions

(a) Defense counsel should ensure that any written disposition agreement accurately and completely reflects the precise terms of the agreement, including the prosecution's promises and the client's obligations and whether any dismissal of charges will be with or without prejudice to later reinstatement.

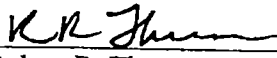
(b) During any court hearing regarding a negotiated disposition, defense counsel should ensure that all relevant details of the negotiated agreement are placed on the record, and that the record fully reflects any factors necessary to protect the client's best interests. Although the presumption is that the record will be public, in some cases the record (or a portion) may be sealed for good cause or as required by applicable rule or statute.

Plea counsel fell short of professional norms by failing to meet with Evans a reasonable number of times to be adequately prepared for the surprise and haste that ensued during the two days prior to the plea. Nor was plea counsel adequately prepared, or prepared for potential testimony of the wife and law enforcement; nor had he provided Evans requested information that would have been important to Evans' decision on whether or not to plea. The posture of the case suddenly changed the week of the plea. This caused prejudice and the two day scramble that led to Evans accept a plea under coercive circumstances. Again, Evans rejected a fifteen year plea offer from the solicitor, and testified he would not have pled if he had known he would receive more than fifteen years.

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In conclusion, Mr. Evans respectfully requests the court reconsider this matter, and now grant him relief on one or both of the claims, reverse the convictions, grant him a new trial, and for any other attendant relief necessary.

Respectfully Submitted,


Robert R. Thuss
Thuss Law Office LLC
7001 St. Andrews Rd. #193
Columbia, SC 29212
(803) 640-1000
Rob@ThussLawOffice.com

September 16, 2016
Lexington, South Carolina.

Thuss Law Office LLC

Robert Rutland Thuss, Esq.
7001 St. Andrews Rd. #193
Columbia, SC 29212
(803) 640-1000
Rob@ThussLawOffice.com

September 18, 2017

Aiken County Clerk of Court
P.O. Box 583
Aiken, SC 29802

RE: Evans v. State of South Carolina: 2016-CP-02-1894
For Filing: Evans' Memo in Support of Motion for Reconsideration

Please see the enclosed Memorandum for filing in the PCR action.

Respectfully,

Rob Thuss



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	Case No. 2016-CP-02-01894
Kenneth Bryant Evans II,	)	
	)	
Applicant,	)	ORDER DENYING MOTION TO
vs.	)	RECONSIDER
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter came before this Court by way of Plaintiff's Motion to reconsider an Order from this Court denying and dismissing Applicant's application for post-conviction relief (PCR) with prejudice. The application for PCR was filed August 22, 2016, and an Order of Dismissal was filed and served June 30, 2017. Applicant filed a Motion to Reconsider on July 10, 2017, and this Motion is denied for the reasons stated herein:

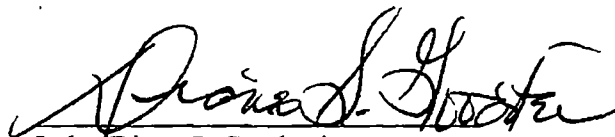
Applicant's Motion to Reconsider and accompanying memorandum in support of that Motion do not present any new, compelling arguments. Applicant's Motion was brought pursuant to SCRCP Rule 59(e), which permits a moving party to request that the Court alter or amend a judgment after it has been filed. Applicant failed to raise any new issues or reasons supporting alteration or amendment of the Order of Dismissal. Instead, Applicant simply asked the Court to reconsider the allegations contained in his application for PCR, specifically those related to his claims of an involuntary guilty plea and ineffective assistance of counsel. All evidence before the Court was considered when deciding the application for post-conviction

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relief, and that evidence was weighed in the discretion of the Court. In sum, Applicant has not presented any valid reasons for the Court to alter its Order of Dismissal.

Therefore, the Plaintiff's Motion to Reconsider is Denied.

IT IS SO ORDERED!


Judge Diane S. Goodstein
Circuit Court Judge

March 8, 2018

St. George, South Carolina

ELECTRONICALLY FILED - 2018 Mar 16 1:18 PM - AIKEN - COMMON PLEAS - CASE#2016CPO201894

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Diane Goodstein, Circuit Court Judge

Case No. 2016-CP-02-1894

Kenneth Bryant Evans II, #308918, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Kenneth Bryant Evans appeals the judgment of the Honorable Diane Goodstein dated March 8, 2018. Appellant received written notice of entry of this judgment on March 16, 2018.

April 6, 2018



Robert R. Thuss, Esq.
Thuss Law Office LLC
7001 St. Andrews Rd. #193
Columbia, SC 29212
(803) 640-1000

Attorney for the Appellant

Other Counsel of Record:
Julie A. Coleman, Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
803 734-3737

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Diane Goodstein, Circuit Court Judge

Case No. 2016-CP-02-1894

Kenneth Bryant Evans II, #308918, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 6th, 2018, address to its attorney of record, Julie A. Coleman, Esq., Assistant Attorney General, P. O. Box 11549, Columbia, SC 29211, on April 6th, 2018.

April 6, 2018


Robert R. Thuss, Esq.
Thuss Law Office LLC
7001 St. Andrews Rd. #193
Columbia, SC 29212
(803) 640-1000

Attorney for the Appellant

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Judge: D. Goodstein

Plf's Atty: Robert Thos

Def's Atty: Julie Coleman

ELECTRONICALLY FILED

2017 May 26 3:59 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201894

Page 1 of 1

By: Rhonda B. Daudy Aiken County Clerk of Court

Clerk should retain white copy in Civil cases and Family Court Cases, yellow copy in Criminal cases.

2016-65-02-00021

2016-65-02-00019

2016-65-02-00018

2016-65-02-00017

Kenneth Bright

2015A0220101053

2015A0220100547

2015A0220100546

2015A0220100545

2015A0220100545

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E-FILED ELECTRONICALLY FILED - 2017 May 26 3:59 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201894

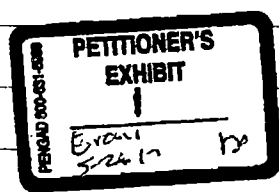
Mrs. Good or Assistant Clerk of Court,

I am writing in concern of requesting a sentence reconsideration from my guilty plea in Aiken County Court General Sessions on (April 14, 2016) in front of Honorable Judge Early of the 2nd Judicial Court. I would like to have this request documented. But I'm requesting to file this motion for sentence reconsideration. Can I get a post conviction Relief Application. I'd also like a motion of discovery of all evidence and my sentencing sheet. I also want to have a copy of all my records.

Sincerely,

P.S.: I would have put a case number out I don't have any legal information. I would like to receive a copy of all my records as well.

Kenneth Bright



April 19 16
L. Hodard
C.C.P. & G.S.
Deputy Clerk

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ECTRONICALLY FILED - 2017 May 26 3:59 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201894



Aiken County Clerk of Court
Criminal Division
P. O. Box 583
Aiken, S.C. 29802-0583
Phone: 803-642-1715

JANUARY 19, 2016

RE: LETTER

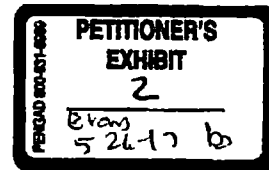
MR. KENNETH EVANS II

YOUR ATTORNEY MR MCMILLIAN WILL HAVE TO FILE FOR A RECONSIDERATION OF YOUR SENTENCES.

I HAVE ENCLOSED LETTER ABOUT YOU GETTING A TRANSCRIPT, AS WELL AS PCR FORMS YOU REQUESTED, AND SENTENCE SHEETS FROM YOUR PLEA AGREEMENT.

Regards;


Clerks Deputy



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ELECTRONICALLY FILED - 2017 May 26 3:59 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201894

OFFICE OF THE SECOND JUDICIAL CIRCUIT PUBLIC DEFENDER
410 Barnwell Avenue N.W.
Post Office Box 2247
Aiken, South Carolina 29802

April 15, 2016

South Carolina Commission
On Indigent Defense
Attention: Lorie French
P. O. Box 11589
Columbia, SC 29211

RE: NOTICE OF INTENT TO APPEAL
Kenneth Evans
2016 GS 02 00018, 2016 GS 02 00019, 2016 GS 02 00021

Dear Mrs. French:

Please find enclosed copies of Notice of Intent to Appeal, Indictment 2016 GS 02 00018, 2016 GS 02 00019 and 2016 GS 02 00020, Arrest Warrant, Sentence Sheet, defendant's affidavit of indigency and the Rule 203 (B) Explanation.

Kenneth Evans pled guilty and was convicted of Harassment, Possession of Pistol with Obliterated Serial Number and Trafficking Meth and was sentenced on April 14, 2016 before the Honorable Doyet A. Early, II. Ms. Cheri Young served as the Court Reporter. Her address is Post Office Box 5232, Aiken, South Carolina 29804.

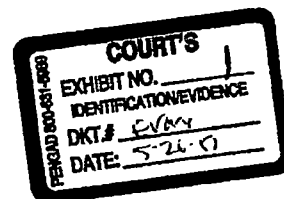
I am available to discuss this case if you so desire.

Sincerely,



M. Bradley McMillian
Assistant Public Defender

MBM:tpc
Enclosure



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ECTRONICALLY FILED - 2017 May 26 3:59 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201894

NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
FROM AIKEN COUNTY
THE HONORABLE Doyet A. Early, II
April 15, 2016

Indictment # 2016 GS 02 00018, 2016 GS 02 00019
2016 GS 02 00021

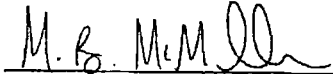
THE STATE OF SOUTH CAROLINA -- Respondent

VS.

KENNETH BRYANT EVANS -- Appellant

NOTICE OF INTENT TO APPEAL

Kenneth Evans pled guilty and was convicted of Harassment, Possession Pistol with Obliterated Serial Number and Trafficking Meth on April 14, 2016 before the Honorable Doyet A. Early, II in Aiken, South Carolina. He appeals his conviction and sentence.


M. Bradley McMillian
Attorney for Defendant

Other Counsel of record is:

Elizabeth B. Young
Assistant Solicitor
Post Office Box 3368
Aiken, South Carolina 29802

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STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

vs.

INDICTMENT #: 2016 GS 02 00021
2016 GS 02 00019, 2016 GS 02 00018

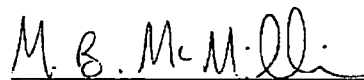
KENNETH EVANS

DEFENDANT

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), the undersigned asserts that he does not have a good faith basis to believe that any issues are properly before the Court of Appeals, and the undersigned did not object to the sentence or file a motion to reconsider the sentence. The Defendant then did make contact with an attorney in the Public Defender's Office telling him that he wanted an appeal filed on his case. The undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. See *Frazier v. South Carolina*, 430 F.3d 696, 706 (4th Cir.2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'" (quoting *Anders v. California*, 386 U.S. 738, 744 (1967))).

Respectfully Submitted,



M. Bradley McMillian
Assistant Public Defender
Post Office Drawer 2247
Aiken, South Carolina 29802
803-642-1732

April 15, 2016

NOTICE OF INTENT TO APPEAL

State of South Carolina

Vs:

Kenneth Bryant Evans

2016 GS 02 00018, 2016 GS 02 00019, 2016 GS 02 00021

CERTIFICATE OF SERVICE

I, Tesa Culbertson, do hereby certify that I have this day served the original of Appellate's Notice to Appeal upon the South Carolina Court of Appeals, and copies of Appellate's Notice of Intent to Appeal to the Clerk of Court of Aiken County and to Elizabeth B. Young, Deputy Solicitor, Second Judicial Circuit by placing same in the United States Mail properly addressed and with correct postage affixed thereto:

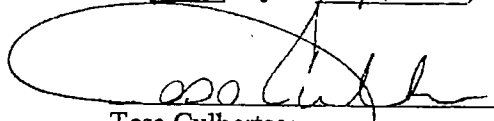
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

South Carolina Commission
Of Appellate Defense
P. O. Box 11589
Columbia, SC 29211

Clerk of Court
Aiken County Judicial Circuit
Post Office Box 583
Aiken, South Carolina 29802

Elizabeth B. Young
Deputy Solicitor
Post Office Drawer 3368
Aiken, South Carolina 29802

Dated this 19 day of April, 2016



Tesa Culbertson
Secretary to Appellant's Attorney
Post Office Drawer 2247
Aiken, SC 29802
803-642-1732

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
 STATE VS.
Kenneth Bryant Evans II

AKA: _____
 Race: _____ Sex: M Age: 32
 DOB: 08-19-1983 SS#: 250-75-1389
 Address: 2112 Honors Cir
 City, State, Zip: Warrenville, SC 29851
 DL#: 011187973 SID#: SC01392303

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in ice, crank or crack - 28 g or more, but less than 100 g - 2nd offense

in violation of § 44-53-0375(C)(2)(b) of the S.C. Code of Laws, bearing CDR Code # 0389
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

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

Elizabeth B. Young 73947 Kenneth Evans M.B. McMillan 100386
 Young, Elizabeth "Beth Ann" 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 16 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

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	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 8.40
TOTAL	\$	\$ 288.40

Clerk of Court/ Deputy Clerk Shannon B. Rosenkrantz

Court Reporter: Cheri Young

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS0200018

A/W#: 2015A0220100546

Date of Offense: 6/5/2015

S.C. Code § : 44-53-0375(C)(2)(b)

CDR Code #: 0389

SENTENCE SHEET

7-30 years
and \$50,000

☐ CONVICTED OF or ☒ PLEADS

ECTRONICALLY FILED - 2017 May 26 3:59 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201894

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge T. McMillan

Judge Code: 0136

Sentence Date: April 14, 2016

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ESSES

DOCKET NO. 2016GS0200018

Aiken Department Of Public Safety

The State of South Carolina

B C Bethmann

County of Aiken

Law Enforcement Case #: 15-38728

BAY

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

JANUARY TERM 2016

2015A0220100546

FILED 4 January 2016

Liz Godard
C.C.P. & G.S.
Shannon D. Rosenkrantz
Deputy Clerk

THE STATE
VS.

KENNETH BRYANT EVANS II

ACTION OF GRAND JURY

TRUE Bill

Foreperson of Grand Jury

Date: January 4, 2016

Gerald Ussery

CDR #: 0389

Indictment for

VERDICT

TRAFFICKING METHAMPHETAMINE

§ 44-53-0375(C)(2)(b)

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

14 day of April 2016

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Shannon D. Rosenkrantz
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE

§ 44-53-0375(C)(2)(b)

At a Court of General Sessions, convened on January 4, 2016, the Grand Jurors of Aiken County present upon their oath:

That **KENNETH BRYANT EVANS II** did in Aiken County on or about June 5, 2015, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly, actually or constructively possess or did knowingly attempt to become in actual or constructive possession of at least 28 grams but less than 100 grams of Methamphetamine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

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

Samuel Grimes
for J. STROM THURMOND, SOLICITOR

CHRONICALLY ILL
FILED 2017 May 26 3:59 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201894

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ELECTRONICALLY FILED - 2017 May 26 3:59 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201894

NESSSES

DOCKET NO. 2016GS0200019

Aiken Department Of Public Safety

B C Bethmann

Law Enforcement Case #: 15-38728

The State of South Carolina

County of Aiken

BAY

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

JANUARY TERM 2016

2015A0220100547

FILED 4 January 2016
Liz Godard
C.C.P. & G.S.
Shannon O. Rosen (Proant)
Deputy Clerk

THE STATE
vs.

KENNETH BRYANT EVANS II

ACTION OF GRAND JURY

True Bill

CDR #: 2364

Indictment for

POSSESSION OF A PISTOL WITH AN
OBLITERATED SERIAL NUMBER

§ 16-23-0030

J. STROM THURMOND, SOLICITOR

Gerald Ussery
Foreperson of Grand Jury
Date: January 4, 2016

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
14 day of April 2016
Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Shannon O. Rosen
Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
POSSESSION OF A PISTOL WITH AN
OBLITERATED SERIAL NUMBER

§ 16-23-0030

At a Court of General Sessions, convened on January 4, 2016, the Grand Jurors of Aiken County present upon their oath:

That **KENNETH BRYANT EVANS II** did in Aiken County on or about June 5, 2015, knowingly and unlawfully have in his possession a pistol, to wit: a S & W 40VE Pistol, from which the original serial number had been removed or obliterated. All in violation of §16-23-30 of the Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS.
Kenneth Bryant Evans II

AKA:

Race: Sex: M Age: 32DOB: 08-19-1983 SS#: 250-75-1389Address: 2112 Honors CirCity, State, Zip: Warrenville, SC 29851DL#: 011187973 SID#: SC01392303*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Harassment / 2nd degree Harassment

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS0200021A/W#: 2015A0220101053Date of Offense: 10/16/2015S.C. Code § : 16-03-1720(A)CDR Code #: 2403

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-1710(A) of the S.C. Code of Laws, bearing CDR Code # 2401☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.Elizabeth S. Young 73947 SC Bar# Defendant M.B. Miller 100386
Young, Elizabeth "Beth Ann" 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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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: 16-05-02-18
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 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	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk Shannon W. RosenkrantzCourt Reporter: Cheri Young

SCCA/217 (03/2011)

Presiding Judge Judge Code: 0156Sentence Date: April 14, 2016

ELECTRONICALLY FILED 2017 May 26 3:59 PM - AIKEN - COMMON PLEAS - CASE#2016CP0201894

153

0-30 Days
and/or
not more than
\$200

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
)

INDICTMENT FOR
HARRASSMENT IN THE FIRST DEGREE

§ 16-03-1720(A)

At a Court of General Sessions, convened on January 4, 2016, the Grand Jurors of Aiken County present upon their oath:

That **KENNETH BRYANT EVANS II** did in Aiken County at divers times on or between the dates of 9/11/2015 and 10/16/2015, commit the crime of Harassment In The First Degree as defined in Section 16-3-1700 Code of Laws of South Carolina (1976), as amended, in that the Defendant, Kenneth Bryant Evans II, through a pattern of intentional, substantial and unreasonable intrusion into the private life of Chelsea Evans that served no legitimate purpose and caused Chelsea Evans and would cause a reasonable person in her position to suffer mental or emotional distress, to wit: Kenneth Bryant Evans II continued to contact Chelsea Evans after being told to contact her solely through her attorney. All in violation of §16-3-1720 (A), 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.

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

ARREST WARRANT

2015A0220101053

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

18-12437 THE STATE
against

Kenneth Bryant Evans, II

Address: 2112 Honors Circle
Graniteville, SC 29829Phone: (803)215-0655 SSN: 250-75-1389
Sex: M Race: W Height: 6 Weight: 265DL State: SC DL #: 011187973
DOB: 8/19/1983 Agency ORI #: SC0020100

Prosecuting Agency: Aiken Public Safety

Prosecuting Officer: Jon Eagerton

Offense: HARASSMENT 1ST DEGREE

Offense Code: 2404 2403

Code/Ordinance Sec: 16-03-1700(B)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Personally appeared before me the affiant Jon Eagerton

being duly sworn deposes and says that defendant Kenneth Bryant Evans, II

did within this county and state on 10/17/2015

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Aiken

in the following particulars:

DESCRIPTION OF OFFENSE:

HARASSMENT 1ST DEGREE

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:

Upon information and belief, the defendant Kenneth Evans did on 10/16/2015 commit the offense of Harassment in the 1st degree. The defendant electronically communicated with the victim Chelsea Evans through unwanted text message and followed the victim to an appointment, creating a disturbance while she was inside the business. This occurring after being advised not to have any contact with the victim and following her during other incidents. There is documentation of a pattern of Harassment including 5 police reports. The victim has suffered emotional stress from these unwanted communications. This incident occurred at 955 Pine Log Rd, within the city limits of Aiken, SC and being in violation of the SC Code of Laws as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Affiant's Address 251 LAURENS STNW

AIKEN, SC 29801-

Affiant's Telephone (803)642-7620 x 0000

ARREST WARRANT

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant
onKenneth Evans
11-3-15

Signature of Constable/Enforcement Officer

RETURN WARRANT TO:

Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

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 10/17/2015 defendant Kenneth Bryant Evans, II

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of City of Aiken) as set forth below.

DESCRIPTION OF OFFENSE:

HARASSMENT 1ST DEGREE

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 10/17/2015

Signature of Issuing Judge (L.S.)

Judge Code: 003

Judge's Address 251 Laurens St NW

Aiken, SC 29801-

Judge's Telephone (803)642-7620 x 0000

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

AUDIT COPY

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Judge 

ор. 11-4-15

Type and Amount: SR \$5000

Name of Surety: _____

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney: _____

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros, etc.)

Disposition:

Sentence:

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address:

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address:

Telephone: _____

Name: _____

Address:

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

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2015A0220100547

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

15-38728 THE STATE
against

Kenneth Bryant Evans, II

Address: 2112 Honors Circle
Graniteville, SC 29829-

Phone: SSN 250-75-1389

Sex: M Race: W Height: 6 I Weight: 232

DL State: SC DL #: 011187973

DOB: 8/19/1983 Agency ORI #: SC0020100

Prosecuting Agency: Aiken Public Safety

Prosecuting Officer: Brandon C. Bethmann

Offense: POSS FIREARM WITH OBLITERATED SERIA

Offense Code: 3434-2364

Code/Ordinance Sec: 16-23-0500(A) 0030

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Kenneth Evans
on 6/5/15 at 1000 AM

Sgt. Sol 6113
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Personally appeared before me the affiant Brandon C. Bethmann who
being duly sworn deposes and says that defendant Kenneth Bryant Evans, II
did within this county and state on 06/05/2015 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Aiken)
in the following particulars:

DESCRIPTION OF OFFENSE:

POSS FIREARM WITH OBLITERATED SERIAL NUMBER

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.

Upon information and belief, the defendant, Kenneth Evans II, did on 06/5/2015; commit the offense of Possession of a
Pistol with Obliterated Serial Number. The defendant did have in his possession, located underneath the driver's seat, of
a vehicle driven by him, an S&W 40VE Pistol with an obliterated serial number. This occurred at 1106 Laurens Street
NW, which is within the city limits of Aiken, and in violation of South Carolina 1976 Code of Laws, as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Affiant's Address 251 Laurens St

Aiken, SC 29801-

Affiant's Telephone (803)642-7620

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 06/05/2015 defendant Kenneth Bryant Evans, II

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of City of Aiken) as set forth below:

DESCRIPTION OF OFFENSE:

POSS FIREARM WITH OBLITERATED SERIAL NUMBER

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 06/05/2015

Signature of Issuing Judge

Judge Code: 005

Judge's Address

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGIN

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

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On 6-5-15

Name of Surety: _____

Judge _____

Defendant Attorney: _____

Decision: _____

Judge _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

Address: _____

Name: _____

Telephone: _____

Address: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address:

Telephone: _____

Name: _____

Address. _____

Telephone: _____

Name: _____

Address: _____

Telephone _____

2015A0220100546

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

15-38728 THE STATE
against

Kenneth Bryant Evans, II

Address: 102 N Holland St.
Clinton, SC 29832

Phone: SSN:
Sex: M Race: W Height: 6 Weight: 232

DL State: SC DL #: 011187973

DOB: 8/19/1983 Agency ORI #: SC0020100

Prosecuting Agency: Aiken Public Safety

Prosecuting Officer: Brandon C. Bethmann

Offense: TRAFFICKING IN METHAMPHETAMINE

Offense Code: 0450

Code/Ordinance Sec: 44-53-370

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Kenneth Evans
on 6/5/15 at 1000 AM

Sgt. Sol 6113
Signature of Constable/Law Enforcement Officer:

RETURN WARRANT TO:

Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

ORIGINAL

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of

City of Aiken

Personally appeared before me the affiant Brandon C. Bethmann who
being duly sworn deposes and says that defendant Kenneth Bryant Evans, II
did within this county and state on 06/05/2015 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Aiken)
in the following particulars:

DESCRIPTION OF OFFENSE: TRAFFICKING IN METHAMPHETAMINE

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:

Upon information and belief, the defendant, Kenneth Evans II, did on 06/5/2015; commit the offense of Trafficking
Methamphetamine. The defendant did have in his possession a quantity of Methamphetamine exceeding fifteen grams
without the lawful authority to do so. The quantity of Methamphetamine was located in the center console of the vehicle
Mr. Evans was driving. This occurred at 1106 Laurens Street NW, which is within the city limits of Aiken, and in
violation of South Carolina 1976 Code of Laws, as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Aiken

Affiant's Address 251 Laurens St
Aiken, SC 29801-
Affiant's Telephone (803)642-7620

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 06/05/2015 defendant Kenneth Bryant Evans, II
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of City of Aiken) as set forth below:

DESCRIPTION OF OFFENSE: TRAFFICKING IN METHAMPHETAMINE

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 06/05/2015

Signature of Issuing Judge (L.S.)

Judge Code 005

Judge's Address

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circ

ORIGIN/

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INMATE SEARCH DETAIL REPORT

EVANS II, KENNETH BRYANT (00308918)



INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	MALE	SCDC ID:	00308918
RACE:	WHITE	SID:	SC01392303
HEIGHT:	6' 01"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	256 lbs.	ADMISSION DATE:	04/20/2016
AGE:	35	LOCATION:	LIEBER
CITIZENSHIP:	CITIZEN - NATIVE BORN	DORM-ROOM-BUNK:	EB-0046-A
BUILD:	LARGE	EWC LEVEL:	5F5
COMPLEXION:	FAIR	EEC LEVEL:	
HAIR COLOR:	BLOND OR STRAWBERRY	PROJECTED RELEASE DATE:	03/23/2029
EYE COLOR:	GREEN	PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
PICTURE DATE:	04/20/2016	SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

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CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
TRAFFICKING IN CRACK COC	ADULT-STRAIGHT SENTENCE	16	0	0	AIKEN	08/21/2015	V	4	16GS0200018	ACTIVE
POSSESSION OF WEAPON	ADULT-STRAIGHT SENTENCE	5	0	0	AIKEN	08/21/2015	N	3	16GS0200019	ACTIVE

ESCAPES

NO ESCAPES DURING CURRENT INCARCERATION

DISCIPLINARIES

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

DATE	DESCRIPTION
12/28/2017	USE, POSS NARC, MARIJ, UNAUTH DRUG, INHALANT
	LOSS OF CANTEEN PRIVILEGES FOR 90 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 90 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 90 DAYS
09/28/2017	POSSESSION OF A WEAPON
	LOSS OF CANTEEN PRIVILEGES FOR 90 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 90 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 90 DAYS

MOVEMENT

MOVEMENT DATE	TO LOCATION	STATUS	REASON
05/28/2018	LIEBER	INCARCERATED	ADMINISTRATIVE
05/27/2018	OUTSIDE MEDICAL	AUTH ABSENCE (AWL)	MEDICAL
05/24/2018	LIEBER	INCARCERATED	ADMINISTRATIVE
08/14/2017	BROAD RIVER	INCARCERATED	RETURN FROM COURT
08/14/2017	DORCHESTER CO	AUTH ABSENCE (AWL)	TO COURT
05/26/2017	BROAD RIVER	INCARCERATED	RETURN FROM COURT
05/25/2017	AIKEN CO	AUTH ABSENCE (AWL)	TO COURT
04/13/2017	BROAD RIVER	INCARCERATED	RETURN FROM COURT
04/13/2017	AIKEN CO	AUTH ABSENCE (AWL)	TO COURT
01/26/2017	BROAD RIVER	INCARCERATED	RETURN FROM COURT
01/25/2017	BAMBERG CO	AUTH ABSENCE (AWL)	TO COURT
01/25/2017	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
01/25/2017	KIRKLAND	INCARCERATED	MEDICAL
07/25/2016	BROAD RIVER	INCARCERATED	RETURN FROM COURT
07/25/2016	AIKEN CO	AUTH ABSENCE (AWL)	TO COURT

INMATE SEARCH DETAIL REPORT

EVANS II, KENNETH BRYANT (00308918)

MOVEMENT			
MOVEMENT DATE	TO LOCATION	STATUS	REASON
06/06/2016	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
04/20/2016	KIRKLAND	INCARCERATED	NEW ADMISSION

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EARNED WORK CREDITS				
JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
GENERAL WORKER	06/20/2018			5F5
FOOD SERVICE AIDE	06/09/2016	10/13/2016	UNSAT JOB PERFORM	3F5

EARNED EDUCATION CREDITS				
NO EARNED EDUCATION CREDITS DURING CURRENT INCARCERATION				