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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

George M. McFaddin, Circuit Court Judge

EFRAIN MATOS RIVERA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000758

APPENDIX

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

State of South Carolina,)
)
 PLAINTIFF,) **TRANSCRIPT OF HEARING**
) 2015-GS-43-0182
 v.)
)
 Efrain M. Rivera,)
)
 DEFENDANT.)

Sumter County Courthouse
 August 11, 2016

BEFORE:

HONORABLE JEFFREY YOUNG, PRESIDING JUDGE

APPEARANCES:

Assistant Solicitor Bronwyn McElveen
 Attorney for The State of South Carolina

Garryl Deas, Esquire
 Attorney for Defendant

TAKEN BY MELISSA R. SINGLETARY
 CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no exhibits marked during this Plea)

1 Solicitor McElveen: Your Honor, this is the case of
2 State of South Carolina vs. Efrain M. Rivera. Indictment
3 Number 2015-GS-43-0182. Mr. Rivera was originally
4 charged with trafficking in heroin over 28 grams. In
5 exchange for his plea, the State is still willing to
6 reduce it to trafficking in heroin 4 to 14 grams with a
7 negotiated sentence of seven (7) years, the mandatory
8 minimum on this offense. It is also a violent and
9 serious offense. He has indicated he wishes to plead
10 guilty and he is represented by attorney Garryl Deas.

11 Bailiff: Raise your right hand, please.

12 (Defendant indicates)

13 Bailiff: State your name.

14 Defendant: Efrain M. Rivera.

15 Bailiff: Do you solemnly swear or affirm that your
16 testimony to the court will be the truth, the whole truth
17 and nothing but the truth, so help you, God?

18 Mr. Rivera: Yes.

19 The Court: Mr. Deas, you represent Mr. Rivera, is
20 that correct?

21 Mr. Deas: Yes, sir.

22 The Court: I know it's just been for a short period
23 of time but you have had several motions this week.
24 Have you had an opportunity to explain to him the charges
25 contained in the indictment, the possible punishment he

1 faces and his constitutional rights?

2 Mr. Deas: I have, Your Honor. Because of the
3 unique situation of this case, let me just put a little
4 bit more on the record.

5 The Court: Yes, sir.

6 Mr. Deas: I, of course, I was retained by Mr.
7 Rivera on Wednesday of this week. He had fired his
8 previous lawyer, Mr. James Erwin. I discussed with Mr.
9 Rivera what the plea offer was which was pleading to the
10 lowest range of trafficking of heroin, which carries
11 seven years, I believe up to twenty-five. I explained to
12 him also, Your Honor, that if he were found guilty as
13 charged under his indictment he was facing a mandatory
14 minimum sentence of twenty-five years up to forty. After
15 picking the jury, I had several more discussions with Mr.
16 Efrain, I'm sorry, Mr. Rivera as well as with his wife
17 and the decision was made by him to plea to the reduced
18 charge with the understanding that it's a negotiated
19 seven years. After thorough discussion with him, he has
20 decided to enter that plea and he signed the plea sheet
21 accordingly.

22 The Court: Okay. Do you agree with his decision?

23 Mr. Deas: Yes, sir.

24 The Court: And do you believe that if this case
25 were to go to trial, that there would be a substantial

1 likelihood that he would be found guilty beyond a
2 reasonable doubt?

3 Mr. Deas: I believe there is sufficient evidence
4 that could yield a guilty verdict.

5 The Court: All right. Now, Mr. Rivera, I need to
6 ask you a series of questions to make sure that you're
7 entering into this plea freely, voluntarily, knowingly
8 and intelligently. The first question I have is:

9 **Mr. Rivera - Questions by The Court**

10 Q Are you under the influence of alcohol or drugs
11 today?

12 A No, sir.

13 Q All right. Are you taking any medication that
14 would cloud your judgment?

15 A No, sir.

16 Q Are you aware of any physical, emotional or
17 nervous condition that would keep you from understanding
18 what is happening today?

19 A No, sir.

20 Q Now, the indictment reads, under indictment
21 2015-GS-43-182, trafficking in illegal heroin. It says
22 that Efrain M. Rivera did in Sumter County on or about
23 October 13, 2014, sell, deliver, purchase or bring into
24 this State or did aid, abet, attempt or conspire to sell,
25 deliver, purchase or bring into this State or was

1 knowingly in actual or constructive possession of a
2 quantity of heroin in an amount of 28 grams or more same
3 being a controlled substance all within the meaning of
4 section 44-53-110 et seq. South Carolina Code of Laws,
5 1976 as amended. And in violation of section 44-53-
6 370(e)(3)(c) of the South Carolina Code. Mr. Rivera, is
7 what is stated in this indictment the truth, sir?

8 A Can I speaks.

9 The Court: He wants to talk to his attorney?

10 (Off the record discussion between attorney and
11 client)

12 A Yes, sir.

13 The Court: Madam Solicitor, what are the facts.

14 Solicitor McElveen: Yes, sir. On October 13, 2014
15 around 9:00 a.m., Officer Rulone with the Sumter County
16 Sheriff's office observed a white 2012 Hyundai Genesis
17 with a Florida license plate at mile marker 137 on
18 Interstate 95 here in Sumter County traveling 78 miles
19 per hour in a 70 mile per hour zone. As the officer
20 pulled behind the vehicle to conduct a traffic stop for
21 the speeding violation, the vehicle slowed to under 70
22 miles per hour in the passing lane impeding traffic by
23 not allowing any vehicles to pass. The officer initiated
24 a traffic stop and the vehicle came to a stop near mile
25 marker 135. Inside the vehicle, Mr. Rivera was the

1 driver of the vehicle. There was a passenger Pazaro(sp).
2 Right when he approached, Your Honor, the officer could
3 smell the distinct odor of marijuana coming from inside
4 the vehicle and he saw a pack of rolling papers in the
5 center console. He immediately called for Staff Sergeant
6 Tasone for backup. Officer Tasone was there within two
7 and a half minutes. Mr. Rivera was asked to step to the
8 rear of the vehicle and while he stepped out, Officer
9 Rulone asked permission to search his person and he
10 granted. The initial search of his person revealed a
11 black plastic bag containing hundreds of pieces of wax
12 paper and rubber bands commonly used to package illegal
13 drugs, specifically heroin in his right back pants pocket
14 and \$534.00 of U.S. Currency in his front pants pocket.
15 Officer Tasone, meanwhile arrived on the scene, and
16 removed the passenger and did a pat down of his person
17 and located a plastic bag wrapped in duct tape around his
18 person between two pairs of underwear and it contained
19 approximately 116 grams of suspect Molly MDMA in a rock
20 form and a clear plastic bag containing marijuana. Both
21 subjects were placed under arrest and read their Miranda
22 Rights. At this point, Mr. Rivera was under arrest for
23 the paraphernalia and for constructive possession of what
24 they think is Molly because he has the packaging for the
25 drugs found on the other. When he went to jail, also the

1 story during all of this doesn't really make sense, they
2 said they had never met but they were riding from North
3 Carolina down to Florida and denied any knowledge of the
4 Molly and Mr. Rivera had the packaging for these drugs.
5 However, at Sumter-Lee Regional Detention Center, Mr.
6 Rivera was stripped to search him and at that point when
7 he was naked from the bottom down the officer, Officer
8 Rulone was present, observed him try to conceal the back
9 of his hand behind himself. His pants that had already
10 been searched were sitting there and the officer asked
11 him what he was doing and they caught him trying to take
12 from his person, where it came from, we would suggest but
13 heading to his pants pocket that had already been
14 searched, and it was a black tube and the officers
15 assumed it was Molly again because the other defendant
16 had Molly. When the drugs were tested they were put into
17 evidence, he was arrested for their drugs, too. When
18 they were put into evidence and Mr. Powell analyzed the
19 drugs it was heroin. It was 47.71 grams of heroin. That
20 is the equivalent of Four Thousand, seven hundred and
21 seventy one hits or doses of heroin and inter-mixed with
22 that heroin we also learned was a heart medicine that
23 would ease the burn upon the entry into the person artery
24 or their vein, I'm sorry. But then also it would slow
25 the heart down so compared with the heroin and the heart

1 medicine potentially lethal doses of heroin, Your Honor.

2 Mr. Rivera was charged with this trafficking
3 offense but in exchange for his plea and the fact that he
4 is a Florida resident and we are willing to let him plea
5 to the mandatory minimum of seven years on the lower
6 level trafficking. All drugs were tested, placed into
7 evidence and he's here today pleading guilty.

8 The Court: Mr. Rivera, you've heard what the
9 solicitor has said concerning your arrest and everything.
10 Is what she stated the truth?

11 Mr. Deas: One of the things, maybe I miss hear,
12 but I thought she may have said he was traveling north on
13 I95, but he was actually traveling south on I95. That's
14 one thing I know he had a issue with but I'll let him
15 answer the question at this time.

16 The Court: Is what she's stated the truth, sir?

17 Mr. Rivera: Yes, sir.

18 The Court: All right. Are you, in fact, guilty?

19 Mr. Rivera: Yes, sir.

20 The Court: I didn't hear you?

21 Mr. Rivera: Yes, sir.

22 The Court: Now, you understand that this carries
23 from seven to twenty-five years in jail but your attorney
24 has negotiated a sentence of seven (7) years and I can
25 either accept that or reject that but I can't change it.

1 Do you understand that?

2 Mr. Rivera: Yes, sir.

3 The Court: Now, do you understand as well that
4 because this is a drug offense, if you should get another
5 drug offense, you could have a minimum, a higher minimum
6 sentence and a higher maximum sentence. Do you understand
7 that?

8 Mr. Rivera: Yes, sir.

9 The Court: Now, do you understand that when you
10 plead guilty you waive certain constitutional rights. The
11 first right you waive is your right against self
12 incrimination. In this court or any other court in this
13 land would you ever been required to testify against
14 yourself; however, when you plead guilty, you're doing
15 that. Do you understand that?

16 Mr. Rivera: Yes, sir.

17 The Court: Do you wish to waive your right against
18 self incrimination and proceed with this plea?

19 Mr. Rivera: Yes, sir.

20 The Court: Now, you're also waiving your right to
21 have a jury trial. We have already selected twelve
22 primary jurors and two alternates to hear this case, if
23 necessary. They are ready to try this case in the
24 morning. And, if there was a trial, Mr. Deas can argue
25 and cross examine with the witnesses, call witnesses on

State of South Carolina vs. Efrain M. Rivera 11

1 your behalf. Could challenge the arrest and the seizure
2 of the drugs, but when you plead guilty, you don't get to
3 ask any questions and the State doesn't have to prove
4 anything. Do you understand that?

5 Mr. Rivera: Yes, sir.

6 The Court: So, you wish to waive your right to have
7 a jury trial and confront the witnesses against you?

8 (Attorney Deas has off the record discussion with
9 Mr. Rivera)

10 Mr. Rivera: Yes, sir.

11 The Court: All right. Has anybody threatened you
12 in any way to get you to plea guilty?

13 Mr. Rivera: Not really.

14 The Court: Has anybody promised you anything other
15 than the seven year negotiated plea to get you to plead
16 guilty?

17 Mr. Rivers: No, sir.

18 Q: Is the reason that you're pleading guilty is
19 because you are in fact guilty?

20 A Yes, sir.

21 Q Are you satisfied with the services of Mr.
22 Deas?

23 A I'm really satisfied with service.

24 Q Do you need anymore time to speak with him
25 while we are here?

1 A Yes, sir.

2 Q All right.

3 The Court: Take a moment to speak with him. I'll
4 give you five minutes.

5 Mr. Deas: Yes, sir.

6 (There was a break)

7 Ms. McElveen: Your Honor, I believe we are back on
8 the record with Mr. Rivera.

9 The Court: All right. You've now had time to talk
10 to your attorney?

11 Mr. Rivera: Yes, sir.

12 **Mr. Rivera - Questions by The Court (cont'd)**

13 Q Have you understood my questions today?

14 A Yes, sir.

15 Q Do you have any questions for the Court? I'm
16 going to give you an opportunity to speak, but do you
17 have any specific questions for me?

18 A For you?

19 Q Yes, sir.

20 A I wish you can let me go handcuffed with the
21 two people here, they can put me in the handcuff and I go
22 down there to my car so I can say by to my wife and I can
23 smoke me a cigar.

24 Q I didn't know you were in handcuffs but I order
25 that you not leave the court house, but I didn't know you

1 were in handcuffs.

2 Mr. Deas: Basically, Your Honor ...

3 The Court: What's he saying.

4 Mr. Deas: He's asking once he's sentence, if he can
5 go in handcuffs in the custody of law enforcement to his
6 car ...

7 The Court: That would be between you and the jail.
8 I do not, I don't grant visitation or anything like that.
9 That's not my job. So, that would be between you and the
10 jail.

11 Mr. Deas: But you don't object to it?

12 The Court: I do, but that's between you and jail.
13 He doesn't need to ask me. He has to ask the jail.

14 Mr. Deas: Yes, sir.

15 The Court: For visitation and it would have to be a
16 secure situation.

17 Mr. Deas: Yes, sir.

18 The Court: I'm just not going to take that chance.

19 Q You understand that if you change your mind
20 about your decision to plead guilty or the sentence that
21 I give you, which, at this time, is the negotiated
22 sentence that you'll only have ten (10) days in which to
23 file an appeal?

24 (Attorney Deas talk to Defendant off the record)

25 A Yes, sir.

1 Q All right. Under indictment 2015-GS-43-182,
2 charging you with trafficking in heroin, four grams or
3 more but less than fourteen grams, first offense, how do
4 you plea, guilty or not guilty?

5 A Guilty.

6 Q All right. I find there's a substantial
7 factual basis for your plea, I find the defendant has
8 entered into it freely, voluntarily, knowingly and
9 intelligently. He has had the advice of counsel and he
10 says that he is well pleased.

11 The Court: Ms. McElveen, anything further?

12 Ms. McElveen: Yes, sir. I just want to make sure
13 the Defendant does understand that it is a violent and
14 serious offense and so there will be strikes.

15 The Court: You understand that with this sentence,
16 you will have to serve eighty-five (85%) percent of the
17 seven years?

18 Mr. Rivera: Yes, sir.

19 The Court: If you should get another sentence such
20 as this then you could be sentenced to life in prison.
21 Do you understand that?

22 Mr. Rivera: Yes, sir.

23 The Court: Okay. Very well. What's his criminal
24 record?

25 Ms. McElveen: Your Honor, he has a 2002 Possession

1 of Heroin out of Florida. Then he has a 2005, out of
2 Florida again, alluding police, an aggravated battery
3 with a deadly weapon is what they their terminology is.
4 That is his criminal record, Your Honor.

5 The Court: Is that correct, sir?

6 Mr. Rivera: Yes, sir.

7 The Court: Mr. Deas.

8 Mr. Deas: Thank you, Your Honor, may it please the
9 Court. Your Honor, I represent the Defendant, Mr.
10 Rivera. He's 38 years of age. His birth date is
11 . He is married. His wife is here with him
12 today. They have a seven year old son. His wife has also
13 recently miscarried. She was pregnant with their second
14 child and recently miscarried. Your Honor, essentially,
15 I've only been involved in this case basically since
16 Wednesday, yesterday, but during that time, you know, Mr.
17 Rivera he was always where I asked him to be. He never
18 gave me any issues or problems. He was respectful, even
19 today, although he was upset about essentially what was
20 likely going to be the outcome if he were found guilty of
21 these charges. When I explained to him that if found
22 guilty, he could be sentenced anywhere from 25 to 40
23 years and that with the crime that he was charged with
24 that if he was found guilty by the jury it was a
25 mandatory minimum sentence of twenty-five years. Of

1 course, I had told him that before today and told him
2 that initially when he retained me and I think ultimately
3 that's what led to his decision to plea. He understood
4 that with a trial, of course, the outcome is uncertain
5 but being a father and a husband, he did not want to take
6 the risk of possibly being found guilty of what he was
7 indicted for because he realized essentially that could
8 mean a twenty-five year or longer sentence and he did not
9 want to take the risk of a trial because of the severe
10 penalty if he's found guilty. He discussed it with his
11 wife and myself in the conference room and ultimately
12 said he made the decision to plea because he wants to
13 have the opportunity to still be a father and a husband
14 and be a family man. He said that prior --- he's always
15 done construction work. He was born in Puerto-Rica but
16 he now lives in Tampa, Florida with his family. He
17 understands this is a violent crime and most serious
18 which means he will have to serve eighty-five (85%)
19 percent of the sentence. He also understands that he
20 will have a strike against him here in South Carolina and
21 if he is convicted of a most serious and violent crime,
22 again, that he's looking at life without parole. He and
23 I had, that was another motivating factor he said for
24 going ahead and moving forward with the plea. He said he
25 just wants to basically put this situation that happened

1 back in 2014 behind him and pay his debt to society and
2 try to move forward. He said he hasn't really, he hasn't
3 been in any trouble with the law since this incident and
4 that's he's tried to turn his life around and that he's
5 basically has been concentrating on being a father and a
6 husband since then. He doesn't deny that he's had quiet
7 a past. He doesn't deny that his life has seen many
8 brushes with the law and he doesn't shy away from the
9 fact that that was his past but he said that's not going
10 to be his future. So, Your Honor, I would ask the court
11 to follow the negotiated sentence and we thank you for
12 your time.

13 The Court: What would you like to say?

14 Mr. Rivera: I would say --- he had say it.

15 The Court: I think certainly based upon what you
16 are possibly facing, you've made the right decision. The
17 sentence of the court, I will accept the negotiated
18 sentence of seven (7) years. Good luck to you.

19 Ms. McElveen: Thank you, Your Honor.

20 (End of Plea)
21
22
23
24
25

CERTIFICATE

This is to certify that the Plea transcript in the matter of State of South Carolina vs. Efrain M. Rivera, consisting of Seventeen (17) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 19th day of July, 2017.

Melissa R. Singletary

Melissa R. Singletary
Certified Verbatim Court
Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of SUMTEREFRAIN MATEO RIVERA 364334

Full name and prison number (if any) of Applicant

v.

State of South Carolina

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IN THE COURT OF COMMON PLEAS

OF ORIGINAL FILE

Barbara Shaper
DEPUTY CLERK OF COURT
2016-CP-13-97
SUMTER COUNTY
SOUTH CAROLINA

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 WATEREE CORRECTIONAL INSTITUTION
REMBERT, SOUTH CAROLINA
2. Name and location of Court which imposed sentence SUMTER COUNTY
GENERAL SESSIONS, SUMTER, SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any) ANGEL LUIS PIZARRA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-43-0182 TRAFFICKING HEROIN 1st
 - (b) _____

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Referred to

Answered

PCB/PB

Dreese

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 11, 2016 7 YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Guilty PLEA
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) LAYMAN TO LAW / TIME EXPIRED
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (c) SEE ATTACHMENT
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (c) SEE ATTACHMENT
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. _____

(Attachment sheet)

(10(A) INEFFECTIVE ASSISTANCE OF COUNSEL) (1st) (11A)

CASE SUMMARY

On October 13, 2014, the Applicant, Efraim Matos Rivera, was arrested in Sumter County for Trafficking Heroin. Applicant then retained Attorney James I. Lewis, of Myrtle Beach, South Carolina as Counsel of Record. Counsel then assured Applicant that he would indeed represent Applicant to the letter of the law, guaranteeing Applicant that the outcome of the matter would assure Applicant a reduction of charges and/or a payment of a fine to the courts. Counsel continued to receive payment of fees from Applicant for two years, stating to Applicant that all was being worked on. August 6, 2016, Counsel contacted Applicant to inform him that on August 8, 2016 he would be expected in court. Applicant complied and upon his appearance, Applicant was made aware that on February 5, 2015 he and his co-defendant (Angel Luis Pizarro) had been indicted by the Grand Jury of Sumter County. He was further made aware that his co-defendant plead guilty and received a fine of \$2,500 (Twenty Five Hundred). Applicant questioned Counsel as

to the status of his case. Counsel then began to attempt to explain to Applicant his failure to investigate the entire case, nor has he filed for Applicant's Rule 5 Discovery to ascertain all of the facts of the case. Counsel was clearly unprepared to represent Applicant for trial or any phase of litigation in the matter pending. Counsel then began to threaten and coerced Applicant into pleading guilty to accept a sentence that was unfair and unjust, even though Applicant's co-defendant received a fine by the court. On August 8, 2016 Attorney James T. Ervin was relieved by Applicant as counsel of record.

(10A) (11A)

INEFFECTIVE ASSISTANCE OF COUNSEL

(James T. Ervin, Esq.)

Strickland vs. Washington, supra, clearly express a two prong test in establishing the effectiveness of a counsel's performance. Attorney James T. Ervin's performance in this present matter before the court fell far below the reason level of representation mandated by law. Counsel's lack of service to Applicant caused undue hardship and violated Applicant's Due Process

rights that are afforded to him under the Constitution of the United States. Under Criminal Law Key 1434, S.C. 2000 it is stated that a defendant who pleads guilty on advice of counsel may collaterally attack the plea by showing that counsel (1) was ineffective (2) there is a reasonable probability that but for counsel's errors defendant would not have pled guilty. Kirk vs. State, 530, S.E. 2d 887, 340, S.C. 81 S.C. 2000 further states, a claim of ineffective assistance of counsel may be raised in a Post Conviction Relief (PCR) action because if applicant proves his case, his conviction or sentence will be overturned. USCA. Constitution Amend. 6 CODE 1976; 17-27-20(a). Al-Shabazz vs. State 527, S.E. 2d 742, 338 S.C. 354.

(10A) (1)(a)

INEFFECTIVE ASSISTANCE OF COUNSEL (2nd)
(GARRY L. DEAS, ESQ.)

CASE SUMMARY

On ~~October~~ 9, 2010, after applicant relieved former counsel, JAMES T. ERVIN of representation

Applicant retained Attorney Garry L. Deas as new counsel of record. Attorney Deas then instructed Applicant that he would have to appear in court on ~~August 10, 2016~~ to motion the court for a continuance in order to be adequately prepared to represent Applicant in this case that is before the court. On ~~August 10, 2016~~ Applicant and counsel appeared before the court to notify the Honorable Court that counsel was just retained as new counsel of record and to present a motion to the court for a continuance, in which the Honorable Court advised and informed Applicant and counsel to be prepared for trial the following day. (~~August 11, 2016~~) Counsel that attempted to force Applicant and coerce Applicant to plea guilty outside of Applicant's will. Applicant began to state to counsel that he was not comfortable with going to trial the next day when counsel only had case one (1) day and not prepared or ready for trial, but counsel stated to Applicant, "these people know me around here, don't worry about anything." On August 11, 2016, Applicant and his family were in court with counsel. Applicant began jury selection, then the

HONORABLE COURT CALLED FOR A RECESS. AT THIS TIME COUNSEL TOLD APPLICANT TO PLEA GUILTY BECAUSE IT WAS CLEAR THAT COUNSEL WAS NOT PREPARED TO GO FORWARD WITH TRIAL. APPLICANT INFORMED COUNSEL OF HIS INTENT AND COUNSEL THEN BEGAN TO TELL APPLICANT THAT THE GOVERNMENT HAD THREATENED TO GIVE THE APPLICANT FORTY (40) YEARS IF HE DID NOT PLEA GUILTY AND WAS FOUND GUILTY OF THE CHARGE. COUNSEL BEGAN TO COERCE AND CREATE A SENSE OF FEAR TOWARDS THE APPLICANT AND HIS WIFE, CAUSING APPLICANT'S WIFE TO BECOME FEARFUL AND EMOTIONAL, THUS CAUSING APPLICANT TO GO CONTRARY TO HIS TRUE DESIRE FOR TRIAL, COUNSEL ATTACKED APPLICANT'S FAMILY WITH FEAR AND CAUSED UNDO PRESSURE ON APPLICANT TO PLEA BY COERCION AND FEAR.

(10(A) (11(A))

INEFFECTIVE ASSISTANCE OF COUNSEL
(GARRY L. DEAS, ESQ.)

THE COURTS HAVE ESTABLISHED THAT ALL DEFENDANTS HAVE A CONSTITUTIONAL RIGHT TO EFFECTIVE COUNSEL. STRICKLAND VS. WASHINGTON, SUPRE. HAS MANDATED A TWO PRONG TEST TO EXAMINE THE EFFECTIVENESS OF COUNSEL IN EVERY CRIMINAL CASE BEFORE THE COURT. CLEARLY IN THE INSTANT CASE THERE IS NO WAY THAT

Counsel could begin to pass the test that is established in Strickland, supra. given the fact that counsel was only counsel of record for one (1) day and had not done any discovery (Rule 5), investigation of facts, filed any motions or petitions on behalf of the applicant nor was he prepared for trial. In Hill vs. Lockhart, supra and Boykin vs. Alabama, supra, it has been clearly established by the Courts that all pleas "must" be knowingly and intelligently made and such plea "cannot" be made under duress, by intimidation, threats or force. After reviewing the record it will clearly show that such violation did in fact occur in this instant case, thus not only violating applicant's Due Process Rights afforded to him by the 14th Amendment of the Constitution, but also applicant's right to a fair trial. Pursuant to Criminal Law Key 1481 (Voluntariness) C.A. 4 (S.C.) 1970, judgement and sentence entered on plea of guilty which is void because induced by promises or threats is subject to collateral attack by a motion to vacate sentence, 28 U.S.C.A. 2255; Fed. Rules Criminal Procedure Rule 11, 18, U.S.C.A. RAWES vs. U.S. 423 F.2d 526 D.S.C. 1975 states relief under statute authorizing motion to vacate, set aside or correct sentence

is available after showing that a guilty plea was a product of governmental promises.

(SEE) U.S. vs. BARRITT, 390 F. Supp. 1022

(10)(B)(C) (11)(B)(C)

14th & 6th Amendment Violation (Due Process)
(Trial Court)

CASE SUMMARY

On August 10, 2016 Applicant and Counsel appeared before Trial Court, after one (1) day retaining of Counsel to motion the Trial Court for a continuance in the instant case in order for Counsel to prepare proper litigation on the behalf of the Applicant. For Counsel states such failure would render his representation of Applicant ineffective. Trial Court denied Counsel's motion, stating that the case was two (2) years old and that Applicant only relieved first Counsel (James T. Edwin) and retained new Counsel (Garry L. Deas) to prolong or intentionally tie the court system up. That Applicant's intent was to attempt to keep his case out of court and hold up the court. Trial Court told the Applicant and Counsel to be in court the next

day for trial with NO EXCEPTIONS. Trial Court Ruling WAS ERRONEOUS AS TO his view of the intentions of the Applicant. It's Ruling WAS PREJUDICIAL in NATURE AND DENIED Applicant his due PROCESS rights Afforded to him under the Constitution. Trial Court's Ruling was bias, based solely on Trial Court's assumptions and according to Factual Evidence. His Ruling prejudices not only Applicant's right to a fair trial, a fair bite of the apple and forces Applicant's counsel to fall far below reasonable representation to insure Applicant's United States Constitutional Right were not violated. Trial Court was in error to speak or rule in regards to Applicant's intent, for there was NO constructive or circumstantial evidence to support Trial Court's assumptions or allegations concerning it's Ruling which forced Applicant to plea to a charge which was not applicable to Applicant.

(10(B)(C)) (11(B)(C))

14th & 6th Amendment Violation (DUE PROCESS)
(Trial Court)

Criminal LAW KEY 586 (Discretion Of Court)

C.A. 4 (S.C.) 2003, states to violate 6th Amendment right to present a defense by denying trial continuance, trial court must have abused it's discretion and the erroneous ruling must have prejudiced the defense. U.S.C.A. Constitution Amendment 6.

(SEE) Hill vs. Ozmint, 339 F.3d 187
Clearly Applicant's 14th & 6th Amendment Rights were violated by Trial Court's erroneous, abusive and prejudice ruling in regards to Applicant's motion for continuance.

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

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. JAMES T. ERVIN
MYRTLE BEACH, SOUTH CAROLINA
 ii. GARRY L. DEAS
SUMTER, SOUTH CAROLINA
 iii. _____

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

i. (INITIAL RETAINED COUNSEL)
(ARRAIGNMENT)
 ii. (NEWLY RETAINED COUNSEL)
(PLEA & SENTENCING)
 iii. _____

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

VACATE, SET ASIDE & GRANT EVIDENTIAL
HEARING TO ESTABLISH THE FACTS AND/OR
TRUE MERITS OF VIOLATIONS OF RIGHTS.

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

NO

STATE OF SOUTH CAROLINA)

County of SUMTER)

VERIFICATION

I, Efraim Marcos Rivera 369339, 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.

Efraim Rivera

SWORN to and subscribed before me this 31st
 day of October 2016.

Pamela D Hatfield (L.S.)
 Notary Public

My Commission Expires: 3/15/2021

RECORDED

2016 NOV -7 PM 2:12

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

SUMTER COUNTY, S.C.

I, EFRAIN MAKOS RIVERA 369339, 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.

Efrain Rivera
Applicant

SWORN or affirmed to and subscribed before me this
31st day of October, 2016.

Pamela D. Hatfield
Notary Public

My Commission Expires: 3/15/2021

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Efrain Matos Rivera, #369339,

Case No.: 2016-CP-43-2097

Applicant,

**RETURN AND PARTIAL
MOTION TO DISMISS**

v.

State of South Carolina,

Respondent.

RECORDED
2017 OCT 17 AM 8:45
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on November 7, 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 Sumter County Clerk of Court. In February 2015, the Sumter County Grand Jury indicted Applicant for possession of a schedule I or II (narcotic) controlled substance and trafficking heroin, twenty-eight grams or more (2015-GS-43-0182). Garryl Deas, Esquire, represented Applicant. James T. Ervin, Esquire, represented Applicant prior to his guilty plea and was relieved as counsel on August 8, 2016. Assistant Solicitor Bronwyn McElveen, Esquire, prosecuted the case.

On August 11, 2016, Applicant pled guilty to the lesser included offense of trafficking in heroin, more than four grams but less than fourteen grams, before the Honorable W. Jeffrey Young. During the plea hearing the State gave the following recitation of the facts:

On October 13, 2010, around 9:00 a.m., an officer with the Sumter County Sheriff's Office conducted a traffic stop for a speeding violation in which Applicant was the driver of the vehicle. As the

officer approached the vehicle, he smelled the distinct odor of marijuana and observed a pack of rolling papers in the center console. He immediately proceeded to call for backup. Once backup arrived, Applicant was asked to step out of the vehicle, and upon doing so, gave consent for the officer to search his person. The search revealed a black plastic bag containing hundreds of pieces of wax paper and rubber bands, which are commonly used to package illegal drugs, specifically heroin, as well as \$534.00 in United States currency. Upon search of the passenger, officers found a plastic bag wrapped in duct tape around his person, which contained approximately 116 grams of suspect Molly (MDMA) in a rock form and a clear plastic bag containing marijuana. Both individuals were arrested and read their Miranda rights. Once the drugs were tested and positively identified as heroin, Applicant was charged with trafficking in heroin.

(Tr. 6-9). Applicant agreed to the Solicitor's recitation of the facts. (Tr. p. 9) Pursuant to a negotiated sentence, Judge Young sentenced Applicant to imprisonment for seven years.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on October 31, 2016, for failure to provide a sufficient explanation for appealing, as required by Rule 203(d)(1)(B) of the South Carolina Appellate Court Rules (SCACR). State v. Rivera, Appellate Case No. 2016-1717 (S.C. Ct. App. filed October 31, 2016). The remittitur was issued on November 18, 2016.

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

II.

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

1. "Ineffective Assistance of Counsel (James T. Ervin, Esquire)/Involuntary Guilty Plea"

- a. "Attorney James T. Ervin's performance in this present matter before this court fell far below the reason level of representation mandated by law, Counsel's lack of service to Applicant caused undo [sic] hardship and violated Applicant's Due Process Rights ..."
 - b. Failure to investigate
 - c. Failure to file motion for Rule 5 discovery materials
 - d. Failure to prepare for trial
 - e. Ervin "coerced Applicant into pleading guilty to accept a sentence that was unfair and unjust, even though Applicant's co-defendant received a fine by the court. On August 8, 2016, Attorney James T. Ervin was relieved by Applicant as counsel of record."
2. "Ineffective Assistance of Counsel (Garryl L. Deas, Esquire)/Involuntary Guilty Plea"
 - a. "[After the court denied a motion for continuance the day before trial], Counsel then attempted to force Applicant and coerce Applicant to plead guilty outside of Applicant's will. Applicant began to state to counsel that he was not comfortable with going to trial this next day when counsel only had case one day and not prepared or ready for trial, but Counsel stated to Applicant "these people know me around here, don't worry about anything."
 - b. "[After jury selection], Counsel told Applicant to plead guilty because it was clear that counsel was not prepared to go forward with trial. Applicant informed counsel of his intent and Counsel then began to tell Applicant that the government had threatened to give Applicant forty (40) years if he did not plead guilty and was found guilty of the charge."
3. "14th and 6th Amendment Violation (Due Process) (Trial Court)"
 - a. "Trial court denied Counsel's motion [for continuance], stating that the case was two (2) years old and that Applicant only retained new counsel to prolong or intentionally tie the court system up."
 - b. "Trial court ruling was erroneous as to his view of the intentions of the Applicant. Its ruling was prejudicial in nature and denied Applicant his due process rights afforded to him under the Constitution. Trial Court's ruling was bias [sic], based solely on Trial Court's assumptions and according to factual evidence. His ruling prejudice not only Applicant's right to a fair trial, a fair bite of this apple and force Applicant's counsel to all far below the reasonable representation to insure Applicant's United States Constitutional Right were nor violated. Trial Court was in error to speak or rule in regards to Applicant's intent, nor there was no constructive or circumstantial evidence to support Trial Court's assumptions or allegations concerning its ruling which forced Applicant to plea to a charge which was not applicable to Applicant."

III.

Respondent submits Applicant's first and second allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for

counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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.

Applicant also asserts his plea was involuntary, as a result of ineffective assistance of counsel. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoc v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent interprets Applicant's third claim as one of trial court error, and therefore requests that it be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Trial court error is not a claim cognizable under the act. Applicant is not collaterally attacking his guilty plea or sentence. Applicant's contention that such a ground is impliedly created by S.C. Code Ann. § 17-27-90 is meritless, as that section does not pertain to *what* may be raised, but *how* valid grounds must be raised.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they

could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss the allegation for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VII.

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

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws 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.

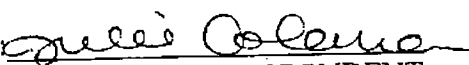
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Telephone: (803) 734-3737

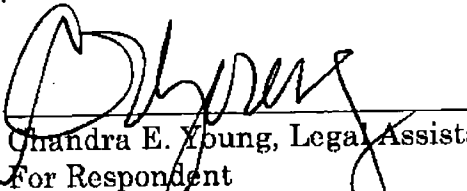
October 10, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2016-CP-43-2097
EFAIN RIVERA, #369339	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Lance S. Boozer, Esquire
 1400 Laurel Street; Suite 4-A
 Columbia, SC 29201

DATED this 10TH day of October, 2017.


 Chandra E. Young, Legal Assistant
 For Respondent

1 State of South Carolina)
2 County of Sumter) In the Court
3 Efrain Matos Rivera,) Of Common Pleas
4 Applicant/Plaintiff,) Case No.: 2016-CP-43-02097
5 vs.) Transcript of Record
6 State of South Carolina,)
7 Respondent/Defendant.)
8 _____)

9

November 16, 2017

10

Sumter, South Carolina

11

12 BEFORE:

13

The Honorable George M. McFaddin, Judge

14

15 APPEARANCES:

16

17

Lance S. Boozer, Esquire
Attorney for the Applicant/Plaintiff

18

19

Julie Coleman, Assistant Attorney General
Attorney for the Respondent/Defendant

20

21 ALSO PRESENT:

22

Efrain M. Rivera

23

24

25

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2	PCR HEARING	
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14	EXHIBITS		
15	NO. DESCRIPTION	ID	EVDS.
16	NONE		
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1 Thereupon, the following proceedings were had,

2 THE COURT: Who's next?

3 MS. COLEMAN: May it please the Court. This is
4 Efrain Rivera versus the State of South Carolina. Docket
5 number 2016-CP-43-2097. The applicant is presently
6 confined in the South Carolina Department of Corrections
7 pursuant to orders of committment of the Sumter County
8 Clerk of Court. In February of 2015 the Sumter County
9 Grand Jury indicted applicant for possession of a
10 schedule I or II narcotic controlled substance and
11 trafficking heroin 28 grams or more. Garryl Deas,
12 Esquire represented the applicant. James T. Irvin,
13 Esquire represented the applicant prior to his guilty
14 plea and was relieved as counsel on August 8th, 2016.
15 Assistant Solicitor Bronwyn McElveen, Esquire prosecuted
16 the case. On August 11th, 2016 applicant pled guilty to
17 the lesser included offense of trafficking in heroin more
18 than 4 grams but less than 14 grams before the Honorable
19 W. Jeffrey Young. Pursuant to a negotiated sentence
20 Judge Young sentenced applicant to imprisonment for seven
21 years.

22 Applicant filed a timely notice of appeal. The
23 South Carolina Court of Appeals dismissed applicant's
24 appeal on October 31st, 2016 for failure to provide
25 sufficient explanation for appealing. The remittitur was

1 issued November 18th, 2016.

2 Applicant filed a timely application for post
3 conviction relief on January 30th, 2017 alleging that he
4 was being held in custody unlawfully based on the
5 following allegations: Ineffective assistance of
6 counsel, James T. Irvin; ineffective assistance of
7 counsel Garryl Deas; involuntary guilty plea; and
8 violation of due process. The State filed its return and
9 partial motion to dismiss on October 10th, 2017 and he is
10 present today and represented in this matter by Lance
11 Boozer.

12 Your Honor, before we begin, I would like to make my
13 motion to dismiss the allegations of trial court error in
14 his application. Those are direct appeal issues and
15 they're not proper for post conviction relief.

16 THE COURT: Mr. Boozer, on that?

17 MR. BOOZER: Judge, anything that obviously relates
18 to a trial court error is asking this court to review
19 another judge's decision and I agree. That's not part of
20 the PCR.

21 THE COURT: That motion is granted, Ms. Coleman.

22 MS. COLEMAN: Thank you, Your Honor.

23 MR. BOOZER: Your Honor, we'll go ahead and call
24 Mr. Rivera to the stand.

25

1 Thereupon,

2 EFRAIN M. RIVERA

3 after having been first duly sworn, testified as follows,

4 THE CLERK: State your name for the record.

5 THE WITNESS: Efrain Matos Rivera.

6 THE COURT: Mr. Rivera, how are you today?

7 THE WITNESS: I'm all right, sir.

8 THE COURT: All right, sir. I'm glad to hear that.

9 Mr. Rivera, do you understand that this is a post
10 conviction relief hearing? Do you understand that?

11 THE WITNESS: Yes, sir.

12 THE COURT: You also understand contrary sometimes
13 to popular belief I do not have the authority to
14 summarily or whimsically reduce your sentence or give you
15 a time cut. Do you understand that?

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. Boozer, did you want to discuss
18 anything further with him before we proceed?

19 MR. BOOZER: Yes, sir, Your Honor. As we start the
20 testimony I will.

21 THE COURT: Yes, sir.

22 MR. BOOZER: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. BOOZER:

25 Q. Mr. Rivera, how are you?

1 A. I'm all right, sir. How about yourself?

2 Q. I'm doing fine. Thank you for asking. Mr. Rivera,
3 obviously the Judge is telling you what he can do here for you
4 today. Obviously you filed a PCR application?

5 A. Yes, sir.

6 Q. Okay. And you understand that the only thing that
7 this court can do is just grant you a new trial and start you
8 completely over on your original charge?

9 A. Yes, sir. I understand that. You did disclose that
10 with me the other day, sir.

11 Q. You're probably tired of hearing that from me,
12 aren't you?

13 A. Yes, sir.

14 Q. Okay. I just want to make sure that you know what
15 you're asking for. But you are fine, you understand that
16 going back to, if you are successful today and you go back and
17 face a new trial, that there are some risks involved, that if
18 everything just went horribly wrong for you with the jury,
19 that you could theoretically get more time than even what you
20 got in your plea or what you have left to serve. We have
21 discussed that?

22 A. Yes, sir. We discussed that, too.

23 Q. Okay. And you understand that that is the risk but
24 the benefit is you get a new trial and knowing that risk you
25 still want to go forward?

1 A. Yes, sir.

2 Q. Okay. Thank you, Mr. Rivera. Mr. Rivera, what are
3 you currently incarcerated for?

4 A. I'm incarcerated because on October 11, 2014 I got
5 stopped on I-95 and when they stopped me, they stopped me for
6 speed limit. When they stopped me for speed limit, the
7 officer that stopped me, they say, "do you know why I stopped
8 you?" I said yes, sir. So he told me, "can I search you?"
9 So I say yes, sir. You can search me. So when they search me
10 and they search me, they don't find no drug on me and all that
11 so when I see that they would search me, they got like two
12 more car, officer car. So when they got my co-defendant, when
13 they search him, they find the drug on him. So they say okay.
14 So both of you go to jail. So when they find the dope on my
15 co-defendant, they started searching on me. They no find no
16 dope on me. So when I went to the county jail, that when they
17 say you got dope, too. I say, "where you find the dope?"
18 Because the county jail, when I went inside the county jail,
19 they got camera in the county jail so they no show no video.
20 They got dope from me for the county jail and all that so I
21 just - I don't understand, you know, so...

22 Q. And I appreciate you giving some of that background.
23 Let me jump in. What were you originally charged with, do you
24 remember?

25 A. My original charge is trafficking heroin 4 gram

1 more, 4 gram more but less than 12 gram.

2 Q. Okay. Well, you ended up pleading to trafficking
3 less than --

4 A. Less than - less than 12 gram. 14 gram.

5 Q. Okay. And you received a seven year sentence as a
6 result of that?

7 A. Yes, sir.

8 Q. All right. Obviously you filed this PCR
9 application. Who was your lawyer who represented you at your
10 guilty plea?

11 A. My lawyer was Garryl Deas.

12 Q. Mr. Deas?

13 A. Deas Firm.

14 Q. We'll get into that in just a second. Did you have
15 an attorney prior to Mr. Deas?

16 A. The only time that I just - I just found Garryl Deas
17 because the first lawyer that I had it was James T. Irvin.
18 The day they call me to court I don't even know I have to go
19 to trial. It was October 6th. They call me. It was Friday
20 so I came here from Florida and it was August 8th so I dismiss
21 him because he trying to give me, he said you have to plea
22 seven years. This is the deal that I got for you.

23 Q. Let me stop you right there. I know you have a lot
24 of information that we have got to give to his Honor but we
25 have to do it in an organized way so let me ask you some

1 questions.

2 A. Yes, sir.

3 Q. When you got arrested, did you hire a lawyer when
4 you first got arrested?

5 A. When I got arrested, I went to court and they no
6 give me a lawyer so I hired a lawyer James T. Irvin from
7 Myrtle Beach, South Carolina.

8 Q. How long did Mr. Irvin represent you?

9 A. He was from 2000 - he was from 2015. I hired him in
10 January 2015 to 2016 in August, August 8th. That when I
11 dismiss him.

12 Q. Okay. When Mr. Irvin was your lawyer, did you, were
13 you here in South Carolina or did you bond out and go back to
14 Florida? Tell me about that.

15 A. No. When I hire James T. Irvin, I bond out. I went
16 back to Florida because that's where I live. I don't know
17 nothing about South Carolina, you know? I never been in South
18 Carolina. My residence is in Florida. Tampa, Florida.

19 Q. Okay. During that time did you speak to Mr..
20 Irvin?

21 A. The only time that I speak with Mr. Irvin was when I
22 paid him every other month. He just -- I sent money to him
23 because we get - it was like, you know, I was like, I paid
24 every other month to him and he charge me 13,000 so I paid
25 every other month so every time I talk to him he tell me

1 everything all right. Everything all right. Just send me the
2 money. That's it.

3 Q. Would you speak with Mr. Irvin about anything other
4 than money? Would y'all talk about the case?

5 A. Nothing else.

6 Q. Okay. Now, eventually you were starting to tell the
7 court this, that you asked that he be relieved or you fired
8 Mr. Irvin?

9 A. I never tell the court no that because Mr. Irvin he
10 never tell me that I have to go to court to only like a week -
11 like a week - a week before I have to come to here to South
12 Carolina. That when he told me I have to come to court.

13 Q. Okay. So he tells you at the last minute that you
14 have got to come to court in South Carolina?

15 A. Yes, sir.

16 Q. Did you come up?

17 A. And I come here.

18 Q. Okay. What happened when you got here?

19 A. When I come here, he told me we have to go to court
20 August 8th so I came here when it was August 8th. He told me
21 be here in court like 10:30 in the morning. So when I was
22 here, they call my name but he no was here so I didn't say
23 nothing. I call him and say, hey, they call me already. He
24 say just hold tight. That I'm fixin' to be here.

25 Q. Was he somewhere else?

1 A. He was somewhere else. He called me from Myrtle
2 Beach. I don't know where in Myrtle Beach, South Carolina.
3 So when he came here, he came here like 2:30, 2:30 afternoon
4 so when he came here, there was nobody. We came here to talk
5 with the State Attorney with Ms. -- I can't pronounce that
6 name for that lady. So when I was talking with him, it was
7 me, my attorney, Mr. James T. Irvin and my evidence, something
8 like that. So she told me listen, Mr. Rivera, you got - it
9 was like 63 gram of heroin or 73 gram of heroin. They have
10 reduced it to 4 gram and offering to give me seven years.

11 Q. They were offering you seven years at that time?

12 A. That's what they told me the first time they told
13 me.

14 Q. What was your response to that? Did you want to
15 accept that?

16 A. And I told I don't - I told her, I said, I came
17 here. I don't even know how to go to court or they fixing to
18 sentence me or they give me a deal like that. I came here
19 because James T. Irvin told me he got a good deal like my
20 co-defendant. My co-defendant got a fine, \$2500.00 and he got
21 caught with 118 gram on the same thing.

22 Q. So you rejected that seven year offer?

23 A. I rejected that offer. So when I rejected that
24 offer, Ms. Maevers (phonetic) or something like that, I can't
25 remember that name for that lady, so I reject the offer. I

1 tell listen, I didn't even know I had to go to trial because
2 he never tell me. He never tell me. So when she told me, he
3 never said nothing. This is the first time I met James T.
4 Irvin. So I reject him and I said, I told her I release him
5 from my lawyer so I left. So when I left, I'm from Florida.
6 So she told me you left. You have to go to trial on the 11th.
7 So it was August 8th so I have a few more day to go to trial.
8 So it was about 4:00, 4:30 that I left from court. So he said
9 Main Street around here so I went with me and my wife and my
10 son that when I went to James - that when I went to Garryl
11 Deas Firm. So when I went in, it was almost closed so I told
12 the secretary in the front, I explain to her and he come to
13 talk to me.

14 Q. Mr. Deas?

15 A. Yeah.

16 Q. Okay. So what day was it that you hired Mr. Deas,
17 do you recall?

18 A. I talked with Mr. Deas August 8th so he told me --

19 Q. All right. Hang on a second. When was your plea?

20 A. I plea guilty.

21 Q. Was that August 11th?

22 A. August 11.

23 Q. So you talked to Mr. Deas on August 8th?

24 A. On August 8.

25 Q. Tell us about that conversation.

1 A. When I went inside there Mr. Deas Firm so I explain
2 my situation. I give him that the first time that I got all
3 my discovery for James T. Irvin for all this time. That's
4 when he give me the discovery the day that I came here to
5 South Carolina so I show that to Mr. Deas and I give him a
6 DVD. So he told me, he told me your lawyer, he just rob. He
7 didn't do nothing. He didn't do no motion. He didn't do
8 nothing for you. So he told me you give me seven grand, you
9 bring me seven grand and you have to dismiss your lawyer.

10 So we did that letter so I can send that letter to
11 James T. Irvin for I can dismiss him for my lawyer. So he
12 tell me you give me seven grand, I'll do a better job than he
13 do. So I told him listen, you do that, I will give you more
14 than seven grand so I gave him ten grand. So I went to
15 Florida. I told him I have to go to Florida to bring the
16 money. So I went to Florida. When I came here with the
17 money, it was August 9, the second time coming with money. So
18 he said yeah. You bring the ten grand. So he told the
19 secretary to wait for me. So when he came, he told me we have
20 to go talk with the judge for the motion for continue the
21 motion. So I said --

22 Q. You wanted to get the case continued?

23 A. The case continued.

24 Q. Okay.

25 A. So when we came here in front of the judge, he

1 started telling the judge that he the new lawyer and the judge
2 told him, he said, well, I deny the motion because this case
3 being almost two year and it's time to get it, and he trying
4 to get a sentence or go to trial so I dismiss the motion. So
5 they denied the motion. On August 9 he deny the motion. He
6 told Mr. Deas and me that he will see us in trial the 11th.

7 Q. Okay. So y'all were - you had hired Mr. Deas on the
8 8th or the 9th and then you were gonna have to go to trial on
9 the 11th?

10 A. On the 11th.

11 Q. All right. What sort of discussion did you have
12 with Mr. Deas about going to trial after the continuance
13 motion was denied?

14 A. So I told Mr. Deas so he started seeing the DVD what
15 the guy on I-95, what they arrest me for. So he see he didn't
16 find no drug on me. They find drug on my co-defendant and all
17 that. So he told me, well, okay, so he really, really for me
18 he ain't got no time for him was - he - he - one day he can't
19 be prepared for my case. But he told me - he told me the
20 people here, he been here about 20 something year a lawyer in
21 Sumter so he know a lot of people here so a case like mine he
22 don't need no time for preparing himself. So I didn't say
23 nothing. So I said I fixing to go to trial.

24 So the day I fixing to come to trial I told him I'm
25 fixing to go back to Florida. So I don't think he think - I

1 don't think he think I'm fixing to come back. He told I don't
2 think you fixing to come back. The time I came here the 11th
3 he see me so he got surprise by me and my wife and my son. So
4 he told me the trial fixing to start at 9:30 and I don't went
5 to trial to 4:00. So I told him what's going on? He tell me
6 hold on. Hold on. Hold on. So he trying to tell me do I
7 still want to go to trial. I say, yeah. I want to go to
8 trial. So he started telling me, "do you still want to go to
9 trial?" So I told him yeah. I want to go to trial. So I
10 don't think he was prepared. For one day for me I don't feel
11 like he know my whole case. He has to do all investigation
12 and in one day there ain't no time for that.

13 Q. Okay. Did y'all actually begin to pick a jury?

14 A. Yes, sir. We picked a jury.

15 Q. What happened after that?

16 A. Well, we picked the jury. It was 12 people and then
17 two extra more. After they pick the 14 people, the judge
18 asked for a rest, for a break, 30 minute break. That when my
19 wife started breaking down. She started crying and all that
20 stuff so they take us to a room, in a little room in the back.
21 So I started talking with my wife and Mr. Deas came inside the
22 room and he said listen, you know, you got a beautiful family
23 and they offer seven year, uhm, you know? And I'm feeling --
24 What he told me, you know, he said you got a beautiful family.
25 If I was you, I would plea seven years because that judge

1 right there, he raise it. If we go in front of judge, he
2 raise it.

3 So I look at him. I said why you no tell me that in
4 the beginning? So, you know, I give you \$10,000.00. You tell
5 me you fixing to give me probation three years. You fixing to
6 do better than James T. Irvin and you still, they still give
7 me seven year.

8 Q. Let me ask you this: Ultimately you ended up going
9 forward with the plea?

10 A. Going for the plea, sir.

11 Q. Tell the court why you took the plea?

12 A. So I took the plea because really was a lot of
13 promises. They tell me I'm -- I did that because they put a
14 lot of pressure on me and my family and one day, in one day he
15 was no prepared for my case. From the beginning he told me
16 when I went inside his office, me and my wife and my son and I
17 explain, he tell me, if you bring me the money, I will get you
18 a better deal than you got and in the end of the day I was
19 still seven year so I know if we go to trial, he ain't do no
20 better than seven, you know.

21 Q. Okay. So were you having any discussions with
22 Mr. Deas about what the charges carried?

23 A. He, really when he got the time that when we was in
24 the room that he told me, you know, we go to trial, I'm fixing
25 to go fight for you, that when the state attorney, she came

1 inside in the room, she say, I'm fixing to give you this last
2 opportunity. You got to sign for seven year because if you go
3 to trial, you fixing to lose trial. You no fixing to win
4 trial. He know that. So he told me you don't know that.
5 That's Mr. Deas told her that she don't know that. So she
6 said you know that you know you no fixing to win trial. So
7 she left. I left the paper right there and me and my wife, my
8 wife, she was crying, you know. She told me just sign the
9 seven year, you know, because he ain't do better, you know.
10 He just lie to us already. So I signed the seven year
11 because, you know, I see that they just put a lot of pressure
12 on me and my wife, you know, and my son. I came here, I
13 didn't expect that.

14 Q. Okay. And you wanted it at that time? You actually
15 wanted a trial?

16 A. Yes, sir.

17 Q. Okay. Now, obviously there's a record of certain
18 questions that you had to answer at your plea indicating you
19 admit your guilt and what not. Why were you making those
20 statements to the judge?

21 A. When I plead guilty, the judge ask me, you satisfied
22 with Mr. Deas, what he did with your case? The way he
23 represent you? I told the judge yes because that's the only
24 word that came out of my mouth at that time. But really
25 inside me, inside him he know one day is not enough for my

1 case like that for he can do all the investigation in one day
2 is not enough.

3 Q. Okay. Now, you filed a fairly lengthy PCR
4 application and I want to make sure we covered all of your
5 allegations. One of which that I believe you covered is that
6 attorney Irvin's performance was deficient in that he failed
7 to investigate?

8 A. Yes, sir.

9 Q. Failed to file a motion for Rule 5?

10 A. Yes, sir.

11 Q. Failed to prepare for trial?

12 A. Yes, sir.

13 Q. And coerced you into accepting a sentence that you
14 felt was unfair based on what your co-defendant got?

15 A. Yes, sir.

16 Q. To your knowledge, did Mr. Irvin do anything to
17 investigate or prepare your case for trial?

18 A. Mr. Irvin just - he just - he ain't did nothing. He
19 just postpone it, postpone it because I don't believe inside
20 my heart that he came from Myrtle Beach one time here to
21 Sumter to discuss my case with the State Attorney.

22 Q. Now, you have also alleged that Mr. Deas was
23 ineffective and your plea was involuntary because after the
24 continuance request was denied, you felt like Mr. Deas was
25 attempting to force and coerce you to plead guilty. That's

1 one of your allegations against Mr. Deas?

2 A. Yes, sir.

3 Q. And that you felt that it was inappropriate for him
4 to reassure you not to worry about anything?

5 A. Yes, sir.

6 Q. You have also alleged against Mr. Deas that you felt
7 like he was not prepared to go forward and that he was telling
8 you you would get 40 years if you didn't plead guilty. Is
9 that an allegation?

10 A. Yes, sir.

11 Q. Okay. Mr. Rivera, obviously this is your day in
12 court and I think that we have covered everything in your
13 application and you have told the judge your reasons for
14 entering the plea and why you want a new trial in this case.
15 Is there anything that we have left out or that you feel like
16 you need to bring to this court's attention about why you pled
17 or your PCR application?

18 A. I just - I just want to tell the judge, you know,
19 because when they stop me on I-95, I got the DVD. When they
20 told me they find drug inside the county jail, drug, and I
21 told them, okay. When I went inside the county jail, they
22 strip me. They strip search so they don't never find no drug
23 when they strip search because they got camera all around the
24 county jail inside the county jail.

25 So I told my first lawyer James T. Irvin, he said,

1 where are video? You told me they found the drug on me inside
2 the county jail and they told me they ain't got no video
3 because they only play the video. I say they don't record. I
4 said, I told him so why you told me they fixing to tell me
5 they found the drug on me when they ain't got no video. When
6 they got the video on I-95, they ain't got no drug on me.
7 They search me four time and they search my car and they no
8 find no drug on me or in my car. They found the drug on my
9 co-defendant.

10 When the judge denied the motion for Garryl Deas,
11 when he say I deny the motion, when he said I deny the motion
12 for Garryl Deas for continue for he could get prepare hisself,
13 so I don't understand why he deny the motion because I got a
14 new lawyer that he don't know nothing about my case.

15 Q. And you understand this court can't do anything
16 about what that judge is doing.

17 A. All right, sir.

18 Q. Is there anything else that's related to your
19 attorneys, their jobs that they were doing for you? Is there
20 anything else that you want to bring to the court's
21 attention?

22 A. Really, really, I know James T. Irvin, he was my
23 first lawyer so he ain't got - he don't represent me because I
24 release him. But Garryl Deas, you know, when I went inside
25 his office, he told me he will do a better job, you know? Me

1 and my wife and my son that was there she told him, too, "you
2 sure?" He say yeah. You bring me that money and I will give
3 you maybe probation or better deal. So I bring the money and
4 then he was running, running around. You get me -- I was the
5 day for trial I was like 8:00 in his office to 4:00. He was
6 running around. Running around. I was sitting down in his
7 office until 4:00 to the end come here and it was for
8 nothing.

9 MR. BOOZER: Okay. Mr. Rivera, please answer any
10 questions that Madam Attorney General may have for you.

11 THE COURT: Ms. Coleman.

12 MS. COLEMAN: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MS. COLEMAN:

15 Q. Mr. Rivera, I want to start talking about James T.
16 Irvin. Did you ever meet with him about your case?

17 A. The first time I meet James T. Irvin was the first
18 time I hire him. That was the only time I met with him.

19 Q. And that's because you bonded out and you went home
20 to Florida, right?

21 A. I went to Florida and when I went here, I bond out.
22 I bond out the 15th, October 15th, 2014 and I came here the
23 first time for court in November 21st, 2014 so that's -- And
24 then the court told me I have to get me my own lawyer. So I
25 went back to Florida and I talked with a lawyer. He tell me I

1 can't represent you because I'm from Florida but I can give
2 you some few name that you can go and they can represent you
3 because they from South Carolina. So I went to James T.
4 Irvin. That was the only time.

5 Q. Did you meet with him in his office? Did you ever
6 drive up to South Carolina to meet with him?

7 A. Yes. I went to, from Florida, from Tampa, Florida
8 to Myrtle Beach on Third Avenue.

9 Q. The first time?

10 A. The first time to met with him, and when I met with
11 him, I talk with him before and he told me come here this day
12 for I can met you and we discuss, uhm, the case. So I went
13 over there and I got with him and he told me he take my case
14 and he will do it the same deal my co-defendant got for
15 13,000. So I went over there and I give him 4000 and then
16 I'll give you a payment every other month.

17 Q. Did you speak to him on the phone while you were in
18 Florida about your case?

19 A. Every time I speak with him about my case he tell me
20 everything all right. Just send me money.

21 Q. Did he discuss the discovery with you?

22 A. He never discuss my discovery. I ask him about my
23 discovery. The first time I got the discovery it as on August
24 8, 2016.

25 Q. Mr. Irvin had the discovery; is that right?

1 A. Yes, ma'am.

2 Q. And you got that from him and gave it to your new
3 attorney when you fired Mr. Irvin?

4 A. Yes, ma'am.

5 Q. So you chose to relieve Mr. Irvin of his services
6 and get a new attorney, right?

7 A. Yes, ma'am.

8 Q. Okay. Now, Mr. Deas who represented you at the
9 plea, did he review the discovery with you that you had gotten
10 from Mr. Irvin?

11 A. When I see Mr. Deas in his office, I give him my
12 discovery. I told him this is the first time I got this
13 paper, the discovery. So he check and he told me your first
14 lawyer, he didn't do nothing for you. He didn't do no motion
15 or none of that so he robbed your money. So he told me that -
16 he told me I charge you 7000 for that.

17 Q. Did he explain the discovery to you and show you
18 everything that the State had against you?

19 A. He told me when we were looking, it was me - it was
20 me, Garryl Deas Firm and this was a private investigation that
21 he got. So he was looking at the video that he got on I-95 so
22 when he said -- He see they ain't got no drug on me so that's
23 what we was doing so we was doing that and him and his private
24 investigation he was trying to call some people but I don't
25 know because they was on the phone so it was too late. It was

1 Wednesday. It was, I believe it was the 9th so I had to go
2 back to Florida so it was kind of late so I left to Florida.
3 I told him, because it was me and my cousin and I told him I
4 had to go back to Florida so he said okay.

5 So he told me, "can you get your co-defendant? Can
6 you contact your co-defendant?" I say, yeah, I can call him.
7 So I call him. I call the co-defendant. So he speak with my
8 co-defendant. So I'm trying to get my co-defendant. He tell
9 me you bring your co-defendant here to court so we got a
10 better chance because he got caught with the drug because they
11 don't find drug on you.

12 So I went back to Florida. But when I went back to
13 Florida, I don't think Mr. Deas feel -- I don't think he
14 believe that I come back. He think I run away. But I can't
15 do that, you know? I can't be my rest of my life running
16 away, you know?

17 Q. Now, you remember the day that you pled guilty. Do
18 you remember waiving your constitutional rights like
19 your right to a jury trial and your right to remain silent?

20 A. Yes, ma'am. When I plead guilty, uhm, the judge
21 told me that - the judge told me that I got, I believe it was
22 ten day to do a motion and Garryl Deas told me that, yeah, he
23 fixing to do that motion for me and then I got a letter from
24 Mr. Garryl Deas that he told me he fixing to charge me
25 \$15,000.00 for do the motion.

1 Q. Okay. At the plea do you remember telling the judge
2 that you were satisfied with your attorney, right?

3 A. Yes. I did that.

4 Q. Why didn't you tell the judge that you were not
5 satisfied?

6 A. Be sincerely with you, I ain't got no word to say no
7 more.

8 Q. I'm sorry?

9 A. Be sincerely to you about that day I was - I was
10 like broke down so I told the judge, yeah. I'm satisfied with
11 Mr. Deas what job he did because that was the only word that
12 come out of my mouth.

13 Q. Why didn't you tell the judge that you didn't think
14 he had enough time to prepare for court and he wasn't ready to
15 go forward?

16 A. He was the same judge that he denied the motion when
17 Mr. Garryl Deas we went in front of so he told me that we was
18 in the wrong place because he was a racist judge so he was.

19 Q. Do you remember telling the judge that no one was
20 promising you anything or threatening you to plead guilty?

21 A. I never tell the judge that nobody was threatening
22 me or none of that.

23 Q. Do you remember telling the judge that you were, in
24 fact, guilty of this crime?

25 A. Yes, ma'am.

1 Q. And you accepted a negotiated plea for seven years,
2 right?

3 A. Yes. When I plead guilty, it was accepted.

4 Q. You were facing up to 40 years if you had been
5 convicted at trial, right?

6 A. They told me 20 to 40 years.

7 Q. Do you still want a new trial on these charges
8 knowing that you could go back and get a 40 year sentence?

9 A. Yes, ma'am.

10 MS. COLEMAN: Okay. Thank you. Nothing further.

11 THE COURT: Mr. Boozer.

12 MR. BOOZER: No redirect, Your Honor.

13 THE COURT: Thank you, sir. Mr. Boozer.

14 MR. BOOZER: Nothing further, Judge.

15 MS. COLEMAN: Your Honor, the State has subpoenaed
16 Mr. James T. Irvin to testify but he recently passed away
17 and is not available unfortunately.

18 THE COURT: He did. He did.

19 MS. COLEMAN: So he will not be here today, of
20 course. We do have Mr. Garryl Deas and we call him to
21 the stand at this time.

22 THE COURT: All right.

23 Thereupon,

24 GARRYL DEAS

25 after having been first duly sworn, testified as follows,

1 THE CLERK: Please have a seat. Once you're seated,
2 state your full name spelling your last please.

3 THE WITNESS: Garryl Deas, D-e-a-s.

4 DIRECT EXAMINATION

5 BY MS. COLEMAN:

6 Q. Good morning, Mr. Deas. How are you?

7 A. Good morning. How are you?

8 Q. Fine. How long have you been practicing law?

9 A. Since 1997 so about right at 20 years.

10 Q. Do you do much criminal work?

11 A. I do a significant amount of criminal work.

12 Q. Were you appointed or retained in this case?

13 A. I was retained.

14 Q. What were the circumstances surrounding when you
15 were retained, how you came to represent Mr. Rivera?

16 A. Uhm, as Mr. Rivera indicated in his testimony, uhm,
17 he came to my office, uhm, and told me that his attorney Mr.
18 Irvin, uhm, was telling him that his case was going to be
19 called for trial and that, uhm, Mr. Irvin had not really ever
20 talked to him about his discovery and never really sat down
21 with him and went over any discovery. Uhm, that basically
22 their conversations were mostly about money. Uhm, I guess him
23 sending Mr. Irvin money, uhm, and he said he just didn't feel
24 like Mr. Irvin was prepared to handle his case.

25 Uhm, he said that, uhm, that essentially Mr. Irvin

1 was telling him that, uhm, there was an offer on the table,
2 uhm, to plea, uhm, to a reduced trafficking charge, uhm, as
3 opposed to pleading to, I guess, the more significant offense
4 where he would be facing 25 to 40 years, uhm, because of the
5 higher weight amount. I think it was 28 grams or more. Uhm,
6 the plea on the table was that he would plea, uhm, to, uhm,
7 trafficking heroin 4 grams to 14 grams with a sentence of
8 seven years and he said that was the first time he had even
9 heard that there was an offer on the table, uhm, and that he
10 was being told if he didn't accept that offer that particular
11 day, they were gonna withdraw it and he would have to go to
12 trial and so, uhm --

13 Q. Did he end up accepting that offer?

14 A. Ultimately once I got involved in the case he did.
15 But prior to that, uhm, as I said, when he came to my office,
16 uhm, I told him that, uhm, before I could really do anything,
17 number 1, he would have to relieve, uhm, Mr. Irvin as his
18 lawyer; that I could not really consult with him or, uhm, do
19 anything to represent him until he first, uhm, relieved Mr.
20 Irvin as his attorney and he was not satisfied at all with Mr.
21 Irvin's, I guess, representation and so he wanted to relieve
22 him and ultimately he did. A letter was sent to Mr. Irvin
23 where he indicated that he was terminating him as his lawyer.

24 Uhm, and then, uhm, once that letter was sent to Mr.
25 Irvin, I actually had an opportunity to talk to Mr. Irvin,

1 uhm, and told him that Mr. Rivera was wanting to hire me. Was
2 looking to hire me and, uhm, I asked Mr. Irvin, uhm, if he had
3 filed any motions in limine, pretrial motions or, you know,
4 Rule 5, Brady and he said he wasn't - said he had not filed
5 any pretrial motions and, uhm, and so, uhm, he said to me that
6 I was welcome to have anything he had in his file, uhm, and,
7 uhm, that was pretty much the extent of our, my conversation
8 with Mr. Irvin.

9 And then Mr. Rivera actually signed a retainer
10 contract with my office on August the 10th but he and I
11 started our discussions on August 8th but he didn't actually
12 sign the retainer contract until August 10th because I think
13 that's when he, uhm, came back with the funds to hire me.

14 Q. Did Mr. Irvin provide you with his file? You
15 testified, I think --

16 A. I believe he may have. Uhm, I think he may have --
17 You know what? I don't think he did. I think the discovery
18 that I received actually came directly from Mr. Rivera.

19 Q. Okay. And did Mr. Rivera get that discovery from
20 Mr. Irvin?

21 A. Yes. That's my understanding.

22 Q. What is your recollection of the evidence that the
23 State had against him?

24 A. Well, quite frankly, uhm, according to the incident
25 report essentially it was a traffic stop because it's alleged

1 in the incident report that the driver was speeding. I think
2 78 in a 70 and that's what led to the traffic stop. There
3 were drugs - at the scene there were drugs found on the
4 passenger who was his co-defendant but there were no drugs
5 found on Mr. Rivera but he was arrested anyway as well as his
6 co-defendant.

7 Uhm, and ultimately what's alleged in the incident
8 report is that when Mr. Rivera was at the detention center and
9 he was, uhm, they were doing a pat down search of him drugs
10 were found on him at that time. Uhm, in the incident report
11 it says that it was believed that it was, that the drugs were
12 being hidden in his rectum and it was 76 grams of suspected
13 heroin that was wrapped in black duct tape. But Mr. Rivera
14 indicated to me that that's not - that wasn't accurate. That
15 there were no drugs. That they did not get the drugs from him
16 is what he said to me.

17 But I think the more poignant issue is the fact that
18 there were no drugs found on him at the scene which means they
19 really had no basis to arrest him and which means that any
20 drugs found on him at the jail would have been the result of
21 an unlawful arrest which could render those drugs inadmissible
22 since it stemmed from an unlawful arrest pursuant to the fruit
23 of the poisonous tree doctrine.

24 I actually filed a motion to suppress the drug
25 evidence that was found at the jail based on the fact that my

1 position was that those drugs essentially stemmed from an
2 unlawful arrest because at the scene there was really no basis
3 to arrest Mr. Rivera because no drugs were found on him. So I
4 actually filed a written motion to suppress the drug evidence
5 that was allegedly found on him at the jail and that was, I
6 think, pursuant to State vs. Boswell was the case that was
7 cited in my motion.

8 Uhm, and again, up until that time no motions had
9 been filed. I don't even think a Rule 5 and Brady motion had
10 been filed on behalf of Mr. Rivera. Certainly no motions to
11 suppress had been filed until I got involved in the case.

12 Q. Was your motion to suppress ever ruled upon or
13 argued to the court?

14 A. Yeah. My motion to suppress was heard I want to say
15 on the day after my motion for continuance was heard.

16 Q. What was the result of that?

17 A. My motion to suppress was denied by the trial judge,
18 Judge Young.

19 Q. What were your discussions with your client at that
20 point about his chances at trial after the motion was denied?

21 A. Which motion? The motion to continue or the motion
22 to suppress?

23 Q. Motion to suppress.

24 A. Well, I guess in reality, I guess to really answer
25 the question you have to go back to, I guess, once I agreed to

1 take on his case because Mr. Rivera was in a pretty precarious
2 situation. His previous lawyer had not, according to him, had
3 not really talked to him at all about his case. His previous
4 lawyer was telling him that, according to Mr. Rivera, his
5 previous lawyer didn't even tell him that his case was coming
6 up for trial, I guess, until the day before he was supposed to
7 possibly go to trial. And so Mr. Rivera was, as I said, in a
8 pretty - he was in a pickle to say the least when it comes to,
9 I guess, what he should do. Whether he should proceed with
10 trial and allow Mr. Irvin to continue to represent him or if
11 he was going to seek new counsel.

12 I mean, I could tell that he just was - he was - it
13 was a tough couple days for him and he was trying to make the
14 right decision and ultimately he decided to relieve Mr. Irvin,
15 retain me for the purpose of trying, number 1, to get the case
16 continued, if possible, and also to try to at least get some
17 pretrial motions filed to address the issues with the evidence
18 in the case because at that point none of that had been done.

19 And so ultimately once I got retained I told him
20 that, number 1, retaining me doesn't mean your case is going
21 to get continued. I specifically said to him just because you
22 get a new lawyer doesn't mean the court is going to continue
23 your case. The court can deny any motion for continuance and
24 require us to proceed on with trial. So he said he understood
25 that. I also told him, of course, there was no guarantee that

1 the judge would grant my motion to suppress. Uhm, although I
2 felt that it was a valid motion with a valid argument. Uhm,
3 and so he said he understood that. Uhm, and so but after the
4 motion for continuance got denied and then I think the next
5 day the motion to suppress was denied, uhm, that's when he and
6 I started having discussions, uhm, about whether we were gonna
7 go to trial or not. Uhm --

8 Q. Let me stop you there. We'll come back to that in a
9 moment.

10 A. Sure.

11 Q. The motion for continuance, what date was that
12 filed, do you recall?

13 A. Uhm, I'm not sure of the date but it had to have
14 been sometime between August 8th and August the 11th. He pled
15 on August the 11th.

16 Q. On what basis did you request the continuance?

17 A. On the grounds that I had just gotten retained and
18 needed sufficient time to review the discovery, to talk with
19 my client and get prepared for trial.

20 Q. Did you explain to the court the situation that
21 Mr. Rivera was in at that time?

22 A. Yes. Yes. I talked to -- During the motion for
23 continuance I pointed out to the judge, uhm, the presiding
24 judge at the time Judge Young that Mr. Rivera basically had
25 had little to no communication with his previous lawyer, uhm,

1 and that, uhm, I think at the time the State's position was
2 that because he didn't, uhm, accept the plea on August 8th, I
3 think they withdrew it. Because he didn't accept the plea
4 bargain on August 8th, they withdrew it initially.

5 So when I actually got involved in the case, my
6 understanding was that that seven year plea deal, uhm, for
7 trafficking heroin at a lesser weight had been withdrawn and,
8 uhm, once I officially, uhm, became retained, sent letters of
9 representation to the Solicitor's Office and I spoke with the
10 prosecuting attorney Ms. McElveen, uhm, she agreed to put it
11 back on. She agreed to re-offer the previous plea deal. Uhm,
12 but my understanding was that prior to that it had been
13 withdrawn because it wasn't accepted on August 8th.

14 So what that meant for him is that if that offer was
15 no longer on the table and he went to trial on trafficking
16 heroin 28 grams or greater, if he was convicted, he was
17 looking at a maximum sentence of 40 years.

18 Q. If Mr. Rivera had chosen to go to trial, were you
19 prepared to proceed with the trial?

20 A. Well, yeah, because I was - I mean, I've been
21 practicing law a long, long time. I mean, this isn't my first
22 rodeo so, uhm, you know, and I do a great deal of criminal
23 defense work and so, uhm, I would have loved to have had more
24 time to prepare, uhm, and had more of an opportunity to talk
25 to Mr. Rivera and to, uhm, do some further investigating and

1 to get more, uhm, I guess get a little more abreast of the
2 specifics and the details of his case but I wasn't given that
3 opportunity because the motion for continuous was denied.
4 Uhm, but if we went to trial, I mean, it's a pretty
5 straightforward, uhm, trafficking case, uhm, stemming from a
6 traffic stop. There's not a lot of complexity to the facts of
7 the case. It's pretty straightforward so, uhm, I certainly
8 would have been prepared to try it if we had gone to trial.

9 Q. Before the guilty plea, did you advise the applicant
10 of his constitutional rights?

11 A. Yes. Yes.

12 Q. Did he ever tell you that he didn't understand
13 something?

14 A. Uhm, no. He understood fully what the situation
15 was. Uhm, I mean, as I said, his main concern was not wanting
16 to potentially expose himself to the maximum sentence if he
17 didn't have to. I mean, ultimately I think that's why he
18 ultimately decided to plea because if he were to be convicted
19 at trial, I mean, he was looking at a very lengthy prison
20 sentence and so I think ultimately I think that's why he
21 decided to plea.

22 Q. Did you advise him to plea guilty?

23 A. Uhm, I think after the motion to suppress, my motion
24 to suppress was denied, uhm, and he and I and his wife had an
25 opportunity to talk, I told him that, uhm, in my view, you

1 know, a seven year plea deal that's now back on the table is
2 something he should consider because of the potential, uhm,
3 bad consequences that he could face if he were convicted. So
4 I told him that given the fact that he's a young man and has a
5 family and he should give some serious consideration to that
6 seven year plea deal because a guilty verdict at trial would
7 yield some pretty stiff penalties and, uhm, ultimately I guess
8 he agreed and that's why he pled.

9 Q. So ultimately whose decision was to plead guilty?

10 A. I mean, clearly it was his decision. And I also
11 told him that he didn't, you know, obviously he had the option
12 of not pleading and that he certainly had the option of going
13 forward with trial, uhm, and, uhm, I told him if he went to
14 trial, that, you know, I would do everything I could to
15 present the case, uhm, and present his defense and, uhm,
16 vigorously and zealously advocate for him. Uhm, but again,
17 uhm, I also told him there's no guarantee of any outcomes and
18 if we try the case, uhm, just as easily as he could be found
19 not guilty, he could very easily be found guilty.

20 Q. Very briefly to wrap up, the applicant has also
21 alleged a lack of subject matter jurisdiction. Was this a
22 criminal charge in General Sessions Court?

23 A. Yes.

24 Q. Was there any question that court had subject matter
25 jurisdiction in this case?

1 A. No.

2 MS. COLEMAN: Thank you. Nothing further.

3 THE COURT: Mr. Boozer.

4 MR. BOOZER: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. BOOZER:

7 Q. Mr. Deas, how you doing?

8 A. Good. Good.

9 Q. Good. You had testified that it was your thought
10 that he didn't even know his case was coming up for trial?

11 A. Yeah. I think that's what he told me at some point,
12 that Mr. Irvin, I guess, told him pretty much at the last
13 minute that, hey, your case is about to go up for trial.

14 Q. And I think along those same lines earlier you had
15 testified you could tell that it was tough on him, that he was
16 in a precarious spot; is that right?

17 A. Yeah. I mean, like I said, you know, Mr. Rivera
18 during my brief time of knowing him he, uhm, he was very
19 respectful. Uhm, he, uhm, was very straightforward. Uhm, he,
20 uhm, you know, from what I know of him a good man and had a
21 wonderful family and had people here that were supporting him,
22 uhm, that had come up from Florida. But he was just in a
23 tough spot because one minute he doesn't know anything about a
24 trial and then the next thing he knows he's being told by his
25 lawyer, hey, you're about to go to trial.

1 Q. Based on your observations and your limited time
2 knowing him, could you say that he was under duress at that
3 point?

4 A. Well, I mean, I can't -- Well, I think anybody
5 that's facing a trial and facing 40 years in prison is under
6 duress so...

7 Q. Well, how about coupled with based on your
8 conversations with him and I think your conversations with Mr.
9 Irvin that he had had very little contact with his prior
10 lawyer and he had no chance to discuss the substance of the
11 case, formulate any sort of defense, strategy, no motions had
12 been filed and it appeared that according to Mr. Rivera that
13 the only conversations were about money and then to throw
14 himself into - he's no longer his lawyer and y'all have got a
15 few days to prepare for a trial. Would you be comfortable
16 saying that he's probably under some duress at that point
17 based on those facts?

18 A. I think everything relating to his situation was
19 stressful to him, uhm, and rightfully so, uhm, and so, uhm,
20 clearly Mr. Irvin at least according to Mr. Rivera had really
21 not done much to prepare, uhm, to try his case, uhm, just
22 based on the fact that there had been no motions filed in this
23 case until I got involved in the case. There had been no
24 pretrial motions filed at all and, uhm, no motions filed to
25 address the suppression of any evidence. Uhm, and as I said,

1 and I don't know this for certain but I don't think there had
2 actually been a Rule 5 and Brady motion filed. But again I
3 may not be absolutely 100 percent certain of that, but I
4 remember Mr. Rivera telling me that he didn't think there had
5 been any discovery motions filed until I filed them.

6 Q. Sort of this very short period in which you and
7 Mr. Rivera had to prepare to go to trial and decide to enter a
8 plea, that wasn't a condition or circumstance that Mr. Rivera
9 created, was it?

10 A. Well, I mean, he made the decision to relieve his
11 prior lawyer and hire me. He understood clearly based on my
12 conversations with him that hiring me wasn't going to
13 necessarily lead to a continuance. It wasn't going to
14 necessarily lead to any better deal. And it wasn't going to
15 necessarily mean that he would not have to go to trial that
16 week, uhm, so because I told him that. But in his situation
17 and I guess the reason why he ultimately decided to relieve
18 Mr. Irvin and hire me is because if he was gonna go to trial,
19 he at least wanted motions filed, the appropriate motions
20 filed and he wanted someone that was gonna, uhm, advocate for
21 him I guess in his mind better than what Mr. Irvin had been
22 doing up to that point.

23 Q. Do you recall about how much actual time you spent
24 with Mr. Rivera in preparing for trial?

25 A. Well, during that - I think my initial contact with

1 him was on August 8th and so during that three day period, you
2 know, we talked daily, uhm, sometimes for, you know, an hour
3 or longer and he was kind of back and forth. You know, in the
4 evenings he would drive back down to Florida. I know he did
5 that at least maybe once or twice during that three day period
6 if I'm not mistaken.

7 Q. Y'all actually, do you recall y'all actually picking
8 a jury?

9 A. Yeah. We picked a jury.

10 Q. Okay. So y'all are - it sounds like to me y'all are
11 preparing to go straight forward with the trial? At least
12 that's the plan?

13 A. Yeah. Because motion for continuance was denied so
14 we were going to trial.

15 Q. What caused it to then flip into a plea?

16 A. Uhm, like I said I had a conversation with
17 Mr. Rivera and his wife and, uhm, he wanted to talk to me
18 before we actually, before the first witness was called and so
19 I asked the judge to give me a moment to talk to my client and
20 his family so we went in one of the conference rooms and we
21 talked and he said, you know, I have a family and I don't want
22 to expose myself to this 40 years so I'm gonna plea. I told
23 him I thought that was a wise decision given the circumstances
24 and given the potential sentence he could get if he were found
25 guilty.

1 Q. Did you ever have any discussions with either
2 Mr. Rivera or his wife that you would be able to maybe work
3 out a probationary sentence?

4 A. No. No. First of all, I mean, trafficking carries
5 a mandatory minimum of seven years sentence so in order for it
6 to be probation it would have to be, the charge would have to
7 be amended from trafficking to, you know, like possession or
8 distribution or something. You know, a trafficking charge you
9 can't get probation.

10 MR. BOOZER: Thank you, Mr. Deas. That's all I
11 have.

12 MS. COLEMAN: Nothing further.

13 THE COURT: You may step down. May he be excused?

14 MS. COLEMAN: He may.

15 MR. BOOZER: No objection.

16 THE COURT: May I speak to the lawyers please.

17 (Discussion off the record.)

18 THE COURT: Mr. Boozer, both of you have put up good
19 cases today. I do appreciate you getting straight to the
20 point with the questions. I'm going to deny the relief
21 sought by Mr. Rivera. I have read the guilty plea
22 transcript and numerous times in that transcript Mr.
23 Rivera could have answered differently than he did to the
24 court's inquiry. Mr. Deas filed not one but two motions
25 before trial so to kind of say he just sat back and did

1 nothing once he was retrained, he filed a motion to
2 continue. That was denied. And then he filed a motion
3 to suppress the evidence which was denied. Mr. Deas made
4 it very clear that he told Mr. Rivera at the outset that
5 hiring him at the last minute was no guarantee for a
6 continuance. There's testimony that Mr. Rivera had
7 family with him. It was a family decision to plead
8 guilty or after discussing with his family he decided to
9 plead guilty and I simply don't find that Mr. Deas fell
10 below any certain standards in his representation of
11 Mr. Rivera. Ms. Coleman, I'll ask you to do an order
12 that would include any additional findings if you so
13 desire if they are supported by the record and I will
14 sign it.

15 MS. COLEMAN: Thank you, Your Honor.

16 THE COURT: Thank you all so much. We'll reconvene
17 at 2:00.

18 WHEREUPON, THE HEARING WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

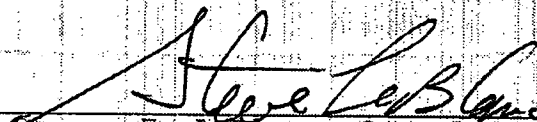
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 16th day of November, 2017.

11 I FURTHER CERTIFY that the forgoing 42 pages
12 constitute a true and accurate record of said proceedings.

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

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 23rd day of June, 2018.

17
18 
19 Steven E. LeBlanc, Sr., R.P.R.
20 Eleventh Circuit Court Reporter
21 State of South Carolina.
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Efrain Matos Rivera, #369339,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2016-CP-43-2097

ORDER OF DISMISSAL

RECORDED
2016 APR 16 PM 4:38
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 7, 2016. Respondent submitted its Return and Partial Motion to Dismiss on October 10, 2017. An evidentiary hearing into the matter was convened on November 16, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Garryl Deas, Esquire ("Plea Counsel").¹ This Court had before it the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, appellate records, the plea transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In February 2015, the Sumter County Grand Jury indicted Applicant for

¹ Prior counsel James T. Ervin, Esquire was unavailable to testify, as he was very recently deceased at the time of the hearing.

possession of a schedule I or II (narcotic) controlled substance and trafficking heroin, twenty-eight grams or more (2015-GS-43-0182). James T. Ervin, Esquire, represented Applicant prior to his guilty plea and was relieved as counsel on August 8, 2016. Garryl Deas, Esquire, represented Applicant at the guilty plea. Assistant Solicitor Bronwyn McElveen, Esquire, prosecuted the case.

On August 11, 2016, Applicant pled guilty to the lesser included offense of trafficking in heroin, more than four grams but less than fourteen grams, before the Honorable W. Jeffrey Young. During the plea hearing the State gave the following recitation of the facts:

On October 13, 2010, around 9:00 a.m., an officer with the Sumter County Sheriff's Office conducted a traffic stop for a speeding violation in which Applicant was the driver of the vehicle. As the officer approached the vehicle, he smelled the distinct odor of marijuana and observed a pack of rolling papers in the center console. He immediately proceeded to call for backup. Once backup arrived, Applicant was asked to step out of the vehicle, and upon doing so, gave consent for the officer to search his person. The search revealed a black plastic bag containing hundreds of pieces of wax paper and rubber bands, which are commonly used to package illegal drugs, specifically heroin, as well as \$534.00 in United States currency. Upon search of the passenger, officers found a plastic bag wrapped in duct tape around his person, which contained approximately 116 grams of suspect Molly (MDMA) in a rock form and a clear plastic bag containing marijuana. Both individuals were arrested and read their Miranda rights. Once the drugs were tested and positively identified as heroin, Applicant was charged with trafficking in heroin.

(Tr. 6-9). Applicant agreed to the Solicitor's recitation of the facts. (Tr. p. 9) Pursuant to a negotiated sentence, Judge Young sentenced Applicant to imprisonment for seven years.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on October 31, 2016, for failure to provide a sufficient explanation for appealing, as required by Rule 203(d)(1)(B) of the South Carolina Appellate Court Rules (SCACR). State v. Riviera, Appellate Case No. 2016-1717 (S.C. Ct. App. filed October 31,

2016). The remittitur was issued on November 18, 2016.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel (James T. Ervin, Esquire)/Involuntary Guilty Plea"
 - a. "Attorney James T. Ervin's performance in this present matter before this court fell far below the reason level of representation mandated by law, Counsel's lack of service to Applicant caused undo [sic] hardship and violated Applicant's Due Process Rights ..."
 - b. Failure to investigate
 - c. Failure to file motion for Rule 5 discovery materials
 - d. Failure to prepare for trial
 - e. Ervin "coerced Applicant into pleading guilty to accept a sentence that was unfair and unjust, even though Applicant's co-defendant received a fine by the court. On August 8, 2016, Attorney James T. Ervin was relieved by Applicant as counsel of record."
2. "Ineffective Assistance of Counsel (Garryl L. Deas, Esquire)/Involuntary Guilty Plea"
 - a. "[After the court denied a motion for continuance the day before trial], Counsel then attempted to force Applicant and coerce Applicant to plead guilty outside of Applicant's will. Applicant began to state to counsel that he was not comfortable with going to trial this next day when counsel only had case one day and not prepared or ready for trial, but Counsel stated to Applicant "these people know me around here, don't worry about anything."
 - b. "[After jury selection], Counsel told Applicant to plead guilty because it was clear that counsel was not prepared to go forward with trial. Applicant informed counsel of his intent and Counsel then began to tell Applicant that the government had threatened to give Applicant forty (40) years if he did not plead guilty and was found guilty of the charge."
3. "14th and 6th Amendment Violation (Due Process) (Trial Court)"
 - a. "Trial court denied Counsel's motion [for continuance], stating that the case was two (2) years old and that Applicant only retained new counsel to prolong or intentionally tie the court system up."
 - b. "Trial court ruling was erroneous as to his view of the intentions of the Applicant. Its ruling was prejudicial in nature and denied Applicant his due process rights afforded to him under the Constitution. Trial Court's ruling was bias [sic], based solely on Trial Court's assumptions and according to factual evidence. His ruling prejudice not only Applicant's right to a fair trial, a fair bite of this apple and force Applicant's counsel to all far below the reasonable representation to insure Applicant's United States Constitutional Right were nor violated. Trial Court was in error to speak or rule in regards to Applicant's intent, nor there was no constructive or circumstantial evidence to support Trial Court's assumptions or

allegations concerning its ruling which forced Applicant to plea to a charge which was not applicable to Applicant."

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified that the charges arose when he was stopped for speeding on I-95 and law enforcement searched his car. He stated the police found drugs on his co-defendant, and when Applicant was searched at the prison, they found drugs on him. He stated he hired James T. Ervin to represent him. He stated he got out on bond, and from 2015 to 2016 he went back home to Florida, where he lived. Applicant testified he spoke to Ervin on the phone and Ervin did not tell him about going to court until the week before he was scheduled to appear. He stated that Ervin did not appear in court on August 8th when he was supposed to.

Applicant testified his codefendant got a \$2,500 fine. Applicant stated he rejected a seven year plea offer because he did not even know he had to go to trial. He stated his court appearance on August 8th was the first time he met Ervin. He testified that he went to Plea Counsel's office on August 8th and hired him that day, and he pled guilty with Plea Counsel on August 11th. Applicant testified he got the discovery from Ervin and gave it to Plea Counsel. He stated Plea Counsel told him that Ervin had "robbed him" and that he should relieve him. Applicant testified that Plea Counsel wanted a continuance, but the trial court denied his motion because the case was two years old. Applicant opined that he was not prepared for trial, and he pled guilty after they picked a jury.

Applicant testified he pled guilty because there was a lot of pressure on him and his family, because he would have gotten a longer sentence if convicted at trial, and because Plea Counsel was not prepared for trial after just one day. He stated he wanted a trial, but because

Plea Counsel was not prepared for trial, he felt he needed to plead guilty. He stated Ervin never prepared the case for trial, he just postponed it.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified he had practiced criminal law since 1997. He stated he was retained to represent Applicant after Applicant came to his office and told him James T. Ervin represented him and he was set for trial, but he had not consulted Ervin about the discovery. Plea Counsel stated he spoke to Ervin about the case and discovered Ervin had not filed any pretrial motions in the case. He stated Ervin told him he was welcome to anything in the file. He stated that, although Applicant did not pay his retainer fee until August 10th, he and Applicant discussed the case on August 8th. He stated Applicant gave him the discovery that he obtained from Ervin. He testified that Applicant made the decision to relieve Ervin and hire him.

Plea Counsel stated that when he got the case, there was an offer on the table to plead guilty to a reduced trafficking charge, and Applicant ultimately accepted that offer and received the mandatory minimum sentence for that charge, seven years. He stated Applicant was facing a mandatory 25 years and up to a possible 40 years at trial, but he pled down and got a seven year sentence for trafficking four to fourteen grams. Plea Counsel testified that the evidence against Applicant included the drugs that were found on the co-defendant at the scene, the drugs found on Applicant during the pat down at the jail. Plea Counsel stated the drugs were found in Applicant's rectum, but he denied they were his. He stated he requested a continuance, and his motion was denied. Plea Counsel stated the day after the continuance request was denied he filed a motion to suppress the drugs based on the "fruit of the poisonous tree" doctrine because there



was no valid basis to arrest Applicant and his arrest was unlawful. He stated the motion was denied.

Plea Counsel testified that this was a tough situation for Applicant. He testified that he specifically told Applicant that he might not get a continuance just because he hired a new lawyer, and the trial court might not grant his motion to suppress. Plea Counsel testified that he explained to the trial judge that Applicant had very little conversation with Ervin. He stated the State withdrew their plea offer, but after he spoke with the solicitor, they agreed to reoffer the same deal. He stated Applicant could have been sentenced up to forty years if convicted at trial, and he was facing a mandatory minimum of twenty-five years if convicted of trafficking.

Plea Counsel testified that he was prepared to go to trial in this case. He stated he would have loved more time to prepare, but he has a lot of experience and could have handled a trial because it was a straight-forward trafficking charge. Plea Counsel testified that he told Applicant he should consider the plea offer, but he would advocate for him if he wanted to go to trial. He stated he explained Applicant's constitutional rights before the plea, and he believed Applicant fully understood the situation and chose to plead guilty.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).



The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty 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).

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

After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Accordingly, post-conviction relief is denied. Specifically, the Court finds as follows:

James T. Ervin

Applicant alleges his prior attorney James T. Ervin was ineffective for failing to investigate, failing to file Rule 5 or Brady motions, and failing to prepare for trial. These allegations are meritless. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation

does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Here, Applicant has failed to prove Ervin failed to investigate his case. His speculative assertion is based only on his lack of communication with counsel, which this Court notes was in part due to the fact that Applicant bonded out of jail and chose to return home to Florida. Applicant has failed to present any evidence that any further investigation by Ervin would have been fruitful or affected the outcome of the case. Applicant was charged with trafficking heroin, and the evidence against him included the heroin that was found in his rectum during a search at the jail after his arrest. A motion to suppress this evidence was argued and denied. Applicant has failed to show how any further investigation would have affected the admissibility of this evidence, which was very harmful to his defense.

Applicant has further failed to prove Ervin did not file Rule 5 or Brady motions, and the testimony shows Applicant received, had a copy of, and reviewed all the discovery materials in his case. Plea Counsel credibly testified he received a copy of the discovery, and Applicant testified that he got the discovery from Ervin and took it to Plea Counsel on August 8th. Finally, although Applicant asserts Ervin failed to prepare for trial, he has failed to show how this affected the outcome of his case, even if true. Ervin did not represent Applicant at trial or at the plea. Applicant voluntarily relieved Ervin as counsel and hired a different attorney to represent him. Applicant failed to prove Ervin was not prepared for trial, and that any failure to prepare affected his case. Accordingly, he has shown no deficiency or prejudice under the Strickland test, and these allegations are denied and dismissed with prejudice.

Plea Counsel

Applicant alleges Plea Counsel was ineffective for failing to prepare for trial, which coerced him into pleading guilty. This allegation is meritless. Plea Counsel credibly testified he was prepared and willing to go to trial. Although he only had the case for a few days before the trial, Plea Counsel explained that it was a straight-forward trafficking case, and he could have handled the trial based on his years of criminal defense experience. Applicant has failed to prove Plea Counsel was ineffective in any manner. Plea Counsel requested a continuance, but his request was denied, and he credibly testified that he told Applicant when he was hired that the court might not grant a continuance. Plea Counsel filed and argued two motions before the trial, but both were denied. He also stated he explained to Applicant that there was no guarantee the motions would succeed. Plea Counsel reviewed the discovery with Applicant and credibly testified that Applicant fully understood the situation he was in.

This Court finds Plea Counsel was not deficient in his representation and none of his actions or inactions fell below reasonable professional norms. This Court further finds Applicant has failed to prove he would have gone to trial rather than plead guilty if Plea Counsel had not "coerced" him to plead. Although Applicant testified he wanted a trial, Plea Counsel credibly testified he told Applicant he was prepared for trial and would advocate for him if he wanted a trial. Applicant was given a seven year sentence, which is the mandatory minimum for the lesser-included offense to which he was allowed to plead. Applicant faced at least 25 and up to 40 years imprisonment if convicted at trial. The State also intended to introduce at trial evidence of more than twenty-eight grams of heroin that was found in Applicant's rectum, and Plea Counsel's motion to suppress the evidence was denied. Applicant was aware of these risks when he voluntarily chose to plead guilty and this Court finds he would not have chosen to proceed to

trial under the circumstances. Accordingly, Applicant has failed to prove either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

To the extent Applicant alleges his guilty plea was not given freely and voluntarily, this Court finds otherwise and concludes Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Cl. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant alleges he was coerced into pleading guilty "to accept a sentence that was unfair and unjust" because both attorneys who represented him were not prepared for trial and threatened him by telling him the State would give him a forty year sentence if he were convicted at trial. This Court finds Applicant was not coerced into pleading guilty, and the

sentence he received was reasonable and properly within the limits allowed in the statute. Applicant received a sentence for seven years' imprisonment, which is the mandatory minimum he would have received if convicted at trial. Plea Counsel's advice that Applicant would face forty years if convicted at trial was correct; the trial court could have imposed a forty year sentence for his convictions after trial. The record and Plea Counsel's testimony clearly show Applicant was not threatened, forced, or coerced to plead guilty.

At the guilty plea, the plea court asked Applicant, "Has anybody threatened you in any way to get you to plea [sic] guilty?" Applicant responded, "Not really." The plea court continued, "Has anybody promised you anything other than the seven year negotiated plea to get you to plead guilty?" Applicant responded, "No, sir." Tr. 11, line 11-17. Plea Counsel credibly testified he was prepared for trial that day and advised Applicant he would advocate for him if he wanted to go to trial. Plea Counsel filed two pre-trial motions, and both were denied, which allowed the drugs to be used as evidence against Applicant at trial. Applicant faced a mandatory minimum of twenty-five years and up to forty years in prison but chose to plead to a lesser offense and got the mandatory minimum of seven years instead. Although the decision may have been difficult for him to make, this Court finds Applicant's decision was freely and voluntarily made. The record shows it was a family decision to plead guilty. Applicant has failed to prove he was coerced into pleading.

Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." *Id.* (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Id.* (citing

Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed.

DUE PROCESS

At the outset of the evidentiary hearing, Respondent moved to dismiss Applicant's specific allegations of trial court error for failure to state a claim under the Uniform Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10 to -160. Respondent asserted these allegations were direct appeal allegations that could have been raised at trial or on direct appeal. A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). This Court granted Respondent's motion.

Regardless, to any extent Applicant frames his allegations as the denial of due process and a violation of his constitutional rights, this Court finds Applicant has failed to prove any such violation. Applicant specifically alleges the trial court erred in denying his motion for a continuance, which resulted in his attorney's performance suffering because of a lack of time to prepare the case. "Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth." State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002). Our courts have held the trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion. State v. Morris, 376 S.C. 189, 208, 656 S.E.2d 359, 369 (2008) (citing State v. McMillian, 349 S.C. 17, 561 S.E.2d 602 (2002)). Even assuming the trial judge should have granted the motion for a continuance so that defense counsel would have had additional time to prepare for trial Applicant has failed to show what the additional preparations would have yielded. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997).

Accordingly, this Court finds Applicant has failed to prove his constitutional due process rights were denied, and this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

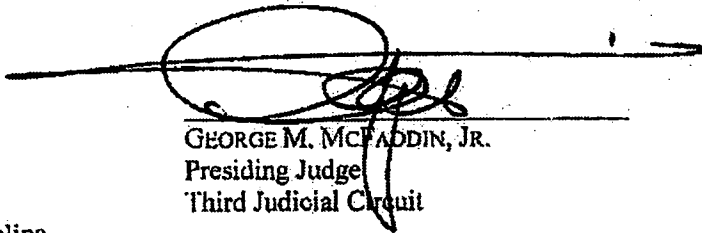
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court 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 the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 9th day of March, 2018.


 GEORGE M. MCFADDIN, JR.
 Presiding Judge
 Third Judicial Circuit

Sumter, South Carolina

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WITNESSES

W. Welch

Sumter County Sheriff

DOCKET NO. 2015-GS-43-0182

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY

TERM

2015

THE STATE

vs.

ANGEL LUIS PIZARRO

EFRAIN MATOS RIVERA

ARREST WARRANT NUMBER

2014A4310100850

2014A4310100851

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date:

2-5-15

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

Possession of a Schedule I or II (narcotic) controlled
substance

Trafficking in Heroin

[Signature]

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Possession of a Schedule I or II (narcotic) controlled substance
Trafficking in Heroin

At a Court of General Sessions, convened on February 5, 2015 the Grand Jurors of
SUMTER County present upon their oath:

CERTIFIED TRUE COPY
OF ORIGINAL FILE
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONEPOSSESSION OF A SCHEDULE I OR II (NARCOTIC) CONTROLLED SUBSTANCE

That in Sumter County, South Carolina, on or about October 13, 2014, the Defendant, **Angel Luis Pizarro**, unlawfully did possess a quantity of ethylone, a Schedule I (narcotic) controlled substance as defined by Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

COUNT TWOTRAFFICKING IN ILLEGAL HEROIN

That **Efrain Matos Rivera** did in Sumter County on or about October 13, 2014, sell, deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was knowingly in actual or constructive possession of a quantity of Heroin in an amount of twenty-eight grams or more, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(e)(3)(c), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

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

Solicitor

