

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Maite Murphy, Circuit Court Judge

LAVONTE FABOR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001119

APPENDIX

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1 State of South Carolina) Court of General Sessions
County of Dorchester) First Judicial Circuit
2
3 State of South Carolina,) Transcript of Record
vs.) 2016-GS-18-1534
Lavonte Fabor,) 2016-GS-18-1535
2016-GS-18-1537
6 Defendant.)

8 March 20th and 21st, 2017
St. George, South Carolina
9

10 B E F O R E:

11 The Honorable W. Jeffrey Young, Judge
12

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

14 Donald N. Sorenson, Assistant Solicitor

15 John Kornegay, Public Defender
16
17

18 Stacy S. Johnson
Circuit Court Reporter
19
20
21
22
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24
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I N D E X

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Certificate of Reporter

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E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (Whereupon, the following proceedings were held on
2 March 20, 2017, beginning at 4:06 PM.)

3 **BAILIFF:** All rise.

4 **THE COURT:** Thank you. Please take your seats.

5 **MR. SORENSON:** Do you still have the Dorchester
6 indictments up there, Judge?

7 **THE COURT:** Yes, I do. I've got five of them from
8 Dorchester.

9 **MR. SORENSON:** He's pleading guilty to four out of the
10 five. The Clonazepam he is not and I'll go over what he's
11 pleading to.

12 **THE COURT:** Yeah, go over all that. That would be the
13 1536?

14 **MR. SORENSON:** Yes, sir.

15 **THE COURT:** Okay.

16 **MR. SORENSON:** Yes, sir.

17 Before you, Your Honor, is Lavonte Fabor. We're here
18 for, I believe, purposes of a guilty plea. He's entering
19 a guilty plea on Indictment 2016-GS-18-1533. He was
20 originally charged with trafficking heroin, 14 to 28 grams,
21 and it would have been a second offense. We're allowing
22 him to plea to trafficking heroin, 4 to 14 grams, first
23 offense, on that indictment.

24 Then on 2016-1534, the trafficking cocaine, he's
25 being allowed to plead to 10 to 28 grams, second offense.

1 Then on the 2016-1535, the trafficking cocaine base,
2 he's being allowed to plead on that one also to 10 to
3 28 grams, second offense.

4 Then he's pleading guilty to the possession of a
5 firearm during the commission of a violent crime.

6 Then in Charleston County he has Indictment -- and
7 these are gonna all be waivers, Your Honor, to the grand
8 jury. 2017-GS-10-2566, which is -- they're allowing him
9 to plead to trafficking cocaine, 10 to 28 grams, first
10 offense. They're treating that as a first offense.

11 And 2017-GS-10-2567 to distribution of cocaine base,
12 first offense, and 2017-GS-10-2568, another count of
13 distribution of cocaine base, and they're allowing him to
14 plead -- we're treating all of those as first offenses.
15 And this is a negotiated 15-year sentence on all of those
16 charges, Your Honor.

17 May I approach?

18 **THE COURT:** You may. Yes, sir.

19 **THE CLERK:** If you will, please, raise your right
20 hand. State your name for the record.

21 **THE DEFENDANT:** Lavonte Fabor.

22 **THE COURT:** I need for you to speak up so we can hear
23 you.

24 **THE DEFENDANT:** Lavonte Fabor.

25 (Whereupon, Lavonte Fabor was duly sworn by the Clerk

1 of Court.)

2 **THE COURT:** All right. Mr. Kornegay, you represent
3 Lavonte Andre Fabor on all these charges; is that correct?

4 **MR. KORNEGAY:** I do, Your Honor.

5 **THE COURT:** Let's just walk through them and make
6 sure. 2016-GS-18-1534, trafficking in cocaine, 10 to
7 28 grams, second offense; is that correct?

8 **MR. KORNEGAY:** That's correct.

9 **THE COURT:** Under Indictment 2017-GS-10 -- these
10 are the Charleston County cases, 2566 -- excuse me.
11 Indictment -- it's got the warrant number it looks like.

12 **MR. SORENSON:** The indictment number should be at
13 the top.

14 **THE COURT:** 2566. I see it.

15 **MR. SORENSON:** It's got a "W" after it. I guess
16 that's because he's waiving.

17 **THE COURT:** He's pleading to trafficking in cocaine
18 10 grams or greater than 28, a first offense; is that
19 correct?

20 **MR. KORNEGAY:** Yes, Your Honor. And I was not
21 appointed to his Charleston County charges, but he's
22 waiving venue and resolving all of his charges here in
23 Dorchester County.

24 **THE COURT:** All right. And then under Dorchester's
25 2016-GS-18-1535, trafficking in meth, cocaine base,

1 10 grams or more, but less than 28 grams, second offense?

2 **MR. KORNEGAY:** That's correct.

3 **THE COURT:** And then the other Charleston,
4 2017-GS-10-2567, for distribution of crack, first offense?

5 **MR. KORNEGAY:** Yes, Your Honor.

6 **THE COURT:** And Dorchester, 2016-GS-18-1533,
7 trafficking in heroin or Morphine, 4 grams but less than
8 14 grams, first offense?

9 **MR. KORNEGAY:** Yes, Your Honor.

10 **THE COURT:** And under 2016-GS-18-1537, possession of
11 a knife or firearm during the commission of a violent
12 crime?

13 **MR. KORNEGAY:** Yes, Your Honor.

14 **THE COURT:** And under 2017-GS-10-2568, distribution
15 of crack, first offense; is that correct?

16 **MR. KORNEGAY:** That's correct.

17 **THE COURT:** Okay. Have you had an opportunity to go
18 over these charges, explain to him his constitutional
19 rights and the potential sentence that he can receive in
20 this matter?

21 **MR. KORNEGAY:** I have, Your Honor.

22 **THE COURT:** Do you think he's understood what you've
23 told him?

24 **MR. KORNEGAY:** I do.

25 **THE COURT:** Does he intend to plead guilty or not

1 guilty?

2 **MR. KORNEGAY:** Guilty, Your Honor.

3 **THE COURT:** Do you agree with his decision?

4 **MR. KORNEGAY:** I do.

5 **THE COURT:** Based upon your investigation of the
6 facts and the circumstances, do you believe that if this
7 case were to go to trial there would be a substantial
8 likelihood that he would be found guilty beyond a
9 reasonable doubt?

10 **MR. KORNEGAY:** I do.

11 **THE COURT:** Mr. Sorenson, as I go through these,
12 could you put on the top right corner of each one of these
13 what the maximum sentence would be? I don't have that
14 book in my head.

15 **MR. SORENSON:** Yes. Yes, sir. They were on the
16 ones that --

17 **THE COURT:** All right. Now, Mr. Fabor, I need to
18 ask you a series of questions to make sure you're
19 entering into this plea freely, voluntarily, knowingly
20 and intelligently, but the first question I have are you
21 under the influence of alcohol or drugs?

22 **THE DEFENDANT:** (Shakes head.)

23 **THE COURT:** I need a verbal.

24 **MR. KORNEGAY:** Speak up.

25 **THE DEFENDANT:** No.

1 **THE COURT:** Speak into the microphone and talk to me
2 or do you not want to plead?

3 **THE DEFENDANT:** What you said?

4 **THE COURT:** Speak into the microphone. When I ask
5 you a question, give me an answer. Do not shake your
6 head.

7 **THE DEFENDANT:** Are you being belligerent? Are
8 you --

9 **THE COURT:** We'll try the case. Thank you.

10 **MR. SORENSON:** Thank you, Judge.

11 **MR. KORNEGAY:** Thank you, Your Honor.

12 (Whereupon, the proceedings were concluded for
13 March 20, 2017, at 4:12 PM.)

14 (Whereupon, the following proceedings were held on
15 March 21, 2017, beginning at 10:18 AM.)

16 **BAILIFF:** All rise.

17 **THE COURT:** Thank you. Please take your seats.
18 Good morning, everyone.

19 **THE CLERK:** State your name for the record.

20 **THE DEFENDANT:** Lavonte Fabor.

21 (Whereupon, Lavonte Fabor was duly sworn by the Clerk
22 of Court.)

23 **THE COURT:** I need for you to speak into the
24 microphone. The court reporter needs to hear what you
25 have to say and I need to hear what you have to say.

1 How far did we get yesterday?

2 **MR. SORENSON:** I know I had gone through and
3 basically just kind of laid out what he was pleading to
4 and I really don't think you got too far into questioning
5 him at all.

6 **MR. KORNEGAY:** I believe you had read the indictments,
7 Your Honor.

8 **THE COURT:** Okay. And I think I'd asked you to be
9 sure to put the maximum sentence on each one and --

10 **MR. SORENSON:** Oh, yeah. And I think that's actually
11 why -- that explains why I had these -- I couldn't
12 figure out why I had these indictments and not the other
13 indictments. I'm sorry.

14 **THE COURT:** Good morning, ladies.

15 **DEFENDANT'S GRANDMOTHER:** Good morning.

16 **DEFENDANT'S MOTHER:** Good morning.

17 **MR. KORNEGAY:** And, Your Honor, this is Mr. Fabor's
18 grandmother and mother present with him.

19 **THE COURT:** And I believe my last question was, is
20 what's stated in the indictments, is that correct?

21 **THE DEFENDANT:** Correct. Correct.

22 **THE COURT:** What are the facts, Solicitor?

23 **MR. SORENSON:** Thank you. May it please the Court,
24 Your Honor? As to the three Charleston County charges,
25 these are all -- two of them are distributions of cocaine

1 base, one of them is trafficking in cocaine. All three
2 of them are -- were controlled buys that were done by --
3 by kind of a joint ATF/Charleston County/North Charleston
4 task force back in April and May of 2015. The first one
5 was a distribution in the parking lot of the International
6 Lounge located at 4620 Dorchester Road and that is in the
7 city of North Charleston in Charleston County where the
8 Defendant sold to an undercover -- or a confidential
9 informant of
10 the Alcohol, Tobacco and Firearms Department a quantity
11 of 8.97 grams of cocaine base.

12 The second one occurred on April 24th of 2015 in
13 that same location where the Defendant sold to yet,
14 again, I believe it was most likely the same confidential
15 informant, 8.08 grams of cocaine base.

16 The third one is a trafficking that occurred on
17 May the 28th of 2015 at the Waterworks car wash at 4610
18 Dorchester Road, also in Charleston County, where the
19 Defendant sold to a confidential informant of the ATF a
20 quantity of 14.48 grams of cocaine.

21 The Dorchester County charges, Your Honor, stemmed
22 out -- it turns out they were actually kind of during the
23 -- during 2015, during that calendar year, there were
24 basically two independent kind of investigations going
25 on that involved this Defendant; one that the Federal

1 government was involved in, another one that just
2 narcotics officers in North Charleston was involved in.
3 They had made a controlled buy, North Charleston Police
4 Department, from the Defendant, in September of 2015, had
5 obtained a warrant, and that was for a quantity of heroin
6 that was sold. Basically a small -- it was like .2 grams
7 of heroin, I believe. A warrant was obtained for the
8 Defendant. They started looking for him kind of shortly
9 after the New Year. Detective Terry, who is seated on
10 Your Honor's left in the courtroom, was the lead agent on
11 that case.

12 Detective Terry had observed the Defendant on
13 February 2nd of 2016 driving over off of Dorchester Road
14 in a white GMC Yukon. He had gotten -- there was a female
15 in the vehicle with him and he had gotten the tag number
16 and it ended up coming back being registered to Enterprise
17 Rental. Detective Terry was just in an unmarked car at
18 that point in time and was attempting to get a patrol unit
19 to come to his location to perform a traffic stop but by
20 the time that happened he had lost -- basically lost the
21 Defendant.

22 That information about that vehicle was kind of
23 circulated to other narcotics officers and road officers
24 in North Charleston and the following day Detective Terry
25 got contacted by a couple of other narcotics officers

1 indicating that they had observed the Defendant over
2 in North Charleston in that vehicle appearing to be
3 interacting with another passenger in that vehicle in I
4 believe it was a gas station parking lot. Detective Terry
5 kind of started heading that way and ultimately ended up
6 passing the Defendant on Dorchester Road, ended up at one
7 point in time actually pulling up beside him and was able
8 to identify him, he was aware of Mr. Fabor, that he was
9 the driver of that vehicle and I believe there was nobody
10 else in the vehicle at that point in time. That vehicle
11 was followed into a subdivision where an individual came
12 and got in the vehicle with him. Shortly after that, a
13 patrol officer, Timothy Brown with North Charleston, had
14 kind of fallen in behind. The Defendant had gone down
15 Dorchester Road and taken a right onto Patriot Boulevard.
16 He's now come into Dorchester County. At that point in
17 time Officer Brown had clocked the Defendant doing 51, I
18 believe it was, and I think that's a 35 through there,
19 35 or 40, and blue-lighted him.

20 The Defendant pulled into a Spinx gas station, which
21 is located at the intersection of Patriot Boulevard and
22 Ashley Phosphate in Dorchester County. Officer Brown
23 identified the Defendant as being the driver and at that
24 point in time he was taken into custody for that
25 outstanding distribution of heroin warrant.

1 Detective Terry was basically behind that vehicle
2 pretty much the whole time, so had pulled into the parking
3 lot kind of right after that occurred. He went up to the
4 vehicle. As he approached the vehicle and the doors were
5 open because they had also taken the passenger, Mr. Fraser,
6 out of the vehicle, he could smell marijuana coming from
7 that vehicle, observed in plain view inside the vehicle
8 two sets of scales, and as a result of that, kind of the
9 totality of all that, searched the vehicle. There was a
10 handgun, a Ruger, that was found. A Ruger nine millimeter
11 in the glove box of the vehicle. It was unloaded. The
12 magazine to the gun along with a loose nine millimeter
13 round was found in the center console.

14 Upon looking at the vehicle a little more closely,
15 Detective Terry observed above the steering wheel on the
16 dash it appeared to not be flush and basically ended up --
17 was able to lift it up and it was basically a compartment
18 underneath the dash right above the steering wheel. In
19 that location he found -- it was a green Crown Royal bag.
20 When he took that bag out, it had a quantity of what ended
21 up field testing initially positive for heroin, cocaine
22 base, powder cocaine, a small amount of marijuana, and
23 also fifty pills, along with several loose kind of baggies
24 that were found in that -- in that Crown Royal bag. Those
25 items were all sent off -- everything but the marijuana,

1 it was a fairly small amount where they ended up not
2 charging him with that. The other items were sent off to
3 the State Law Enforcement Division. The heroin came back
4 at 18.31 grams of heroin, the cocaine was 28.8 grams of
5 cocaine, the cocaine base was 30.38 grams and then the
6 pills were Clonazepam, which are a Schedule 4 substance,
7 and there were fifty tablets of that that were found in
8 there.

9 The Defendant, Your Honor, has a prior record that
10 would -- because several of the charges -- the Dorchester
11 charges we're pleading him as second offenses and he does
12 have prior convictions out of Charleston County in 2005
13 for the possession of meth or cocaine base and also
14 possession of a controlled substance that he received a
15 suspended youthful offender sentence on.

16 **THE COURT:** All right. Thank you.

17 Mr. Fabor, do you agree with the facts as submitted
18 by the Solicitor?

19 **THE DEFENDANT:** Correct. Correct.

20 **THE COURT:** And are you, in fact, guilty of these
21 charges?

22 **THE DEFENDANT:** Correct.

23 **THE COURT:** Now you understand that of the Charleston
24 charges that you're being allowed to plead to, the
25 distribution of crack first, the distribution of crack

1 first and the trafficking of cocaine -- the distribution
2 of crack, each carry up to fifteen years and the
3 trafficking of cocaine carries up to ten years in jail?
4 Do you understand that?

5 **THE DEFENDANT:** (Nods head.)

6 **THE COURT:** Do you understand as far as the
7 Dorchester County charges because they are second
8 offenses that all of those added together carry up to
9 ninety years in jail? Do you understand that?

10 **THE DEFENDANT:** Correct.

11 **THE COURT:** Do you understand that if you were to
12 -- the Court was to take each one of these and sentence
13 you individually consecutively that a court would be well
14 with in its right to sentence you to 130 years in jail?
15 Do you understand that?

16 **THE DEFENDANT:** Correct.

17 **THE COURT:** Do you understand that because of the
18 work of your attorney and the grace of the solicitor's
19 office that they have agreed to a negotiated 15-year
20 sentence? Do you understand that?

21 **THE DEFENDANT:** Correct.

22 **THE COURT:** And I need for you to speak up. I need
23 -- I really do. I'm not trying to say you're stupid or
24 anything like that, but I need to hear it so that the
25 court reporter can hear it, all right?

1 **THE DEFENDANT:** Correct.

2 **THE COURT:** All right. So now you understand at this
3 point in time I cannot change the negotiated settlement,
4 but I don't have to accept it as well. I can't lower it,
5 I can't raise it, but I don't have to accept it. Do you
6 understand that?

7 **THE DEFENDANT:** Correct.

8 **THE COURT:** And knowing these are also violent
9 charges that whatever sentence that you get, and right
10 now it's the fifteen years negotiated, you will have to
11 serve 85 percent of that? Do you understand that?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** And do you understand that the long-term
14 consequence is if you should get out of jail and do --
15 get another charge like this that you are very close to
16 being in the life without possibility of parole realm,
17 so if you should get another drug offense that another
18 subsequent judge could sentence you to life without the
19 possibility of parole?

20 **THE DEFENDANT:** Correct.

21 **THE COURT:** All right. Now knowing all of that, do
22 you still wish to plead guilty?

23 **THE DEFENDANT:** Correct.

24 **THE COURT:** Okay. And also when you plead guilty
25 you waive certain constitutional rights. The first right

1 you waive is your right against self-incrimination. In
2 neither this Court or any other court in this land would
3 you ever be required to testify against yourself, however,
4 when you plead guilty you're doing exactly that. So do
5 you wish to waive your right against self-incrimination
6 and continue with this plea?

7 **THE DEFENDANT:** Correct, but -- but is it where I
8 can come back for an appeal?

9 **THE COURT:** I haven't finished yet. Now you're
10 also waiving your right to have a jury trial. Now we
11 have twelve jurors and two alternates already selected
12 planning on coming in here at 1:00 to hear this case.
13 Are you telling me now that you do not want them to hear
14 this case?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** You don't want them to hear the case?

17 **THE DEFENDANT:** No.

18 **THE COURT:** During the course of the trial, I will
19 tell you that if you decided not to testify that I would
20 instruct the jury that they couldn't hold that against
21 you. Further, your attorney could artfully cross-examine
22 the witnesses, call witnesses on your behalf, could
23 challenge the way that the drugs were seized possibly
24 resulting in your being exonerated. When you plead
25 guilty, you don't get to ask any questions and the State

1 doesn't have to prove anything. Do you understand that?

2 **THE DEFENDANT:** Correct.

3 **THE COURT:** Now so you wish to waive your right to
4 have a jury trial and confront the witnesses against you?

5 **THE DEFENDANT:** Correct.

6 **THE COURT:** Now has anybody threatened you in any
7 way to get you to plead guilty?

8 **THE DEFENDANT:** No. No, sir.

9 **THE COURT:** Has anybody promised you anything other
10 than a negotiated sentence of fifteen years to get you to
11 plead guilty?

12 **THE DEFENDANT:** No, sir.

13 **THE COURT:** Is the only reason that you're pleading
14 guilty to all of these charges, the Dorchester and the
15 Charleston County charges, is because you are, in fact,
16 guilty of those?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** All right. Are you satisfied with the
19 services of Mr. Kornegay?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Has he done everything that you've asked
22 him to do?

23 **THE DEFENDANT:** Correct.

24 **THE COURT:** Okay. And do you need any more time to
25 speak with him?

1 **THE DEFENDANT:** No. No, sir.

2 **THE COURT:** Now have you understood all of my
3 questions today?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** And do you have any questions for the
6 Court?

7 **THE DEFENDANT:** No.

8 **THE COURT:** All right. And you understand that if
9 you change your mind about your decision to plead guilty,
10 that you will only have ten days in which to file an
11 appeal?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Under Indictment -- let me read through
14 them. This is the Charleston. Under Indictment
15 2017-GS-10-2568 charging you with distribution of crack,
16 first offense, how do you plead; guilty or not guilty?

17 **THE DEFENDANT:** Guilty.

18 **THE COURT:** Under Indictment 2017-GS-10-2567, how do
19 you plead; guilty or not guilty?

20 **THE DEFENDANT:** Guilty.

21 **THE COURT:** Under Indictment 2017-GS-10-2566 charging
22 you with trafficking in cocaine, 10 grams but less than
23 28 grams, first offense, how do you plead; guilty or not
24 guilty?

25 **THE DEFENDANT:** Guilty.

1 **THE COURT:** Under Indictment 2016-GS-18-1534,
2 charging you with trafficking in cocaine, 10 grams or
3 more, but less than 28 grams, second offense, how do you
4 plead; guilty or not guilty?

5 **THE DEFENDANT:** Guilty.

6 **THE COURT:** Under Indictment 2016-GS-18-1535,
7 charging you with trafficking in meth or cocaine base,
8 10 grams or more but less than 28 grams, second offense,
9 how do you plead; guilty or not guilty?

10 **THE DEFENDANT:** Guilty.

11 **THE COURT:** Under Indictment 2016-GS-18-1533,
12 charging you with trafficking in heroin or Morphine,
13 4 grams or more but less than 14 grams, first offense,
14 how do you plead; guilty or not guilty?

15 **THE DEFENDANT:** Guilty.

16 **THE COURT:** Under Indictment 2016-GS-18-1537,
17 charging you with possession of a firearm or knife during
18 the commission of a violent crime, how do you plead;
19 guilty or not guilty?

20 **THE DEFENDANT:** Guilty.

21 **THE COURT:** All right. I find there's a substantial
22 factual basis for the plea. I find the Defendant has
23 entered into it freely and voluntarily, knowingly and
24 intelligently. He has had advice from counsel who he
25 says he is well-pleased, I will accept the plea.

1 Mr. Kornegay.

2 **MR. KORNEGAY:** Thank you, Your Honor. May it please
3 the Court? Your Honor, we've worked with Dorchester
4 County, as well as Charleston County. This has been a
5 long process. I was actually appointed to Mr. Fabor in
6 February, but I had represented him about a year ago for
7 a few months. There were some issues that we were gonna
8 bring out at trial. There was a pending warrant that the
9 solicitor mentioned that to this day has not been served
10 on Mr. Fabor, and that was the September of 2015 warrant,
11 but ultimately after discussing with Mr. Fabor and his
12 family we felt like a guilty plea would be in his best
13 interest and we would just ask the Court to accept the
14 State's recommendation -- or negotiation of fifteen years.

15 **THE COURT:** Would the State like to say anything
16 further, Solicitor?

17 **MR. SORENSON:** The only thing, I guess, I would
18 like to put on the record since Mr. Kornegay had just
19 kind of brought that up and I'd mentioned in my factual
20 presentation, that that warrant out of Charleston County,
21 the warrant number is 2015A1021000866, that is for
22 distribution of heroin. When he was arrested, he was
23 lodged into the Dorchester County jail back on February
24 the 3rd and a copy of that warrant was faxed to basically
25 put a hold on him to Dorchester County. There was also

1 a hold placed on him from Berkeley County for his YOA
2 revocation. That warrant somewhere has gotten lost in
3 the shuffle. It has never been served on him from looking
4 in the public index. I've had Detective Terry spend a
5 pretty significant portion of time last week trying to
6 locate the actual warrant, so it is still floating out
7 there somewhere. It would be my intention as part of this
8 plea --

9 **THE COURT:** To dismiss as part of that because --

10 **MR. SORENSON:** That would be my intention because
11 obviously if this pops up somewhere down the road, and
12 I'm not sure I technically have the authority to dismiss
13 it because it's a Charleston County --

14 **THE COURT:** I don't think you do either.

15 **MR. SORENSON:** But needless to say, that would be
16 -- and given the fact that we're resolving the pending
17 charges that have been served on him in Charleston County
18 I'm hoping that it will be seen by everybody down the
19 road.

20 **THE COURT:** Is that your understanding as well?

21 **MR. KORNEGAY:** That's my understanding, Your Honor.

22 **THE COURT:** This is really to be a global plea that
23 takes care of everything that's going on?

24 **MR. KORNEGAY:** Right.

25 **THE COURT:** Of course, if something came out later

1 that nobody was contemplating, then that would still be a
2 charge, but at this point in time everything that you know
3 he's involved with he's pleading to; is that correct?

4 **MR. KORNEGAY:** That's correct, Your Honor.

5 **THE COURT:** Is that your understanding as well?

6 **THE DEFENDANT:** Is my YOA getting overridden?

7 **MR. SORENSON:** Well, he's on YOA --

8 **THE COURT:** You're not gonna be on YOA anymore.

9 **MR. SORENSON:** He'll have to, I assume, address that
10 elsewhere. I don't know if he's on parole or probation
11 or --

12 **THE COURT:** That's a different matter. That's not
13 before me today.

14 **MR. KORNEGAY:** It wouldn't exceed this. This would
15 supersede your YOA.

16 **THE COURT:** Yeah, you won't go to YOA on this one.

17 **THE DEFENDANT:** So I don't have to worry about my
18 YOA in Berkeley County?

19 **THE COURT:** No.

20 **MR. KORNEGAY:** His concern, Your Honor, is getting
21 more time than the fifteen years.

22 **THE COURT:** No, this is -- this supercedes that.
23 This supercedes that.

24 All right. Do you understand that?

25 **THE DEFENDANT:** Correct.

1 **THE COURT:** I think I asked you. I just want to be
2 sure. The Charleston cases have not been presented to
3 the grand jury. You signed this knowing it had not been
4 presented to the grand jury. Do you still consent to it
5 not being presented to the grand jury? Do you waive that?

6 **THE DEFENDANT:** Right.

7 **DEFENDANT'S GRANDMOTHER:** Uh-huh.

8 **THE COURT:** I need him to speak, ma'am.

9 **MR. KORNEGAY:** Speak up.

10 **THE DEFENDANT:** Right.

11 **THE COURT:** All right. Anything further?

12 **MR. KORNEGAY:** Nothing further, Your Honor.

13 **THE COURT:** How much time did he spend in jail? It
14 sounds like about two years.

15 **MR. SORENSON:** No, it wouldn't be quite that much.
16 He was arrested on February the 3rd. The jail -- we'd
17 probably have to go back and calculate that if Your Honor
18 wanted him -- because he got -- he got --

19 **MR. KORNEGAY:** Your Honor --

20 **MR. SORENSON:** -- his charges got dismissed and --

21 **THE COURT:** I'm just gonna put down that he's
22 entitled to it. Somebody else can do the calculation.

23 **MR. KORNEGAY:** In my conversation with my client,
24 Your Honor, we had about seven months in jail, Your Honor.

25 **THE DEFENDANT:** No.

1 **MR. KORNEGAY:** That's what I was told.

2 **THE DEFENDANT:** Will I get time served for my --
3 time credit for ankle monitor, too?

4 **THE COURT:** I'm gonna give you credit for time
5 served. Somebody else will have to do the calculation,
6 but I'm gonna give you credit for time served.

7 **THE DEFENDANT:** I was asking if I would get time
8 credit for my ankle monitor while I was on my ankle
9 monitor.

10 **THE COURT:** No, I don't think so.

11 All right. Under Indictment 2017-GS-10-2567, on
12 the charge of distribution of crack, first offense, the
13 sentence is that you be committed to the State Department
14 of Corrections for a period of fifteen years.

15 Under Indictment 2017-GS-10-2568, on the charge of
16 distribution of crack, first offense, the sentence is that
17 you be committed to the State Department of Corrections
18 for a period of fifteen years.

19 Under Indictment 2017-GS-10-2566, charging you with
20 trafficking in cocaine, 10 grams or greater than 28 grams,
21 first offense, the sentence is that you be committed to
22 the State Department of Corrections for a period of
23 ten years.

24 Under Indictment 2016-GS-18-1534, charging you with
25 trafficking in cocaine, 10 grams or more, but less than

1 28 grams, second offense, the sentence is that you be
2 committed to the State Department of Corrections for a
3 period of fifteen years.

4 Under Indictment 2016-GS-18-1535, charging you with
5 trafficking in meth or cocaine base, 10 grams or more, but
6 less than 28 grams, second offense, the sentence is that
7 you be committed to the State Department of Corrections
8 for a period of fifteen years.

9 Under Indictment 2016-GS-18-1533, charging you with
10 trafficking in heroin or Morphine, 4 grams or more, but
11 less than 14 grams, first offense, the sentence is that
12 you be committed to the State Department of Corrections
13 for a period of fifteen years.

14 Under Indictment 2016-GS-18-1537, charging you with
15 possession of a knife or a firearm during the commission
16 of a violent crime, the sentence is that you be committed
17 to the State Department of Corrections for a period of
18 five years.

19 All of these sentences are to run concurrent and he
20 is to be given credit for time served in jail. Thank you.

21 **MR. SORENSON:** Thank you, Your Honor.

22 **MR. KORNEGAY:** Thank you, Your Honor.

23 (Whereupon, the proceedings were concluded for
24 March 21, 2017, at 10:46 AM.)

25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 20th and 21st days of March, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

December 26, 2017

ISI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Dorchester)2017-CP-18- 1681Laronte Fabre 371906
Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention B.C.I.
2. Name and location of Court which imposed sentence Dorchester County Court of General Session
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016A1021000070 - trafficking Heroin
 - (b) 2016A1021000071 - trafficking Cocaine
 - (c) 2016A1021000072 - trafficking Cocaine base
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 21 2017 Concurrent 15 years
 - (b) March 21 2017 Concurrent 15 years

Revised 3/2003

1) d. 2016A1021000074 - Possession of A Fire Arm During Commission 29
of a violent crime

E. 2017A1010201000 - trafficking cocaine

F. 2017A1010201001 - Distribution cocaine base

G. 2017A1010201002 - Distribution cocaine base

5.) c. march 21 2017 concurrent 15 years

d. march 21 2017 Concurrent 15 years

e. march 21 2017 Concurrent 15 years

F. march 21 2017 Concurrent 15 years

G. march 21 2017 Concurrent 15 years.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel Failed to inform me of my right to appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance of counsel
- (b) Direct appeal
- (c) Subject matter jurisdiction

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

- (a) Counsel Failed to do any investigation
- (b) Counsel Failed to inform of my right to direct appeal
- (c) Court kept jurisdiction to accept my plea b/c I was ~~denied~~ denied my preliminary hearing, I was arrested with out a warrant.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) these are PCR issues only

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. John T Kornegay
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea
 - ii. Sentencing
 - iii. _____

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

New trial

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

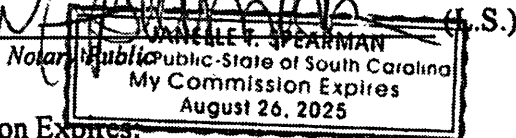
County of Dorchester)L. Faber

I, _____, 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.

L. Faber

SWORN to and subscribed before me this 2nd
day of October, 2017

My Commission Expires: _____



CERTIFIED COPY
2017 OCT 12 PM 4:24
[Signature]
CLERK OF COURT
DORCHESTER COUNTY

Revised 3/2003

In Jesus Name

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

L. Fabel

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

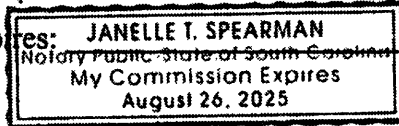
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Larrie Fabel
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of October, 2017

Janelle T. Spearman
Notary Public

My Commission Expires



Janelle T. Spearman
 Notary Public
 State of South Carolina

2017 OCT 12 PM 4:26

CERTIFIED COPY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Lavonte Fabor, #371906,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2017-CP-18-1681

RETURN

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on November 2, 2017, would respectfully show this Court:

I.

Lavonte Fabor (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. On September 5, 2016, the Dorchester County Grand Jury indicted Applicant for trafficking heroin, 14-28 grams (2016-GS-18-1533), trafficking cocaine, 28-100 grams, (2016-GS-18-1534) trafficking cocaine base, 28-100 grams (2016-GS-18-1535), manufacturing, possession of scheduled IV drugs with intent to distribute (2016-GS-18-1536) and possession of a firearm or knife during the commission of a violent crime (2016-GS-18-1537). The Charleston County Grand Jury also indicted Applicant for trafficking cocaine (2017-GS-10-2566) and two counts of distribution of cocaine base (2017-GS-10-2567, 2017-GS-10-2568). The charges resulted from controlled buys of drugs between Applicant and undercover agents, confidential informants and investigations conducted by a joint task force of the federal government and narcotics officers.

John Thomas Kornegay, Esquire represented Applicant. On March 21, 2017, Applicant appeared before Honorable W. Jeffery Young in the Dorchester County Court of General Sessions to enter guilty pleas to the lesser-included offenses of trafficking heroin, 4-14 grams,

first offense, trafficking cocaine, 10-28 grams, trafficking cocaine base, 10-28 grams, second offense, trafficking cocaine, 10-28 grams, first offense, two counts of distribution of cocaine base and as indicted of possession of a firearm during the commission of a violent crime. Applicant waived venue for the Charleston County charges so all charges could be disposed of together in Dorchester County. Pursuant to a negotiated sentence between Applicant and the State, Judge Young sentenced Applicant to imprisonment for concurrent terms of fifteen years each for trafficking heroin, two counts of trafficking cocaine, trafficking cocaine base, two counts of distribution of cocaine base and five years for possession of a firearm during the commission of a violent crime. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Dorchester and Charleston County Clerks of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, 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
 - a. Failure to investigate
 - b. Failure to inform client of right to direct appeal
2. Subject Matter Jurisdiction
 - a. "Court lacked jurisdiction to accept my plea because I was denied my preliminary hearing, I was arrested without a warrant."

III.

In a PCR action, the 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, the 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, 466 U.S. 668.

First, an 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).

In this case, the record refutes Applicant’s allegations of ineffective assistance of counsel. Applicant testified at his guilty plea hearing that he was satisfied with his representation and there was nothing else he wanted his plea counsel to do. Tr. p. 18. Applicant also testified that he was not promised anything in exchange for his plea and was pleading guilty because he was

indeed guilty. Tr. p 18. Furthermore, Applicant benefited greatly from his guilty plea. The State dismissed Applicant's charge of manufacturing, possession of schedule IV drugs, and agreed to negotiated sentences for lesser-included charges. Tr. p. 16. Applicant testified he understood the charges against him as well as the lesser included offenses he was pleading guilty to. Tr. p. 16.

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.

In his application, Applicant also claims that he was denied effective assistance of counsel because his counsel failed to advise him of a direct appeal. While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E.2d at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). Applicant has failed to show such extraordinary circumstances. Therefore, Respondent submits that this allegation should be dismissed.

V.

The Respondent submits that the Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Applicant here cannot show any irregularity. Therefore, the Respondent would move for summary judgement on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

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), SCRCPP. 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, SCRCPP. 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.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. 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.

VIII.

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

IX.

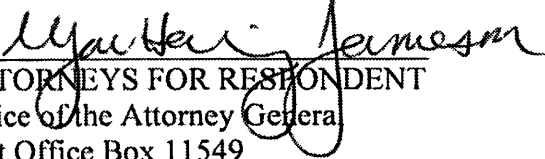
WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

January _____, 2018

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) Court of Common Pleas
3 _____) Case No. 2017-CP-18-1681
4 LAVONTE FAVOR,)
5 Applicant,)
6 vs.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: March 2, 2018
9 _____)

10 B E F O R E:

11 THE HONORABLE MAITE MURPHY

12
13
14 A P P E A R A N C E:

15 RODNEY DUANE DAVIS
16 Attorney for the Applicant

17 CHRISTIAN AARON SAVILLE
18 Attorney for the Respondent

19 Karen V. Andersen, RMR, CRR
20 Circuit Court Reporter
21
22
23
24
25

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EXAMINATION

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1 MR. DAVIS: We talked about it extensively, but if you
2 would go over the risks and benefits on the record.

3 THE COURT: Certainly.

4 MR. SAVILLE: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 MR. SAVILLE: This is Lavonte Fabor vs. South
7 Carolina, 2017-CP-18-1681. Applicant is presently confined in
8 the South Carolina Department of Corrections after being
9 indicted on September 5th, 2016, by the Dorchester County Grand
10 Jury for trafficking heroin, 14 to 28 grams; trafficking
11 cocaine, 28 to 100 grams; trafficking cocaine base, 28 to 100
12 grams; manufacturing; possession of Schedule IV drugs with
13 intent to distribute; and possession of a firearm or knife
14 during the commission of a violent crime.

15 Your Honor, the Charleston County Grand Jury also
16 indicted applicant for trafficking cocaine and two counts of
17 distribution of cocaine base. I've spoken with Mr. Davis and
18 he will have more to say on this, but applicant indicated he
19 does not wish to challenge the Charleston County charges in
20 this PCR action. He will only be challenging the Dorchester
21 County charges, although he did waive venue and plead guilty to
22 all of them in Dorchester County.

23 John Thompson Kornegay, Esq. represented applicant.
24 Donald Sorenson, Esq. prosecuted the case. And on March 21st,
25 2017, the applicant appeared before the Honorable Jeffrey Young

1 in Dorchester County Court of General Sessions to enter guilty
2 pleas to lesser-included offenses of trafficking heroin, 4 to
3 14 grams, first offense; trafficking cocaine, 10 to 28 grams;
4 trafficking cocaine base, 10 to 28 grams, second offense; two
5 counts of distribution of cocaine base; and as indicted, a
6 possession of a firearm during the commission of a violent
7 crime.

8 Pursuant to a negotiated sentence between applicant
9 and the State, Judge Young sentenced him to imprisonment for
10 concurrent terms of 15 years. The applicant did not appeal his
11 convictions or sentence. He filed an application for
12 post-conviction relief on November 2nd, 2017, alleging
13 ineffective assistance of counsel and subject matter
14 jurisdiction.

15 The State made its return on January 26, 2018, moving
16 to dismiss the allegation regarding subject-matter
17 jurisdiction.

18 Applicant is present today and represented by
19 Mr. Rodney Davis, Esq. I will turn it over to Mr. Davis.
20 Thank you.

21 THE COURT: Mr. Davis.

22 MR. DAVIS: Good morning, Your Honor.

23 Judge, before we get into some procedural issues, I
24 just want the Court to know that I have spoken with him on
25 multiple occasions about the risks and benefits of a PCR, that

1 a win doesn't always equal an improvement, although it could, a
2 dismissal of lower charge or charge would go away or certainly
3 a lower sentence. But we are dealing with four Dorchester
4 County charges, two of them -- I'm sorry, three of them being
5 trafficking charges.

6 I'm holding a drug sentencing sheet that I reviewed
7 with him previously. And just for the Court, you probably
8 already know this, Your Honor, but on the two of the four that
9 are the most serious in Dorchester, it's 28 to 100 grams,
10 second offense. Each one of those would carry a mandatory
11 minimum of 7 years up to 30 years. Those are no parolable
12 offenses. So makes it 85 percent.

13 And as the colloquy explained at the plea, both the
14 weight and the offense level, all but one trafficking were
15 reduced. Having said that, he is still serving one 85 percent
16 charge. And that's on one of the Dorchester County trafficking
17 charges.

18 I've spoken with him about the fact that a win here
19 and even on appeal, if the State chose to appeal, that all --
20 the win is that he would start over on those four charges as
21 they were originally brought forward. I believe he completely
22 understands that. We have talked, as I said, multiple times.
23 He went to the 11th grade at North Charleston High School. He
24 does have a GED.

25 His grandmother and his brother are in court with us

1 today. I've spoken with them previously and today as well. So
2 I do believe he understands the risks and benefits. He
3 indicated to me as recently as this morning in lockup that he
4 does wish to go forward, given the potential risk of that. But
5 if you have any questions about that on the record, we
6 certainly could.

7 THE COURT: Good morning. Please stand and be sworn.

8 MR. FAVOR: Good morning.

9 LAVONTE FAVOR,

10 having been duly sworn, testifies as follows:

11 THE COURT: Mr. Fabor, your attorney tells me that he
12 discussed with you the potential risks and benefits of going
13 forward here today; is that correct?

14 MR. FAVOR: Yes, ma'am.

15 THE COURT: And he tells me that you have your GED, so
16 you certainly can read and write. And you understand what's
17 going on; is that right?

18 MR. FAVOR: Yes, ma'am.

19 THE COURT: You don't have any kind of mental
20 conditions or anything that would prevent you from
21 understanding what you are doing here today?

22 MR. FAVOR: No, ma'am.

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

25 MR. FAVOR: No, ma'am.

1 THE COURT: Anything that would prevent you from
2 understanding about you going forward here today?

3 MR. FAVOR: No, ma'am.

4 THE COURT: As your attorney has explained to you, you
5 understand that if your case is granted, if your PCR is
6 granted, then, basically, the process starts over. So you
7 would be looking at potential maximum penalty on each of your
8 original charges, rather than the 15-year sentence that you
9 received. Do you understand that?

10 MR. FAVOR: Yes, ma'am.

11 THE COURT: And knowing that, you wish to go forward
12 here today and waive those potential risks and benefits? Do
13 you need more time to talk to your attorney about that?

14 MR. FAVOR: No, ma'am.

15 THE COURT: You will be looking at full exposure if
16 your case is granted?

17 MR. FAVOR: I would be looking at full exposure?

18 THE COURT: Yes, sir. Do you understand that?

19 MR. FAVOR: Yes, ma'am.

20 THE COURT: By full exposure, I mean the maximum
21 possible sentence on each of the crimes. Two of those carried
22 up to 30 years. So at least on those two, you would be looking
23 at 60 years, potentially, in prison. Do you understand that?

24 MR. FAVOR: Yes, ma'am.

25 THE COURT: Knowing that, you wish to go forward today

1 with your PCR hearing?

2 MR. FAVOR: Yes, ma'am.

3 THE COURT: All right. Sir, any other questions,
4 Mr. Davis?

5 MR. DAVIS: No, Your Honor. Thank you so much. One
6 final issue that the attorney general referenced, during the
7 plea, he did waive venue and jurisdiction and handled three
8 Charleston County charges during the same guilty plea here in
9 Dorchester. He filed one application here in Dorchester
10 covering all the charges. I've reviewed the statute, the PCR
11 statute, which says that the application must be -- following
12 application verified by the applicant with the clerk of the
13 court in which the conviction took place, I tried to do some
14 research on case law on that. I didn't find anything
15 specifically on PCRs. But I've advised him certainly there's a
16 reading on that that it could all be here because he was
17 physically here and waived. I talked to the attorney general
18 about that. But reading also could be although he pled here,
19 he waived venue to do that and jurisdiction to do that, so he
20 would have to refile in Charleston.

21 We are still within the one-year statute of
22 limitations. I've given him a copy today -- I appreciate the
23 guards having that -- of his application. It would be the same
24 argument, the same witnesses. And I told him I could ask Your
25 Honor to consider ruling on all of them today and we would

1 waive again today. He's indicated to me -- but I want to make
2 this clear on the record, if we can. He indicated to me this
3 morning that he did not want to stop. He wanted to go forward.
4 He did not want to pause to try to file in Charleston and then
5 have one hearing for everything. Judicial economy, did not
6 wish to do that, did not wish for me to ask you to rule on the
7 three Charleston charges.

8 We've talked. If he chooses to do that, he will file
9 before the deadline, which, again, for the record, and I told
10 him and written down on the paperwork, the deadline is March
11 21st. Today is March the 2nd. He understands all of that.
12 And it's my understanding, even though we made reference to
13 Charleston in the testimony today, he wishes to go forward on
14 the four Dorchester County charges and get a ruling from Your
15 Honor on those only today.

16 The final thing there, once they were reduced, the
17 only one that's 85 percent is one of the trafficking. I think
18 that's part of his thinking on that.

19 Is there anything about that, Mr. Fabor, that I said
20 incorrectly?

21 MR. FABOR: No, sir.

22 THE COURT: Mr. Fabor, you fully understand what your
23 attorney has explained to me?

24 MR. FABOR: Yes, ma'am.

25 THE COURT: And you don't wish for me to rule on the

1 Charleston County indictments; is that correct?

2 MR. FAVOR: Correct.

3 THE COURT: You understand that you have to file that,
4 if it's going to be heard in a timely manner, in Charleston
5 County?

6 MR. FAVOR: Yes, ma'am.

7 THE COURT: All right. Do you have any more questions
8 about that?

9 MR. FAVOR: No, ma'am.

10 THE COURT: All right. You may proceed, Mr. Davis.

11 MR. DAVIS: Thank you.

12 MR. SAVILLE: Your Honor, I would just like to state
13 for the record that we think it would be desirable as a matter
14 of judicial economy to dispose of all of the charges today. We
15 understand --

16 THE COURT: We will proceed and allow him to file in
17 Charleston.

18 MR. DAVIS: Thank you very much, Your Honor. I would
19 call my client today as the first witness.

20 THE COURT: You are already under oath. If you would
21 just take a seat in the witness stand.

22 THE COURT: Your witness.

23 MR. DAVIS: Thank you very much, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. DAVIS:

1 Q. Let's just do a little background for the judge to
2 start out. Okay? How old are you now?

3 A. 22.

4 Q. How old were you, 21 or maybe 20 when you pled?

5 A. 21.

6 Q. 21. And we already mentioned earlier, but you didn't
7 finish high school, but you do have your GED; is that right?

8 A. Correct.

9 Q. And so today we are dealing with four charges out of
10 Dorchester that you pled guilty to; is that right?

11 A. Correct.

12 Q. Who was your attorney on those charges?

13 A. Charlie Kornegay.

14 Q. Was there anyone else ever assigned to you to
15 represent you on those charges?

16 A. Leon Stavrinakis.

17 Q. We will get back to Mr. Stavrinakis in just one
18 second. Who was the first attorney you had of those two?

19 A. Kornegay, John Kornegay.

20 Q. He was working for the public defender's office back
21 then?

22 A. Correct.

23 Q. Okay. And so he was appointed to you first?

24 A. I believe so.

25 Q. Okay. And who was the attorney with you when you did

1 the guilty plea?

2 A. John Kornegay.

3 Q. Okay. Do you see him in the courtroom here today?

4 A. Correct.

5 Q. Okay. To deal with Mr. Stavrinakis briefly, can you
6 remember about how long he was involved on your case?

7 A. After John Kornegay got off of my case, he got on the
8 case.

9 Q. For how long of a period of time?

10 A. I'm going to say eight months to a year.

11 Q. Okay. Can you tell what the jury the major reason of
12 hiring Mr. Stavrinakis was?

13 A. Because I knew the lawyer was going to fight with
14 me.

15 Q. Okay. Was there some particular motion or some
16 particular issue you were wanting him to get you into court for
17 quickly, Mr. Stavrinakis?

18 A. Say that one more time.

19 Q. Sure. Was there some motion or hearing that you
20 wanted Mr. Stavrinakis to file and get you into court quickly
21 on; do you recall?

22 A. Illegal search and seizure. What's it called? And a
23 bond reduction. It was an illegal search and seizure motion
24 and a bond reduction.

25 Q. You never made bond on these charges?

1 A. Yes, I did make bond.

2 Q. Did you ever hit the street on these charges?

3 A. Yes, I did, on an ankle monitor.

4 Q. Now, was that -- did Mr. Stavrinakis file a bond
5 motion for you?

6 A. He did. Well, he did.

7 Q. Did you and Mr. Stavrinakis ever have a hearing on the
8 other issues, the search and seizure issue in front of a judge?

9 A. No, sir.

10 Q. And then at some point after that, Mr. Kornegay came
11 back on the case; is that right?

12 A. Correct.

13 Q. And stayed with you until you entered the charges with
14 the guilty plea; is that right?

15 A. No. I didn't have an attorney on my case after
16 Stavrinakis got on the case until March, 'til March.

17 Q. Well, tell the judge, between the time that
18 Mr. Stavrinakis was off your case and March when you
19 appeared -- hold on. Please tell the judge about the time
20 between Mr. Stavrinakis being off the case in March 20th when
21 you came before Judge Young, okay, in that period of time --

22 A. Mr. Stavrinakis off the case?

23 Q. He's off the case, and then you show up in March with
24 Judge Young here at the courthouse, right?

25 A. Uh-huh.

1 Q. In that break, in that time, did you meet with Mr.
2 Kornegay?

3 A. How long was Stavrinakis off my case?

4 Q. Did you meet with Mr. Kornegay in that break?

5 A. When Stavrinakis was off my case?

6 Q. Yes.

7 A. No, I did not.

8 Q. How long would you say between when he was off and
9 when you came to court on March 20th, what was that period of
10 time?

11 A. Before I talked to Kornegay?

12 Q. Yes.

13 A. I didn't talk to Kornegay until after it was time to
14 go to trial.

15 Q. Okay. Maybe I am not asking this well, Mr. Fabor.
16 Okay. There's a period of time that Mr. Stavrinakis is off the
17 case. And then you show up for this guilty plea, right?

18 A. All right.

19 Q. How long was that time, weeks, days, months, from the
20 last time you saw Mr. Stavrinakis until you showed up for
21 court?

22 A. I'm going to say six months, six, six to seven.

23 Q. Awhile?

24 A. Right, correct.

25 Q. Okay. And in that break, you are not talking to

1 Mr. Stavrinakis anymore because he's not your lawyer anymore,
2 right?

3 A. Correct.

4 Q. But you are also not seeing Mr. Kornegay, correct?

5 A. So I don't have no attorney at all.

6 Q. You didn't believe you had any attorney?

7 A. I didn't have an attorney.

8 Q. So you show up here on March the 20th. And did you
9 speak with Mr. Kornegay in lockup?

10 A. Yes, I did.

11 Q. So just for the judge to be clear, our complaints here
12 are about the way Mr. Kornegay handled the case, right? Not
13 Mr. Stavrinakis, right? I need you to say yes or no.

14 A. Say that one more time.

15 Q. Complaints are about the way Mr. Kornegay handled the
16 case, including the guilty plea, not Mr. Stavrinakis, correct?

17 A. Correct, correct.

18 Q. We talked before you started testifying, about you had
19 charges in Dorchester County and Charleston County, right?

20 A. Correct.

21 Q. You were incarcerated in Charleston County Jail for a
22 period of time, correct?

23 A. Correct.

24 Q. Did you ever have a public defender in Charleston
25 County appointed to your case?

1 A. No, sir.

2 Q. At any time, at any time after you were arrested for
3 these charges in Dorchester, okay, did Mr. Kornegay visit you
4 over at the county jail here?

5 A. Dorchester County?

6 Q. Yes.

7 A. Yes, he did.

8 Q. How many times would you say that he came to the
9 Dorchester County jail and visited you?

10 A. Two or three times.

11 Q. Okay. And just to cover all our bases, did he ever
12 come talk to you while you were in Charleston County jail, Mr.
13 Kornegay?

14 A. Once.

15 Q. Now, you already told Judge Murphy that you did at
16 some point make bond and have an ankle monitor and you went
17 home, correct?

18 A. Correct.

19 Q. While you were at home on that monitor, did Mr.
20 Kornegay ever visit you at your house?

21 A. No, sir.

22 Q. Did he ever have you come to Summerville to the public
23 defender's office and meet with him?

24 A. No, sir.

25 Q. Other than when you were here in front of Judge Young

1 in March of last year for the guilty plea, other than that
2 time, did you ever meet with Mr. Kornegay here at the
3 courthouse?

4 A. Yeah, I can say once.

5 Q. So one time you were at the courthouse and the day you
6 pled guilty here at the courthouse?

7 A. Uh-huh.

8 Q. Okay. Did he ever appear with you in court in
9 Charleston?

10 A. Hm-mm.

11 Q. Did you ever go to court in Charleston?

12 A. No, I didn't.

13 Q. All right. So we've got two times here at the
14 courthouse, one visit in Charleston, two or three times over at
15 the jail; is that your testimony?

16 A. Uh-huh, yes.

17 Q. So let's say six times total. In those six meetings,
18 can you give Judge Murphy an idea about how long those meetings
19 would last when he would come see you?

20 A. Like, 10, 10 minutes, 15 minutes. We never had a real
21 agreement, like ...

22 Q. For the Dorchester County charges?

23 A. Correct.

24 Q. Did he ever give you what might be referred to as Rule
25 5 or discovery? Did he ever give you that, give you a copy of

1 that?

2 A. Yeah, I got that.

3 Q. Did he ever give you a copy of the Charleston County
4 Rule 5 or discovery?

5 A. No, sir.

6 MR. SAVILLE: Your Honor, I would object under
7 relevancy, since he's only challenging the Dorchester County
8 charges today.

9 THE COURT: Sustained.

10 Mr. Davis, was part of the negotiation the whole case,
11 though?

12 MR. DAVIS: I certainly want to respect your ruling.
13 Obviously, you saw me pause. I'm thinking. What I would ask
14 is this. There's an avenue of questions here and, certainly,
15 if the State objects, but I will try to attempt in my next
16 couple of questions to show the relevance of referencing the
17 Charleston charges.

18 THE COURT: You may proceed.

19 BY MR. DAVIS:

20 Q. When you came to court here in Dorchester in March of
21 2017, you resolved all your pending charges; is that right?

22 A. Correct.

23 Q. In doing that, did you talk to Mr. Kornegay about both
24 Charleston and Dorchester, or just one set of charges?

25 A. Both things.

1 Q. Do you know, do you know which public defender's
2 office he worked for a year ago?

3 A. No, I didn't. From my understanding, he was only
4 under -- he was only a probation officer -- I mean, not a
5 probation officer, but a public defender for a year when I met
6 him.

7 Q. Okay. Did he ever talk to you about whether he got
8 appointed on the Charleston cases or not?

9 A. No.

10 Q. But he had discussions with you about whether you
11 should plead to them or not?

12 A. Correct.

13 Q. And they were part of the overall resolution of the
14 case?

15 A. Correct.

16 MR. DAVIS: Judge, I would ask some leeway to go into
17 that, because I don't know how we can parse some out without
18 the other. Again, we are not asking for a ruling on those
19 charges, but they are so intertwined.

20 THE COURT: I understand. You may proceed on that.

21 MR. DAVIS: Thank you.

22 BY MR. DAVIS:.

23 Q. I will ask -- unless I tell you otherwise, I'm going
24 to be talking about both sets of charges from both counties.
25 Okay?

1 A. All right.

2 Q. Did he ever describe to you what the elements or the
3 requirements of the State were to prove you guilty of each
4 different charge you were arrested on? Did he ever talk about
5 that?

6 A. No.

7 Q. Did he talk with you about what the potential
8 sentences were for any of your charges?

9 A. Yes.

10 Q. Did he talk to you -- did he ever use the phrase
11 "serious offense"? Did he ever describe that to you?

12 A. No.

13 Q. Can you tell the jury what a serious offense in South
14 Carolina criminal court means?

15 A. I can't.

16 Q. Did he ever talk to you about strikes or strike
17 offenses?

18 A. No.

19 Q. Can you tell the judge what would happen if you got
20 three strikes in your lifetime?

21 A. That means, from what I know, I mean, three strikes is
22 you are out, three strikes you are out.

23 Q. Like baseball?

24 A. Right.

25 Q. Did Mr. Kornegay ever talk to you about that?

1 A. No.

2 Q. Did he ever talk to you about, on any of your charges,
3 any of them, potential parole eligibility or when you might be
4 getting out if you plead guilty?

5 A. No.

6 Q. Or were convicted, or if you were convicted?

7 A. No.

8 Q. Did he ever use the terminology "no-parole offense"?
9 Have you ever heard that from your attorney?

10 A. No.

11 Q. What about "85 percent"?

12 A. I believe so.

13 MR. SAVILLE: Your Honor, we are going to object as
14 that is a collateral consequence of the plea.

15 THE COURT: You can proceed.

16 MR. DAVIS: Thank you, Your Honor.

17 BY MR. DAVIS:

18 Q. On those types of issues, did he ever talk to you --
19 you said three strikes and you are out. Did he ever talk to
20 you about life without parole or LWOP? Did you ever hear
21 that, --

22 A. Yes.

23 Q. -- from your attorney? Now, would he have talked to
24 you about that potential punishment, life without the
25 possibility of parole, early on or really close to the guilty

1 plea?

2 A. Closer to the guilty plea.

3 Q. Let's get away from guilty plea for a second, though.
4 Okay? At any time in these half dozen meetings you had with
5 him, did he ever talk to you or explain to you about how a
6 trial is conducted in state court in South Carolina?

7 A. Never talked about a trial.

8 Q. Okay. So did he tell you about how to pick a jury or
9 opening statements or anything like that?

10 A. I mean, no, no.

11 Q. Okay. And now, just real quick, prior to this, did
12 you have other convictions?

13 A. I have one, yeah.

14 Q. For what?

15 A. Simple possession of cocaine base.

16 Q. Did you plead guilty or go to trial on that?

17 A. I pled guilty.

18 Q. So you've never been to trial in a criminal case in
19 South Carolina?

20 A. No, sir.

21 Q. I want to be clear about a few things. You said he
22 never talked about trial. But did he ever talk to you about
23 any potential defenses that you could present to a jury at
24 trial?

25 A. No. It was never -- we was never talking about no

1 defense, no. It was never a defense type of ...

2 Q. When you are answering that, would that be to any of
3 the charges you had?

4 A. Any of my charges.

5 Q. Now, a little awhile ago, you mentioned to Judge
6 Murphy something that you wanted Mr. Stavrinakis to do. One of
7 things you wanted him to do was about an issue of search and
8 seizure?

9 A. Search and seizure motion and a --

10 Q. Did you talk to Mr. Kornegay about that issue?

11 A. Yes, I did.

12 Q. You are not a lawyer, are you?

13 A. No, I am not.

14 Q. What did he say in response or what information did he
15 give you about that issue, a search and seizure issue?

16 A. I mean, when me and Mr. Kornegay was meeting up, I
17 mean, it was never eye-to-eye-situation. We could never get on
18 the same page. Like, it was either I got mad and -- it was
19 never -- we could never see eye to eye. So the meetings was
20 always cut short.

21 Q. Okay. I don't want to put words in your mouth, but
22 did he talk to you anything about a search and seizure issue?

23 A. No. No, sir.

24 Q. Can you tell the Judge Murphy what you thought was the
25 issue about search and seizure?

1 A. My illegal search and seizure, I believe they said
2 they had a distribution of heroin warrant that they never filed
3 in court. Like, that's why they didn't detain me out of the
4 car. They said I had a distribution. They pulled me over for
5 speeding and said I had a distribution warrant for heroin that
6 they never found. So they lied.

7 Q. Whether he found out about it any other way or not,
8 whether he found out about it any other way or not, did you
9 tell Mr. Kornegay that very issue?

10 A. I did.

11 Q. Hey, there's a warrant out there they claim they got
12 on me, go find that?

13 A. I did.

14 Q. Did he ever talk to you more about that?

15 A. Never.

16 Q. Ever provide that warrant for heroin?

17 A. Never.

18 Q. Ever talk about how he might be able to file a motion
19 to suppress based on that issue?

20 A. No, he didn't.

21 Q. As far as you know, did he ever file that motion?

22 A. As far as I know, he didn't.

23 Q. Did he ever talk to you about how that issue would be
24 decided in a courtroom in front of a judge --

25 A. No.

1 Q. -- if the judge would decide whether the jury could
2 even hear about what they found from that search and seizure or
3 not?

4 A. No.

5 Q. Do you know how that process works?

6 A. No, sir.

7 Q. Do you have knowledge as to what his strategy would
8 have been if you had asked for a trial?

9 A. I mean, yeah. I told him that I wanted to fight. He
10 told me, like, it's no winning in this situation. It was a 70
11 percent of me losing and 30 percent of me winning. Like, that
12 put me in, like, cross fires. Like, I had no fight with me.

13 Q. On that specific comment, the 70/30, was that early on
14 or was that up close to the guilty plea?

15 A. Close.

16 Q. Let me circle back, because I'm not sure I got a real
17 clear answer, though. Maybe I didn't ask it well. Did you
18 have an idea of what his strategy would be if you had asked for
19 a trial on any of your charges?

20 A. No, I don't have an idea.

21 Q. So when it came to going to trial or pleading guilty,
22 what was his advice to you?

23 A. Plead guilty.

24 Q. You've seen the copies of your sentence sheets?

25 A. Correct.

1 Q. Right? And on there, there's a box that's X'd, says
2 negotiated. Do you remember that?

3 A. Correct.

4 Q. Can you tell Judge Murphy -- first of all, did you
5 mark that box?

6 A. No, I didn't.

7 Q. Can you tell Judge Murphy what Mr. Kornegay told you
8 about that word "negotiated", what that meant about that being
9 connected with a guilty plea?

10 A. I wasn't told what a negotiated plea was. Like, it
11 was, that's what Charleston County want from you and this is
12 what Dorchester County wants from you.

13 Q. Tell the judge what exactly that was. What did they
14 want from you?

15 A. Charleston County wanted five years for all of my
16 charges. And Dorchester County wanted 10 years for the rest of
17 my charges. That's what Kornegay told me.

18 Q. When you signed the sentence sheets, seven of them,
19 okay, was there anything written on there as far as what the
20 negotiated sentence was when you signed them?

21 A. When I signed them?

22 Q. Yes. Do you recall?

23 A. Ask the question one more time.

24 Q. Sure. When you signed them, do you recall there being
25 any writing on there as far as what the -- number of years,

1 what the sentence was going to be negotiated when you signed
2 them? Do you remember?

3 A. Yes. But they told me I couldn't sign no papers. I
4 put "justice" in parenthesis at the end of my paper. And he
5 told me I couldn't -- it couldn't go through or whatever. So I
6 had to sign the right papers.

7 Q. Okay. So just to be clear on that, if you hadn't
8 signed these, what did you think was going to happen?

9 A. Nothing could have been able to happen if I hadn't
10 signed them, I believe.

11 Q. You mean guilty plea wouldn't happen?

12 A. Right.

13 Q. What bad would have happened if you didn't sign these?

14 A. I don't know.

15 Q. Just briefly, I do want to talk about one other thing
16 with the Charleston charges. On those sentence sheets, do you
17 remember initialing where it says defendant waives presentment
18 to the Grand Jury? Do you remember initialing a place on that?

19 A. I believe so.

20 Q. Okay. Can you tell Judge Murphy what the Grand Jury
21 does? Do you know?

22 A. No, I don't.

23 Q. Do you know what the legal phrase "waive presentment"
24 means?

25 A. Waives? Like -- no, I don't. I can't.

1 Q. So did Mr. Kornegay -- I'm sorry?

2 A. I can't tell you off the top of my head. No, I
3 can't.

4 Q. Did Mr. Kornegay talk to you about that, what waiving,
5 initialing, waiving presentment to the Grand Jury, did he talk
6 to you about that, for the Charleston charges?

7 A. Yes, he did.

8 Q. But you can't explain it to Judge Murphy today?

9 A. No. He said waiving -- waiving my rights is like
10 without -- like, going without seeing, like, everything that
11 comes with the case. That's waiving my rights, right?

12 Q. Last thing on that. How much talk did he have with
13 you about bringing the Charleston charges up here and pleading,
14 just that decision?

15 A. Just one time.

16 Q. Early on or real close to the plea?

17 A. The same day as the plea.

18 Q. Can you tell Judge Murphy anything that you are aware
19 of that Mr. Kornegay did to prepare for a trial on any of your
20 charges?

21 A. We was never talking about a trial. He never ...

22 Q. Judge Murphy has a copy of your transcript, so she
23 already has that, but do you remember stopping and starting
24 again?

25 A. Yes.

1 Q. We have what everybody said in the courtroom. But why
2 do you think your plea stopped and then started again?

3 A. I mean, a lot of things was going on that day. The
4 judge, the judge got upset with what I was saying. I guess he
5 didn't hear me. And I answered him and he just said, oh, trial
6 in the morning.

7 Q. So let's talk about the meeting just -- you met with
8 Mr. Kornegay right close to the plea, right?

9 A. Correct.

10 Q. And on the first floor here in lock-up at the
11 courthouse?

12 A. Correct.

13 Q. How long did he spend preparing you to go in front of
14 Judge Young for the guilty plea?

15 A. Like, 10 or 15 minutes.

16 Q. And other than getting you to sign seven pieces of
17 paper, what other preparation did he give you to come into the
18 courtroom that day?

19 A. Just how to answer the questions in court. Like,
20 during the guilty plea, like, just -- he was just telling me to
21 say yes, that's going to make it easier for you. Like, yes,
22 keep saying, yes, ma'am, no, ma'am, yes, ma'am.

23 Q. So there was a break. And Judge Young wasn't going to
24 take your plea. And then he came back the next morning; is
25 that right?

1 A. Uh-huh.

2 Q. Yes or no?

3 A. Correct, yes.

4 Q. During that break, did you go back to county jail?

5 A. I go back to the county jail.

6 Q. Overnight?

7 A. Overnight, no phone call or nothing.

8 Q. Did you see Mr. Kornegay that next day?

9 A. I did not.

10 Q. Did you see him next morning?

11 A. Next morning.

12 Q. Here in the courtroom or back in lockup again?

13 A. Courtroom. Lockup is downstairs, right?

14 Q. That's what I was referring to. I apologize, yes.

15 A. I seen him in lockup.

16 Q. Okay. Now, how long was that meeting with him before
17 you came in and finished up the plea?

18 A. Really wasn't nothing to say. We already had my mind,
19 like ...

20 Q. So it was very quick meeting?

21 A. Yeah, quick.

22 Q. A few more questions, sir. Did you specifically tell
23 Mr. Kornegay that you wanted to fight the Dorchester County
24 warrants?

25 A. I did.

1 Q. You complained about the stop of you?

2 A. Stop, correct.

3 Q. Did you complain to Mr. Kornegay about the search and
4 seizure after they stopped you?

5 A. Correct.

6 Q. Even with all of that, was his advice to you to fight
7 that and go to trial or plead guilty?

8 A. Plead guilty. He told me it was a 70 percent of me
9 losing and 30 percent of me winning.

10 Q. And I already asked you earlier if you knew of
11 anything he had done to prepare for trial, and you said you
12 didn't know of anything, correct?

13 A. No, correct.

14 Q. If he had done anything to show you that he was
15 willing to go fight those issues on the Dorchester --

16 A. I would have gone to trial.

17 Q. Let me finish my question. She can only take down one
18 person at a time.

19 A. I apologize.

20 Q. If he had shown you that he was doing anything to get
21 ready to go to trial and fight those issues you complained
22 about, would you have pled to these charges or would you have
23 gone to trial?

24 A. I would have went to trial.

25 Q. You know we talked about it at the very beginning.

1 You know you were facing some big punishment if you lose on
2 trial, right?

3 A. Correct.

4 Q. Because you pled to smaller charges, correct?

5 A. I pled to the --

6 Q. I mean, less weight and making them first and seconds,
7 correct?

8 A. Correct.

9 Q. So you know that at least on two of these traffickings
10 in Dorchester County, if you lost at trial, it's 7 to 30?

11 A. Correct.

12 Q. 85 percent if you lose?

13 A. Right.

14 Q. Any number in there you could get 85 percent?

15 A. Correct.

16 Q. And you got kind of in the middle. You got 15.

17 A. I know that.

18 Q. And you are telling the judge that you would risk that
19 if you had known your attorney was prepared for trial?

20 A. Correct. If I had someone to fight with me, I would
21 have went to trial.

22 Q. Did you feel like you had to plead guilty or did you
23 feel like you had another option?

24 A. It was no other option. Like, if he doesn't want to
25 fight with me, I can't fight with myself. Got to plead guilty.

1 I mean, it ain't no -- I didn't have no other option.

2 Q. Is that based on your personal feelings or was that
3 influenced at all by your attorney?

4 A. Both.

5 MR. DAVIS: If I could have just one moment.

6 Thank you, Mr. Fabor. That's all the questions I
7 have. The attorney general may have some questions for you.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. SAVILLE:

11 Q. Good morning, Mr. Fabor. Thank you for being here.

12 A. Good morning.

13 Q. Now, you told Mr. Davis that you were concerned with a
14 warrant that led to a trafficking charge; is that correct?

15 A. Not a trafficking, a distribution warrant.

16 Q. A distribution warrant?

17 A. Correct.

18 Q. Can you go over the facts of what happened when they
19 stopped you that day?

20 A. They said they pulled me over for a speeding ticket.
21 They detained me because they said I had a warrant for
22 distribution of heroin that I didn't have. I got detained and
23 they searched my car. That wasn't even my car neither. That
24 was a rental car.

25 Q. Is this the one that occurred at a car wash or near a

1 car wash?

2 A. What car wash?

3 Q. A search? You said that you felt like you were
4 illegally stopped because of an arrest warrant that you never
5 saw. Is that what you testified to? That's what you told
6 Mr. Davis?

7 A. I said I got pulled over for a speeding ticket. And
8 they detained me because I had a distribution warrant for
9 heroin, a distribution warrant for heroin that they never
10 found.

11 Q. Yes, sir.

12 A. So if they never lied to me and told me that I had a
13 distribution warrant for heroin, they would have never detained
14 me.

15 Q. Yes, sir. And isn't it true that that actually led to
16 a charge in Charleston County which you are not challenging
17 today?

18 A. I don't have any distribution for heroin in Charleston
19 County at all.

20 Q. Now, do you recall the judge at the plea hearing
21 informing you that you would have to serve 85 percent of the
22 sentence?

23 A. Say one more time.

24 Q. Do you recall the judge at the plea hearing telling
25 you that you would have to serve 85 percent of the time that he

1 gives you?

2 A. One more time.

3 Q. Sure. When you pled guilty, do you remember the judge
4 telling you that you were going to have to serve 85 percent --

5 A. Correct.

6 Q. -- sentence? Do you recall the judge at the plea
7 hearing telling you that if you get two more drug charges, you
8 would be eligible for life without parole?

9 A. Correct.

10 Q. Did you give Mr. Kornegay any leads or witnesses to
11 investigate in this case?

12 A. Did I give him any leads to do what?

13 Q. Or witnesses to investigate, anybody to talk to about
14 the case that might have some helpful testimony for you?

15 A. There wasn't no one to give him, like, no witnesses or
16 anything.

17 Q. So there was nobody available to provide any helpful
18 testimony for you?

19 A. There was no witnesses in my case.

20 Q. Do you recall telling the plea judge that you were,
21 indeed, guilty of the charges?

22 A. Yes.

23 MR. SAVILLE: Beg the Court's indulgence for just a
24 moment.

25 BY MR. SAVILLE:

1 Q. Mr. Fabor, in the car that you were stopped in, the
2 rental car, were you the one who rented the car?

3 A. No, I wasn't.

4 Q. Do you remember telling the judge at the plea hearing
5 that you were satisfied with Mr. Kornegay's services?

6 A. Yes.

7 Q. And do you recall telling the plea judge that he had
8 done everything you asked him to?

9 A. Yes, I did.

10 Q. And do you recall telling the judge that you didn't
11 need any more time to speak with Mr. Kornegay?

12 A. Yes.

13 MR. SAVILLE: That's all I have, Your Honor. Thank
14 you.

15 THE COURT: Any redirect?

16 MR. DAVIS: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q. The attorney general just went over some stuff that
20 the judge talked to you about at the plea.

21 A. Uh-huh.

22 Q. Specifically, the 85 percent and life without parole.
23 Had you heard about that before the judge told you?

24 A. No.

25 Q. They also asked you some questions about what you told

1 the judge and some answers you gave the judge. Were you given
2 any advice prior to the plea about what to tell you the judge?

3 A. Yes, I was.

4 Q. What was that advice?

5 A. Yes, just answer the questions, just answer the
6 questions so it would be easy, easy for the both of us, which
7 came from Kornegay.

8 Q. What did you think would happen if you didn't follow
9 that advice?

10 A. Things would have went left and the judge would have
11 probably did the same thing he did the day before.

12 Q. Which was what?

13 A. Stop everything and trial tomorrow.

14 Q. You were that close to going to a trial?

15 A. Correct.

16 Q. Very quickly. This goes to couple questions the
17 attorney general asked. But to get there, your prior
18 conviction was a guilty plea, right?

19 A. Correct.

20 Q. Simple possession, right?

21 A. Correct.

22 Q. What was your sentence on that?

23 A. Probation, one year probation.

24 Q. This is the second time you pled guilty to anything,
25 these charges, right?

1 A. Correct.

2 Q. Did you know you had the right to stop a plea in the
3 middle of a plea if you wanted to?

4 A. No, I didn't.

5 Q. Did your attorney talk to you about that?

6 A. No.

7 Q. So you thought once you started, you had to finish
8 it?

9 A. Yeah. I had already signed the papers. There was
10 nothing I could do.

11 MR. DAVIS: Thank you. No other questions.

12 THE COURT: You may step down, sir. Thank you.

13 MR. SAVILLE: Your Honor, may I ask for a very brief
14 recess?

15 THE COURT: Sure.

16 MR. SAVILLE: Thank you very much.

17 (Whereupon, a recess takes place.)

18 THE COURT: Are you ready, Mr. Davis?

19 MR. DAVIS: Your Honor, we are ready to proceed. We
20 call Mr. Kornegay to the stand.

21

22

23

24

25

1 JOHN KORNEGAY,
2 having been duly sworn, testifies as follows:

3 THE COURT: Your witness.

4 MR. DAVIS: Thank you very much, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q. Mr. Kornegay, where are you currently employed?

8 A. I'm employed at the Dorchester County Public
9 Defender's Office.

10 Q. And were you employed in that capacity a year ago at
11 the time of this guilty plea?

12 A. I was, yes.

13 Q. And so prior to this guilty plea, how long had you
14 been employed at the Dorchester County Public Defender's
15 Office?

16 A. Prior to the plea, about little over a year.

17 Q. And can you give the judge a sense -- is it fair to
18 say that -- well, I apologize. Before I get to that, when were
19 you first licensed?

20 A. I was sworn in in November 2015.

21 Q. What, if any, legal employment did you have before
22 going to Dorchester County Public Defender's Office?

23 A. None.

24 Q. So as a first-year lawyer at the Dorchester County
25 Public Defender's Office, is it fair to say that you did not

1 get murder cases, burglary first cases? Is that fair?

2 A. I did not get murder cases. I did get burglary-first
3 cases.

4 Q. Prior to this guilty plea, had you tried a general
5 sessions case?

6 A. I had not. I believe I sat as co-counsel on a case.
7 I had not tried a case on my own at that point.

8 Q. Okay. So considering how South Carolina procedurally
9 handles suppression motions, prior to this plea, had you had
10 the opportunity to argue suppression motions on any search and
11 seizure issue?

12 A. I had drafted memos for suppression motions. I never
13 argued a suppression motion myself.

14 Q. Summarizing, you were first appointed to Mr. Fabor's
15 case from the public defender's office after his arrest,
16 correct?

17 A. That's correct, yeah.

18 Q. There was a period of time where a private attorney
19 took over the case; is that right?

20 A. That's right. I believe that was May 2016,
21 Mr. Stavrinakis took the case.

22 Q. But then, ultimately, before it was resolved, it got
23 back to you at the public defender's office, right?

24 A. That's correct. It was actually February of 2017.

25 Q. And just real quick, you have a copy of your file with

1 you?

2 A. I do, yes.

3 Q. And you reviewed it before your testimony today?

4 A. Yes, sir.

5 Q. In reviewing that, can you tell Judge Murphy -- and I
6 will only go briefly on this. But can you tell Judge Murphy
7 when you became aware of the fact that Mr. Fabor also had
8 Charleston County charges?

9 A. It was not until -- well, so after I got reappointed,
10 I was informed by the solicitor that Mr. Fabor would be
11 scheduled for a trial in March. So I attempted calling
12 Mr. Fabor multiple times. I believe one time I was able to
13 talk to him on the phone. But soon after that, I found out he
14 had been arrested and was in Charleston County. At that point,
15 those charges were new to me, hearing about them. I didn't
16 know anything about them, really, until we started talking
17 about trial and/or plea for the Dorchester County charges. So
18 I never was given discovery on those charges or -- I was really
19 just informed about them.

20 And then during the course of plea negotiations, asked
21 the solicitor would they be open to a global resolution so that
22 Mr. Fabor wouldn't have to go back to Charleston County to
23 resolve this.

24 Q. And that would have been talking with Assistant
25 Solicitor Stephanie Linder down in Charleston? Do you recall?

1 A. I don't recall the Charleston solicitor, but
2 Dorchester County was Don Sorenson.

3 Q. If Ms. Linder's signature is on the sentencing sheet,
4 would that indicate who probably you spoke with in Charleston?

5 A. That would.

6 Q. Okay. Is it accurate that if we tally up the number
7 of meetings, it's roughly half a dozen that you had with
8 Mr. Fabor?

9 A. Yes, sir, that's probably accurate. That's from early
10 2016 to May 2016 when I was his attorney. And then February to
11 March in 2017 when I was his attorney.

12 Q. Excuse me. What was that first date you got
13 appointed? Do you have that?

14 A. I do. Let's see. It looks like February 10th of
15 2016.

16 Q. Okay. Thank you. You had mentioned preparing memos
17 on search and seizure issues and filing motions. Did you file
18 a suppression motion on this case?

19 A. I don't know if I had filed a motion pretrial. I had
20 told the solicitor we would conduct a suppression motion as
21 well as *Jackson v. Denno* motion. And the solicitor was
22 prepared for that.

23 Q. At some point during your representation, you did
24 provide your client a copy of the discovery?

25 A. Yes, sir.

1 Q. And just to be clear, you never received Charleston,
2 though?

3 A. That's correct.

4 MR. SAVILLE: Your Honor, I would object again to
5 relevance about the Charleston discovery.

6 THE COURT: I will allow it.

7 MR. DAVIS: I don't intend to go further on that
8 issue.

9 BY MR. DAVIS:

10 Q. It's accurate that your advice -- and, again, I will
11 ask it this way. Is it accurate your advice as to all the
12 charges, based on the offer, was to plead guilty?

13 A. Yes, that's accurate.

14 Q. Do you recall, in advising that, using the analogy
15 that, look, if you go to trial, there's 70 percent chance you
16 are not going to win on this and only 70 percent chance you are
17 likely to be successful?

18 A. I don't recall giving those numbers, but I'm sure I
19 told him I thought it was more likely than not that he would be
20 convicted if we went to trial. But I don't know if I gave him
21 that percentage.

22 Q. That doesn't sound unreasonable as far as your
23 attitude on the case, though, the 70/30?

24 A. Sure. You know, when people talk numbers, coming at a
25 case from different perspectives is difficult to interpret

1 percentages. But I'm sure I told him I thought it was more
2 likely that he would be found guilty at trial.

3 Q. If you had filed a motion to suppress for a search and
4 seizure violation, and if the drugs had been suppressed, is
5 there any way the State could have convicted him with
6 Dorchester charges?

7 A. No. I think that would have been a victory, not
8 guilty.

9 Q. Kind of a two-parter. We will deal with you
10 personally first. Did you have the opportunity or make the
11 effort to speak to any of the law enforcement officers involved
12 in Mr. Fabor's arrest?

13 A. I did research on Detective Terry. And our office has
14 an investigator, John Tisdale. I provided him with our file
15 and asked him to look into this case. One of the main issues
16 that we had was body cam. We had not received body cam in the
17 case. And trying to get that from North Charleston,
18 specifically, I wanted Mr. Tisdale to try to get that. But we
19 were informed by North Charleston and the solicitor's office
20 that that was either lost or destroyed. But I did not
21 personally talk to the officers in the case.

22 Q. You answered both parts for me. I was going to deal
23 with -- I didn't know you had an investigator at the time. So
24 you had a full-time public defender investigator a year ago or
25 before that?

1 A. Yes, sir.

2 Q. During your representation of Mr. Fabor?

3 A. Yes, sir, John Tisdale, yes, sir.

4 Q. Other than meeting with Officer Terry, can you tell
5 Judge Murphy what you meant by research on that officer?

6 A. Well, so, that may have been more me than John
7 Tisdale. I just mainly did search online to see if he had any
8 disciplinary issues or issues that would be potentially
9 impeachment at trial. So that was the nature, potential
10 impeachment material.

11 Q. Like was testified previously, other than law
12 enforcement and your client, there were no other independent
13 witnesses to this case, were there?

14 A. There was a passenger in the vehicle, Herbert Frazier.
15 And we had also done background checks on him, you know, as a
16 part of a defense at trial and potentially impeaching him if he
17 were to testify.

18 Q. And I was very inartful about that question. I
19 apologize. I was trying to follow up. The attorney general
20 asked my client if he gave you the names of any other folks?
21 And I apologize.

22 A. No, not any --

23 Q. And that's accurate, he didn't give you any other
24 names other than in the incident report?

25 A. Correct.

1 Q. Okay. And I apologize. And we say "background
2 check", did you run Mr. Frazier's prior record to see if he had
3 any impeachable offenses?

4 A. That's right.

5 Q. Did you personally speak with him?

6 A. I did not personally speak with him. I know
7 Mr. Tisdale was trying to get in touch with him. I don't know
8 if he was successful or not prior to the trial.

9 Q. Do you know whether your investigator spoke with
10 Mr. Frazier?

11 A. No. I know he was trying to, but I don't know if he
12 was successful.

13 Q. I'm sorry. You just -- so Mr. Tisdale was trying to
14 reach Mr. Frazier?

15 A. Right, correct.

16 Q. From your initial appointment, you are on the case for
17 a little over a year from February 16 -- I'm sorry, I
18 apologize, February to May; so only a few months, same year,
19 correct?

20 A. Right, that's correct.

21 Q. Then you come back on in February of 2017, correct?

22 A. Correct.

23 Q. And you are notified, hey, he's on the trial docket
24 next month, correct?

25 A. That's correct.

1 Q. It was your opinion and advice to Mr. Fabor that he
2 had one prior drug conviction that would count; is that
3 accurate?

4 A. Yes, to my recollection, yes.

5 Q. As these charges were pending, they should have all
6 been second offenses?

7 A. Well, I don't know how he was initially charged. I
8 know at one point, his charges were dismissed at a preliminary
9 hearing, I believe when Mr. Stavrinakis was representing him.
10 And then the solicitor's office directly indicted him, I
11 believe in September. So I'm not sure. I would have to look
12 to see how his charges were pending in those various times.

13 Q. There's really only one prior?

14 A. Most it should be a second, sure.

15 MR. DAVIS: If I can have just one moment.

16 Mr. Kornegay, that's all the questions I have. Thank
17 you very much.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. SAVILLE:

21 Q. Good morning, Mr. Kornegay. Thank you for being here
22 today.

23 A. Good morning.

24 Q. Where did you go to law school, Mr. Kornegay?

25 A. I went to the University of South Carolina.

1 Q. And when did you graduate?

2 A. 2015.

3 Q. And you were sworn in the following --

4 A. November, that November.

5 Q. So you passed the bar your first try?

6 A. I did.

7 Q. Now, can you take us through the facts of this case
8 that led to these charges, as you recall them?

9 A. Sure. So, Detective Terry's initial report notes a
10 warrant that he had outstanding. And I know Mr. Fabor had
11 spoken about that earlier. And it's true that for a long time
12 we were unable to locate a warrant. Prior to trial, though,
13 the solicitor was able to find a copy of a Charleston County
14 warrant from 2015. And it's only the front of the warrant. So
15 I don't know what happened to the rest of that warrant or
16 affidavit or to that case.

17 But it turns out this is at least the front of the
18 warrant that Detective Terry was referring to when he was
19 looking for Mr. Fabor. However, Mr. Fabor's car was initially
20 stopped for speeding. During the traffic stop, the police
21 officers recognized that there was a pending warrant and
22 detained Mr. Fabor and as well as the passenger.

23 And during the stop, they noticed a bulge in kind of
24 the front dash of the vehicle. And within the dash, kind of
25 stowed within the dash was a Crown Royal bag with the drugs

1 that Mr. Fabor ended up being charged with. And they were --
2 they also located a handgun. It was not loaded, but there was,
3 I believe, one 9-millimeter round with it.

4 Q. Okay. Now, did you talk to him about the rental
5 car?

6 A. I did.

7 Q. Was he -- he testified that he did not rent the rental
8 car. Was he a permissive user of the rental car?

9 A. Yes, I believe it was his wife who signed out the
10 rental car.

11 Q. Okay. Now, was applicant cooperative throughout your
12 representation?

13 A. No. Throughout -- at least during that last month,
14 all of our conversations were very tense, noncooperative. At
15 first, it seemed like he was planning to rehire Leon
16 Stavrinakis. That never happened. And then as it came to a
17 decision and we actually picked a jury in the case, we were
18 ready to go to trial, jury was ready, but we were just having a
19 difficult time with Mr. Fabor not committing to a trial, not
20 committing to a plea, and just wavering back and forth.

21 Q. Now, I notice the plea hearing took a pause and then
22 reconvened the next day. Why did Judge Young stop the plea
23 hearing?

24 MR. DAVIS: Objection, Your Honor. Calls for
25 speculation.

1 THE COURT: He was there.

2 BY MR. SAVILLE:

3 Q. What happened the first day of the hearing?

4 A. Well, during the beginning of the hearing when
5 Mr. Fabor was asking questions, Judge Young asked him to speak
6 up a couple of times. And Mr. Fabor responded by saying
7 something along the lines, are you being belligerent, to Judge
8 Young. At that point, Judge Young shut down the proceeding.

9 Q. And then they reconvened the next day?

10 A. That's correct.

11 Q. Did you discuss any possible defenses with Mr. Fabor?

12 A. I did. I did.

13 Q. What were those possible defenses?

14 A. Well, our first step was going to be the pretrial
15 motions of a suppression motion and *Jackson v. Denno* hearing to
16 address the written statements. But the overall strategy at
17 trial, assuming those pretrial motions were unsuccessful, was
18 to impeach the investigation. I mean, there were issues with
19 the investigation that we had to bring out at trial, especially
20 with Detective Terry. But that would have been the overall
21 strategy. But, obviously, if we lost the suppression hearing,
22 the drugs were going to come in, which was the main issue.

23 Q. Now, did he seem to understand the conversations you
24 had with him about these potential defenses?

25 A. I believe he understood. But, again, the dialogue was

1 never smooth. There was always some tension in discussing
2 either the trial or a plea.

3 Q. Right. Now, was there a reason to believe that a
4 suppression or *Denno* hearing would have been successful?

5 A. No. I didn't believe either motion would be
6 successful, but I was prepared to do both motions. And, you
7 know, I thought it would be beneficial, you know, at least to
8 get Detective Terry on the record for even further impeachment
9 material.

10 Q. Now, you noted at the plea hearing that you thought it
11 was in applicant's best interest to plead guilty to these
12 charges. And do you think he would have gotten the same deal
13 had the suppression hearing been unsuccessful and all the drugs
14 came in?

15 A. No. The solicitor had informed me that once the trial
16 started, that offer was gone, that offer was off the table.

17 Q. Okay. And were there any charges dismissed pursuant
18 to this plea?

19 A. I believe there was a Dorchester County charge
20 dismissed. I don't recall off the top of my head.

21 Q. Just one of the lesser-included?

22 A. Right.

23 Q. Lesser charges?

24 A. I'm not sure about Charleston County.

25 MR. SAVILLE: Beg the Court's indulgence, Your Honor.

1 BY MR. SAVILLE:

2 Q. Now, whose decision was it to plead guilty?

3 A. Mr. Fabor's.

4 Q. Did he ever indicate that he did not understand that
5 he would be waiving his rights to a jury trial?

6 A. No. He understood. We had picked a jury. And I had
7 co-counsel. John Loy was going to sit with me at the trial.
8 He also spoke with Mr. Fabor. So he knew that it was either a
9 trial or a plea.

10 Q. Did he ever tell you that he did not understand
11 something?

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

13 Q. And, furthermore, in his application, he alleged that
14 you failed to file an appeal for him. Did he ever ask you to
15 file an appeal?

16 A. He did not.

17 Q. Did you talk to him about an appeal?

18 A. We discussed an appeal. The only conversation I
19 really remember about appeal is at one point his mother and
20 grandmother and I were talking to Mr. Fabor, and either his
21 mother or grandmother said, don't worry, we will hire somebody
22 to file an appeal. But he didn't ask me to.

23 MR. DAVIS: Your Honor, I'm going to object to that on
24 hearsay. And I will let the Court know we don't intend to ask
25 for appellate relief.

1 THE COURT: So it's a nonissue.

2 MR. SAVILLE: Okay. We will drop that, Your Honor.
3 Beg the Court's indulgence.

4 That's it, Mr. Kornegay. Thank you for being here.

5 THE COURT: Any redirect?

6 MR. DAVIS: Your Honor, may we approach and see the
7 document that he indicated is the face of a warrant?

8 THE COURT: Sure.

9 MR. DAVIS: I have no other questions for this
10 witness.

11 THE COURT: Any other witnesses, Mr. Davis?

12 MR. DAVIS: Your Honor, I would ask to re-call my
13 client based on that last issue about that document, the
14 warrant, if we could.

15 THE COURT: Come on back up, Mr. Fabor.

16 LAVONTE FAVOR,

17 having been previously sworn, testifies as follows:

18 THE COURT: Sir, you are still under oath. You may
19 proceed.

20 MR. DAVIS: Thank you, Your Honor.

21 FURTHER EXAMINATION

22 BY MR. DAVIS:

23 Q. Mr. Fabor, did you just have a chance a few seconds
24 there to take a look at the face of an arrest warrant that was
25 testified about? Did you have a chance to look at that?

1 A. That was the first time I ever seen that piece of
2 paper there.

3 Q. It appears to be a 2015 warrant. Can you tell the
4 judge -- out of Charleston. Can you tell the judge when you
5 were last incarcerated? When were you last incarcerated before
6 the guilty plea?

7 A. In Charleston County, I did -- I did 60 days off of
8 three tickets. It was 30-day tickets a piece. I did 60 days
9 off of them. I came home January 9th of 2000 -- that was last
10 year. That was last year.

11 Q. Okay. So 30 days each, 90 days, but you ended up
12 doing 60 of the 90, right?

13 A. Correct.

14 Q. And were released January 9th of 2017?

15 A. Correct. Was these charges February 3rd of 2016 or
16 '17? Because I been locked up for a year already. It had to
17 have been '16.

18 Q. Did you ever go to Charleston for that charge?

19 A. Never been, never. I never was locked up for that,
20 for that there.

21 MR. DAVIS: Thank you, Your Honor. No other
22 questions.

23 THE COURT: Anything?

24 MR. SAVILLE: Beg the Court's indulgence, Your Honor.

25 No further questions.

1 MR. DAVIS: Before we rest, can I have just one moment
2 with my client?

3 May I have just one moment with the attorney general?

4 THE COURT: Sure.

5 (Whereupon, an off-the-record conversation takes
6 place.)

7 MR. DAVIS: Your Honor, thank you so much. We
8 discussed briefly with my client, and I've spoken with attorney
9 general and Mr. Kornegay. We just want to be clear. I will
10 admit to something up front. I have the transcript of the
11 start, stop, and then the guilty plea. I had not asked -- I
12 knew if he didn't plead, it was going to trial. I had not
13 asked nor had I realized until today's testimony that a jury
14 had actually been picked. I confirmed that's as far as it
15 went. There were no pretrial hearings put on the record.
16 Because of that and the discussions with my client, we don't
17 believe there will be anything in the transcript, if it only
18 contains jury selection, that would add to this record.

19 If there had been any pretrial motions or anything,
20 then we respectfully ask the record be kept open so we can get
21 that. It's my understanding, if need be -- I know John, again,
22 I take him at his word as an officer of the court. The only
23 thing prior to the first attempted plea was picking of the
24 jury. With that being the case, we would not request that
25 transcript. We have nothing additional to add. And the

1 applicant would rest on those facts.

2 THE COURT: Thank you, Mr. Davis.

3 Anything from the State?

4 MR. SAVILLE: Your Honor, we would like to briefly
5 call back Mr. Kornegay to the stand.

6 THE COURT: All right. Come back up, Mr. Kornegay.

7 JOHN KORNEGAY,

8 having been previously sworn, testifies as follows: Re

9 FURTHER EXAMINATION

10 BY MR. SAVILLE:

11 Q. Thank you, Mr. Kornegay. Now, this warrant that you
12 have shown us, did you talk about that with Mr. Fabor at the
13 time of his plea?

14 A. I did.

15 Q. Okay. And this warrant was actually discussed at the
16 plea hearing, correct?

17 A. That's correct.

18 Q. Did you bring it up at the plea hearing?

19 A. I can't remember if I brought it up or the solicitor
20 brought it up.

21 Q. I will let the transcript speak -- it's page 21, line
22 2.

23 Mr. Kornegay brought this to the Court's attention.

24 And still, knowing that you had this warrant, this warrant, we
25 will call it in issue that you could potentially argue, you

1 still felt like a *Jackson v. Denno* would not have been
2 successful?

3 A. Or a suppression hearing, that's correct.

4 MR. SAVILLE: That's all I have. Thank you.

5 THE COURT: Any cross?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: Thank you, Mr. Kornegay. You may step
8 down.

9 Any other witnesses from the State?

10 MR. SAVILLE: No, Your Honor.

11 THE COURT: Parties care to make a brief closing?

12 MR. DAVIS: I will try to be brief, Judge. Thank you
13 so much. I won't summarize the factual testimony. You've
14 heard that. You've heard what my client was aware of as far as
15 any trial preparation or lack thereof. I would argue that even
16 when Mr. Kornegay testified, he certainly identified issues.
17 And there was some brief research done. It's his obligation as
18 the attorney that ultimately met with Mr. Fabor at the time of
19 his guilty plea and advised him about that, but none of us can
20 extend time and he was jammed with this reality, Judge. He was
21 jammed with the reality of three months originally from May --
22 I'm sorry, February 10th, 2016, to May of 2016. So roughly
23 three months and then a break, and then he's back on February
24 of 2017 at some point that month. Let's suggest February the
25 1st. That's 28 days before they hit March. And they are going

1 to take this case to trial. So at most, he had four months, at
2 most.

3 And there's still an unresolved issue of this warrant,
4 as one example, and how that might have affected the issue in
5 the case, the legal issue in the case, or certainly one that
6 could have won the case without even being presented to the
7 jury. It was a constitutional violation.

8 We would argue that we have met our burden. That
9 given the time available -- and there's no testimony a
10 continuance was requested. There's no testimony that he filed
11 any of these motions. Certainly, it's his opinion, as he
12 testified, that they would not have been successful. And
13 lawyers have to make judgment calls and give advice all day,
14 every day. And, ultimately, it is the client's decision. But
15 given that limited time, and there was sufficient testimony
16 about full preparation for a trial, my client was stuck between
17 a rock and a hard place.

18 On the one hand, I'm paraphrasing, don't believe my
19 attorney's ready to go to trial and fight for me and argue this
20 suppression motion which I mentioned to him repeatedly.

21 It's factual that there's still this unknown issue
22 about this warrant, unserved warrant, unresolved warrant that
23 gets resolved during guilty plea where this would be a global
24 resolution to all charges that are outstanding. That's a nice
25 way to clean it up. But for use at a suppression hearing, it's

1 not clean.

2 So my client, on one hand, didn't feel that his
3 attorney was fully prepared to go to trial. And I will submit,
4 simply based on the time that he had to prepare, I don't know
5 that Mr. Kornegay or anyone could have been fully prepared and
6 clear of outstanding issues. He wasn't.

7 So one hand, he feels forced into a plea, because the
8 alternative is a trial that we are not prepared for. When you
9 compound that with the advice to plead guilty -- and, Judge, I
10 do have to -- I'm going to ask to touch on the Charleston case
11 briefly. Plead guilty to Dorchester -- forgive me. Plead
12 guilty to Dorchester and also Charleston, even though I never
13 gotten discovery on that. It's going to add drug convictions
14 to your record, may not affect the time things run concurrent,
15 but take my advice, forego your constitutional right to a
16 trial, not only on these charges and Charleston too, which I
17 don't really know anything about, and plead guilty. 70 percent
18 chance --

19 MR. SAVILLE: We would object to that as hearsay.

20 THE COURT: It's closing. I will allow it.

21 MR. DAVIS: My client testified he was told 70 percent
22 chance you are going to lose, 30 percent chance you are going
23 to win. With that kind of influence from a lawyer who had
24 incredibly limited time to prepare for very serious charges
25 with very serious penalties, and still remains to this day an

1 unresolved issue that could have affected the constitutional
2 violation argument on suppression, all of those things factored
3 together, we believe forced my client into a plea that he
4 otherwise wouldn't have done.

5 THE COURT: Are you saying your client lied to the
6 judge when asked all those questions?

7 MR. DAVIS: No, Your Honor. Specifically to that,
8 specifically to that, it was run through twice. Were you given
9 advice on how to answer the questions? And again, paraphrase,
10 say yes, get through this process, it will be easier for you.
11 And I'm adding, the outcome is so much better than if we don't
12 do this.

13 THE COURT: He testified it's a yes, sir, no, sir. He
14 never testified he was told to lie.

15 MR. DAVIS: That is correct, Your Honor. That is
16 correct. By inference, it's, be affirmative in your responses,
17 and that will get you through the plea.

18 You are correct, there was no direct testimony, tell
19 the judge -- to lie. You are correct that testimony was not on
20 the record. But when it's suggested that you need to answer
21 affirmatively or this isn't going to happen, and you could have
22 recalled the brief meetings in that month prior to going to
23 trial or plea, that's undue pressure, we believe, towards the
24 ineffective assistance prong.

25 And to the second prong, the outcome would have been

1 different, only person that knows whether they would have
2 continued with trial or pled guilty is Mr. Fabor. He has
3 testified to you. It's undisputed evidence that had the
4 situation with his attorney in preparation and advice been
5 different, he would have continued with trial. That's
6 undisputed. It's the second prong we met.

7 The issue is whether we met the ineffective assistance
8 or not. And, again, without belaboring the point, I know you
9 have the record, you've listened to the testimony, I would
10 simply argue based on the testimony of both, and simply the
11 time frame available to get prepared, and the fact there's
12 still an issue that nobody in this courtroom has an answer to,
13 that clearly shows he was not fully prepared. And we would
14 argue that shows ineffective assistance. And we would ask that
15 you vacate the guilty plea -- overturn the guilty plea, vacate
16 the sentences.

17 And, again, this is relief we are asking. We are here
18 in Saint George, Dorchester County. We would ask as to those
19 four, that you overturn the guilty plea, vacate the sentences,
20 remand it back to the county jail to begin anew, and face these
21 charges and try to have a better outcome.

22 Thank you very much.

23 THE COURT: Thank you, Mr. Davis.
24 Counsel.

25 MR. SAVILLE: Thank you. Your Honor, Mr. Davis was

1 right. This is a serious set of charges. In fact, if we are
2 only going to consider the Dorchester charges today, applicant
3 was facing up to 90 years potentially here. And I think Judge
4 Young actually said it best at the plea hearing when he said it
5 was because the hard work of his attorney and grace of the
6 solicitor's office that he even got this 15-year sentence on
7 these charges.

8 I think the record reflects that Mr. Kornegay
9 thoroughly investigated the case. He worked diligently to
10 procure this plea offer. He looked into the rental car issue.
11 He -- the record clearly reflects that he discussed the warrant
12 issue with his client.

13 And, in fact, in the transcript, he talks about how he
14 met with his client and the family and talked about the warrant
15 issue. And they decided that it was best to plead guilty.

16 The testimony at the plea hearing indicates that
17 applicant knew -- he told the judge he knew what he was doing.
18 He told the judge he didn't need any more time with his
19 attorney, and that he believed there's -- I think plea counsel
20 credibly testified there would have been a substantial
21 likelihood that he would be convicted. And I just don't think
22 there's any reasonable probability that but for the alleged
23 deficiencies of counsel, applicant would have rather tried to
24 proceed to trial on charges that could have, in Dorchester
25 County, got him 90 years, when there were just really no search

1 issues likely to be successful. And that's all we have. Thank
2 you very much.

3 THE COURT: Thank you, counsel. I will take the
4 matter under advisement and notify you of my opinion.

5 MR. SAVILLE: Thank you, Your Honor.

6 MR. DAVIS: Thank you very much, Your Honor.

7 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina at
Large, do hereby certify that the foregoing transcript is a
true, accurate and complete Transcript of Record of the
proceedings.

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



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

2018 MAY 10 PM 12:53

Lavonte Fabor,

2017-CP-18-1681

Applicant,

Christy Beahm
CLERK OF COURT
DORCHESTER COUNTY

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 2, 2017. Respondent submitted its return on January 30, 2018. An evidentiary hearing into the matter was convened on March 2, 2018, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Rodney D. Davis, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court are the records of the Dorchester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the State's Return, and the application.

I. PROCEDURAL HISTORY

The records before this Court indicate that Lavonte Fabor ("Applicant") is presently confined pursuant to orders of commitment of the Clerk of Court for Dorchester County. The Dorchester County Grand Jury first indicted Applicant at their September 2016 term for trafficking heroin, 14-28 grams (2016-GS-18-1533), trafficking cocaine, 28-100 grams (2016-GS-18-1534), trafficking cocaine base, 28-100 grams (2016-GS-18-1535), manufacturing, possession of schedule IV drugs with intent to distribute (2016-GS-18-1536), and possession of a

firearm or knife during the commission of a violent crime (2016-GS-18-1537). The Charleston County Grand Jury also indicted Applicant for trafficking cocaine (2017-GS-10-2566) and two counts of distribution of cocaine base (2017-GS-10-2567, 2017-GS-10-2568).

On March 20, 2017, and March 21, 2017, Applicant pled guilty before the Honorable W. Jeffrey Young to his Dorchester County charges as follows:

1. On 2016-GS-18-1533, the lesser included offense of trafficking heroin, 4-14 grams, first offense.
2. On 2016-GS-18-1534, the lesser included offense of trafficking cocaine, 10-28 grams, second offense.
3. On 2016-GS-18-1535, the lesser included offense of trafficking cocaine base, 10-28g, second offense.
4. On 2016-GS-18-1537, as indicted to possession of a firearm during the commission of a violent crime.

Applicant waived venue for the Charleston County charges so all charges could be disposed of together in Dorchester County. However, Applicant confirmed at his PCR hearing that he only wished to challenge the charges arising from Dorchester County in this action. Applicant pled guilty to his Charleston County charges as follows:

1. On 2017-GS-10-2566, the lesser included offense of trafficking cocaine, 10-28 grams, first offense.
2. On 2017-GS-10-2567, the lesser included offense of distribution of cocaine base, first offense.
3. On 2017-GS-10-2568, the lesser included offense of distribution of cocaine base, first offense.

There was a negotiated sentence of fifteen years for all of the charges. John Thomas Kornegay, Esquire ("Plea Counsel"), represented Applicant. Assistant Solicitor Donald N. Sorenson, Esquire, prosecuted the case. On March 21, 2017 Judge Young sentenced Applicant to concurrent terms of imprisonment for the following durations:

- Trafficking heroin, 4-14 grams, first offense (2016-GS-18-1533): fifteen years.
- Trafficking cocaine, 10-28 grams, second offense (2016-GS-18-1534): fifteen years.
- Trafficking cocaine base, 10-28 grams, second offense (2016-GS-18-1535): fifteen years.

- Possession of a firearm during the commission of a violent crime (2016-GS-18-1537): five years.
- Trafficking cocaine, 10-28 grams, first offense (2017-GS-10-2566): ten years.
- Distribution of cocaine base, first offense (2017-GS-10-2567): fifteen years.
- Distribution of cocaine base, first offense (2017-GS-10-2568): fifteen years.

Applicant did not appeal from his guilty plea or sentences.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. Failure to investigate.
 - b. Failure to inform client of right to direct appeal.
2. Subject matter jurisdiction
 - a. "Court lacked jurisdiction to accept my plea because I was denied my preliminary hearing, I was arrested without a warrant."

At the evidentiary hearing, Applicant alleged Plea Counsel was ineffective for failing to explain his charges and the State's burden of proof, and failing to consider and discuss defenses. Applicant also argued the limited amount of time Plea Counsel served as Applicant's attorney of record prior to the guilty plea was insufficient time to prepare and prejudiced Applicant. Plea Counsel served as attorney of record for three months before being substituted for another attorney, and then one month after the other attorney had ceased representing Applicant.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant testified on his own behalf at the hearing. Applicant's Plea Counsel also testified at the hearing.

Applicant's testimony

At the PCR hearing, Applicant explained he first retained a different attorney to represent him on his charges, and this representation lasted for about eight months to one year before the representation ended and Plea Counsel was appointed to represent Applicant. Applicant testified

all of his allegations for post-conviction relief pertained to Plea Counsel, not the counsel who represented him beforehand. Applicant recalled Plea Counsel representing him for approximately six months.¹

Applicant testified he met with Plea Counsel two or three times in Dorchester County and once in Charleston County prior to his plea, and the meetings lasted ten to fifteen minutes. Applicant testified he also met with Plea Counsel once at the courthouse, where they discussed his Dorchester and Charleston charges. Applicant recalled he “heard” he could receive life imprisonment without parole for his charges, and Plea Counsel discussed this and other potential sentencing consequences with him close to the guilty plea. However, Applicant also testified there was no discussion of parole eligibility, strikes, or a mandatory eighty-five percent sentence. According to Applicant, Plea Counsel did not talk to him about a trial or possible defenses, nor did Plea Counsel talk about any search and seizure issues. Applicant recalled he was pulled over for speeding which led to the original traffic stop. Applicant also testified he never saw the arrest warrant for heroin distribution which led to his arrest. According to Applicant, Plea Counsel told him to plead guilty, but Applicant told Plea Counsel he wanted to “fight” the charges. Applicant testified he had no option but to plead guilty because he had no one to fight for him.

Applicant conceded he told the plea judge Plea Counsel had done everything he had asked him to, he did not need any more time to speak with him, and he was satisfied with Plea Counsel’s services. Applicant did not deny telling the plea judge he was pleading guilty because he was, in fact, guilty.

Plea Counsel’s testimony

Plea Counsel testified this was the first case in which he served as lead counsel, but he

¹ Records indicate Plea Counsel actually served as attorney of record for a total of approximately four months prior to Applicant’s guilty plea.

had sat as co-counsel on other cases. He recalled meeting with Applicant on roughly six occasions over a total of four months of representation and was prepared to go to trial if Applicant did not choose to plead guilty. Plea Counsel described Applicant's behavior as "tense and uncooperative," and wavered back and forth between a trial or guilty plea before finally pleading guilty. Plea Counsel recalled Applicant provided no leads or witnesses to investigate. Nevertheless, Plea Counsel testified he had his investigator seek out body camera footage from the traffic stop and arrest and checked for any disciplinary history of the involved law enforcement officers. While Applicant had claimed there was no discussion of possible defenses, Plea Counsel testified he discussed defenses with Applicant, including the challenges to suppress the evidence and statements as well as impeachment of the investigators. Furthermore, Plea Counsel explained he was prepared to argue a motion under Jackson v. Denno, 378 U.S. 368 (1964), and was prepared to argue for suppression of the fruits of the traffic stop. Plea Counsel explained it was Applicant who decided to plead guilty. While Plea Counsel testified he did not assign a numerical value to Applicant's chances of being convicted at trial, he did advise Applicant that he would more likely than not be convicted if he proceeded to trial.

Plea Counsel testified he did indeed discuss the arrest warrant with Applicant and showed it to him and his family the day of the plea. As to an appeal, Plea Counsel testified Applicant never asked him to appeal from the guilty plea. Plea Counsel did not recall any appealable issues, and Applicant and his family advised Plea Counsel they did not want him to handle Applicant's appeal.

IV. APPLICABLE LAW

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show 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).

In the present case, this Court finds Applicant has failed to prove that he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. At the PCR hearing, Applicant conceded he told the plea judge, under oath, that he was satisfied with Plea Counsel and Plea Counsel had done everything Applicant asked him to do. Moreover, Applicant told the plea judge he did not require any more time with Plea Counsel. Plea Counsel credibly testified he met with Applicant approximately six times before his guilty plea. This Court finds Applicant's testimony that Plea Counsel never discussed any defenses with him not to be credible. By contrast, this Court finds Plea Counsel's testimony that he discussed defense strategies with Applicant such as arguments to be made at suppression hearings and

impeachment of the law enforcement officers to be credible. Plea Counsel was prepared to proceed to trial if Applicant did not plead guilty.

Plea Counsel also credibly testified he advised Applicant he would most likely be found guilty if he proceeded to trial, but it was Applicant's decision to plead guilty. The guilty plea transcript reveals Applicant was fully advised of the consequences of his guilty plea and had no more questions for Plea Counsel. Applicant told the plea judge he did not want to proceed to trial and had not been promised anything or threatened in exchange for pleading guilty. Tr. p. 17, ll. 16-17; p. 18, ll. 6-12. The record reveals Applicant understood he was facing a possibility of life imprisonment without parole if he was convicted of these charges. Tr. p. 16, ll. 13-20. Furthermore, the record reveals Applicant understood the State had the burden of proving his charges at trial. Tr. p. 18, ll. 1-2. There is no reasonable probability that, but for any alleged deficiencies, Applicant would not have pled guilty and would have proceeded to trial. Plea Counsel secured a favorable plea deal for Applicant which avoided a substantially likely conviction and possible sentence of life imprisonment without parole. Therefore, Applicant has failed to offer any evidence of deficiency or prejudice from these allegations. Accordingly, these allegations are denied and dismissed with prejudice.

Failure to investigate

Applicant alleges Plea Counsel was ineffective for failure to investigate. This Court finds this allegation to be meritless. At the PCR hearing, Plea Counsel credibly testified his investigation of this case included sending his investigator to look into the body camera footage worn by officers during the traffic stop and also an investigation into the disciplinary history of the law enforcement officers involved. Plea Counsel also testified he investigated whether Applicant was a "permissive user" of the rental car he was driving at the time. Plea Counsel also credibly testified he was prepared to go to trial and argue for the suppression of evidence. This

Court finds Plea Counsel conducted a thorough investigation in this case. Applicant has therefore failed to meet his burden of proving Plea Counsel was deficient in this regard. Moreover, Applicant has failed to offer any evidence of what further investigation would have revealed, and there is no reasonable probability Applicant would have chosen to proceed to trial had Plea Counsel investigated differently. Accordingly, this allegation is denied and dismissed with prejudice.

Insufficient Time as Attorney of Record

Applicant alleges Plea Counsel's limited time as attorney of record for Applicant did not allow Plea Counsel enough time to prepare, and prejudiced Applicant. This Court finds this allegation to be meritless. At the hearing, Applicant testified Plea Counsel represented him for approximately six months. Plea Counsel credibly testified he was prepared to proceed to trial if Applicant had not pled guilty. Furthermore, this Court has found Plea Counsel thoroughly investigated the circumstances of the case regardless of the duration of representation, and Applicant affirmed his own satisfaction with Plea Counsel's services at the guilty plea hearing and did not need any more time to speak with him. Tr. p. 18, l. 18 – p. 19, l. 1. This Court therefore finds Applicant has failed to meet his burden of proving deficiency due to the duration of Plea Counsel's representation. Applicant has also failed to establish prejudice from the time Plea Counsel served as his attorney of record. The duration of representation was clearly enough time for Plea Counsel to negotiate a favorable plea deal on behalf of Applicant, and there is no evidence that Applicant would have rather proceeded to trial but for any alleged deficiency. Accordingly, this allegation is dismissed with prejudice.

Arrest Warrant

Applicant alleges Plea Counsel was ineffective for not addressing an issue regarding the arrest warrant for which Applicant was detained. This Court finds this allegation to be meritless.

At the PCR hearing, Plea Counsel credibly testified he had possession of this arrest warrant on the day of Applicant's plea and discussed the warrant with Applicant and Applicant's family. Moreover, the guilty plea transcript reveals this matter was addressed and settled at Applicant's guilty plea hearing. Tr. p. 21, l. 2 – p. 22, l. 24. There has been no evidence presented against the sufficiency of this warrant or the procedures involved in its obtainment. For these reasons, Applicant has failed to meet his burden of proving Plea Counsel's performance was deficient in this regard. Furthermore, Applicant has presented no evidence to suggest he was prejudiced by Plea Counsel's conduct in this regard. Therefore, this allegation is denied and dismissed with prejudice.

SUBJECT-MATTER JURISDICTION

Applicant alleged a lack of subject-matter jurisdiction in his original PCR application. Applicant did not proceed on the allegation regarding subject-matter jurisdiction, nor did he present any evidence or testimony to support such an allegation. Accordingly, this Court finds this allegation to be abandoned and it is denied and dismissed with prejudice.

VI. CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-

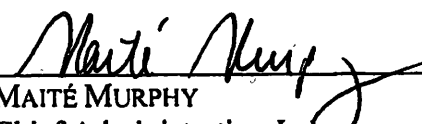
conviction relief. Rule 71.1(g), SCRCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1 day of May, 2018.

St. George, South Carolina


MAITÉ MURPHY
Chief Administrative Judge
First Judicial Circuit

WITNESSES

G Brazelton

North Charleston Police Department

ARREST WARRANT NUMBER

2016DOR36

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: September 1, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1533

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

September 5, 2016 TERM

THE STATE
vs.

lavonte Andrea Javon Fabor

Indictment for

Trafficking in Heroin 14 - 28 grams

SC Code: 44-53-370(e)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CHIEF CLERK
CLERK OF COURT
DORCHESTER COUNTY

2016 SEP -1 PM 2:43

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

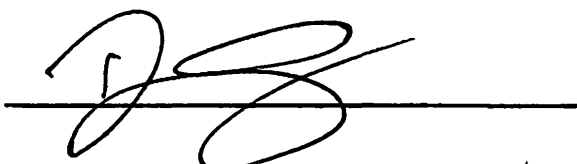
INDICTMENT
2016GS18-1533

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

TRAFFICKING IN HEROIN 14 - 28 GRAMS

That in Dorchester County, South Carolina, on or about February 3, 2016, the Defendant, lavonte Andrea Javon Fabor, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of 14 to 28 grams of Heroin. This offense in violation of Section 44-53-370 of the South Carolina Code of Laws, as amended.

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


Donald N. Sorenson, Solicitor

WITNESSES

G Brazelton

North Charleston Police Department

ARREST WARRANT NUMBER

2016DOR37

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: September 1, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1534

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

September 5, 2016 TERM

THE STATE
vs.

lavonte Andrea Javon Fabor

Indictment for

Trafficking in Cocaine, 28 g or More, But
Less than 100 g

SC Code: 44-53-370(e)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2016 SEP - 1 PM 2:43
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

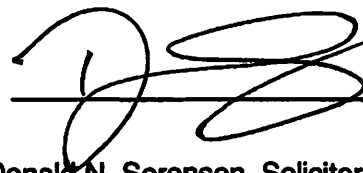
INDICTMENT
2016GS18-1534

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

TRAFFICKING IN COCAINE, 28 G OR MORE, BUT LESS THAN 100 G

That in Dorchester County, South Carolina, on or about February 3, 2016, the Defendant, lavonte Andrea Javon Fabor, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of more than 28 but less than 100 grams of Cocaine. This offense in violation of Section 44-53-370 of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to be "DS", is written over a horizontal line.

Donald N. Sorenson, Solicitor

WITNESSES

G Brazelton

North Charleston Police Department

ARREST WARRANT NUMBER

2016DOR38

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

FA

Foreperson of Grand Jury
Date: September 1, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1535

**The State of South Carolina
County of DORCHESTER**

COURT OF GENERAL SESSIONS

September 5, 2016 TERM

**THE STATE
vs.**

lavonte Andrea Javon Fabor

Indictment for

**Trafficking in Cocaine Base - 28 g or
More, But Less than 100 g**

SC Code: 44-53-375(C)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORD
2016 SEP - 1 PM 2:43
CHERYL G. ALLEN
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

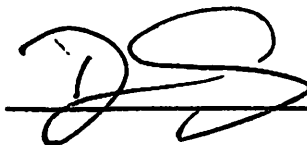
INDICTMENT
2016GS18-1535

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

TRAFFICKING IN COCAINE BASE - 28 G OR MORE, BUT LESS THAN 100 G

That in Dorchester County, South Carolina, on or about February 3, 2016, the Defendant, lavonte Andrea Javon Fabor, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of approximately more than 28 grams but less than 100 grams of Cocaine Base. This offense in violation of Section 44-53-375 of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to be 'DS', written over a horizontal line.

Donald N. Sorenson, Solicitor

WITNESSES

G Brazelton

North Charleston Police Department

ARREST WARRANT NUMBER

2016DOR39

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: September 1, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1536

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

September 5, 2016 TERM

THE STATE
vs.

lavonte Andrea Javon Fabor

Indictment for

Manuf., Poss. of Sch. Iv Drugs, Except
Flunitrazepam, with intent to Distribute

SC Code: 44-53-370(a)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECORD
2016 SEP - 1 PM 2:44
CHERYL JOHNSON
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INDICTMENT

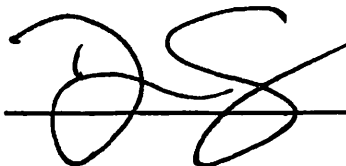
2016GS18-1536

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

**MANUF., POSS. OF SCH. IV DRUGS, EXCEPT FLUNITRAZEPAM, WITH INTENT TO
DISTRIBUTE**

That in Dorchester County, South Carolina, on or about February 3, 2016, the Defendant, lavonte Andrea Javon Fabor, did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to do the same, or possess with the intent to distribute, dispense, or deliver, a quantity of Clonazepam, a Schedule IV controlled substance. This offense in violation of Section 44-53-370 of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to be 'DS', is written over a horizontal line.

Donald N. Sorenson, Solicitor

WITNESSES

G Brazelton

North Charleston Police Department

ARREST WARRANT NUMBER

2016DOR40

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

TA
Foreperson of Grand Jury
Date: September 1, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS18-1537

**The State of South Carolina
County of DORCHESTER**

COURT OF GENERAL SESSIONS

September 5, 2016 TERM

**THE STATE
vs.**

lavonte Andrea Javon Fabor

Indictment for

**Possession of a Firearm or Knife During
the Commission of a Violent Crime**

SC Code: 16-23-490

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORD
2016 SEP - 1 PM 2:44
CHERYL SEANAN
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

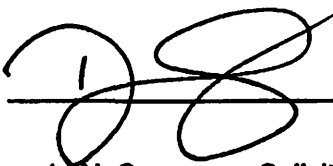
INDICTMENT
2016GS18-1537

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

**POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME**

That in Dorchester on or about February 3, 2016, the defendant, Lavonte Andrea Javon Fabor, did visibly display or have in his possession a handgun during the commission of a violent crime as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended, to wit: Trafficking Heroin and/or Cocaine and/or Cocaine Base, thereby violating Section 16-23-490, Code of Laws of South Carolina, 1976, as amended.

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



Donald N. Sorenson, Solicitor