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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Dorchester County

Honorable Kristi Lea Harrington, Circuit Court Judge

\_\_\_\_\_

FREDRICK B. MOSLEY, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-0001113

\_\_\_\_\_

APPENDIX

\_\_\_\_\_

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State of South Carolina ) In General Sessions Court  
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Vs. ) 2014-GS-18-507

Frederick B. Mosley, Jr., ) 2014-GS-18-508

Defendant. )

September 14, 2015

St. George, South Carolina

**B E F O R E:**

The Honorable Edgar W. Dickson, Presiding Judge

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

Kyle Ward, Assistant Solicitor

Attorney for the State

John Loy, Public Defender

Attorney for the Defendant

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

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**\*\*NO EXHIBITS WERE INTRODUCED\*\***

1 Monday, September 14, 2015

2 THE COURT: Mr. Ward?

3 MR. WARD: Yes, Your Honor.

4 THE COURT: Is this your case?

5 MR. WARD: Technically, it's Mr. Sorenson's, but I  
6 will be handling the trial.

7 THE COURT: Okay, because Mr. Sorenson is doing a  
8 murder trial, I believe.

9 MR. WARD: That is correct.

10 THE COURT: Okay. And what's this charge?

11 MR. WARD: Your Honor, the trial we are ready to go  
12 forward on in State V. Frederick Mosley, Jr. He's  
13 charged under indictment 2014-GS-18-507 for trafficking  
14 cocaine base greater than 10 grams, less than 28; as well  
15 as 0508 for possession of a weapon during a violent  
16 crime.

17 THE COURT: And what's the sentence on trafficking  
18 10 to 28?

19 MR. WARD: It's a mandatory minimum of three years,  
20 three to 10 years is the sentence.

21 THE COURT: Okay.

22 MR. WARD: And the possession of a weapon is five  
23 years not suspendable, but that can be run concurrent.

24 THE COURT: Okay.

25 MR. LOY: He's signed the sheets, Your Honor.

1 THE COURT: He is going to plea?

2 MR. LOY: Yes, sir.

3 THE COURT: Okay. All right.

4 THE CLERK: Raise your right hand. State your full  
5 name for the record.

6 You'll have to speak up a little bit.

7 THE DEFENDANT: Frederick Bernard Mosley, Jr.

8 FREDERICK B. MOSLEY, JR., after having been  
9 duly sworn, testified as follows:

10 THE COURT: Mr. Loy, you represent Mr. Mosley?

11 MR. LOY: Yes, sir.

12 THE COURT: And you have had an opportunity to  
13 review with him the evidence that the State has against  
14 him regarding these two charges?

15 MR. LOY: Yes, sir.

16 THE COURT: And it's my understanding that this  
17 case is actually ready to be called for trial this week;  
18 is that correct?

19 MR. LOY: That is my understanding also, Your  
20 Honor.

21 THE COURT: I've got a jury waiting.

22 MR. LOY: Your Honor, Mr. Mosley and I are aware  
23 that the jury is waiting. The solicitors told us that we  
24 are first up and perhaps only up, that they are here for  
25 us.

1 THE COURT: So in meeting with him you have  
2 explained to him that he's facing -- on the trafficking  
3 cocaine base he's facing a minimum of three years and a  
4 maximum of 10 years in that charge?

5 MR. LOY: Yes, sir.

6 THE COURT: And on the possession of a weapon  
7 during a violent crime he's facing up to five years, and  
8 that sentence is not suspendable but it can be served  
9 concurrent; is that correct?

10 MR. LOY: My understanding is that is correct, and  
11 that's what I have relayed to him.

12 THE COURT: Okay. All right. Now, and you have  
13 advised him of his constitutional rights?

14 MR. LOY: Yes.

15 THE COURT: And he understands that he has the  
16 right to have a jury trial on both of these?

17 MR. LOY: Yes, sir.

18 THE COURT: All right. He has indicated to you  
19 that he wishes to plead guilty to these two charges?

20 MR. LOY: Well, Your Honor, he's indicated to me  
21 initially he would like to relieve me of further service  
22 and asked me if I would relay that to the Court, and he  
23 could retain another attorney to represent him.

24 I told him I would relay that. I did not believe  
25 at this hour with us having plenty of advanced notice of

1 having being placed on the trial docket that the Court  
2 would seriously entertain such a notion and that we would  
3 go forward. He seemed to accept my perspective on the  
4 point and said then he would go ahead and take -- so  
5 ideally what he would like is to have a continuance and  
6 continue to preserve the situation, work on it further.

7 In the alternative if that's not an option, and I  
8 pretty well told him I believe it's not, then he wishes  
9 to avail himself of a guilty plea and seek such leniency  
10 as the Court can offer.

11 THE COURT: All right. Mr. Mosley, I need to make  
12 sure you understand. You know, I'm not granting a  
13 continuance. You have an excellent attorney representing  
14 you in Mr. Loy and I'm not -- I would not continue this  
15 case. I want to make sure you understand that. Okay?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Mosley, my sentencing sheet  
18 indicates you are 23 years old.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. And, Mr. Mosley, are you working  
21 somewhere?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Where are you working?

24 THE DEFENDANT: With my uncle, Rogers Painting.

25 THE COURT: What does he do?

1 THE DEFENDANT: Paint.

2 THE COURT: Oh, paint.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: How long have you been working for him?

5 THE DEFENDANT: About two years.

6 THE COURT: And you're working full-time?

7 THE DEFENDANT: Yes, sir. Well, recently we hadn't

8 been working because we had got in an accident coming

9 from work, so two months we haven't been working.

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

11 THE DEFENDANT: I graduated.

12 THE COURT: From what high school?

13 THE DEFENDANT: Woodland High School.

14 THE COURT: Woodland?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're going to have to speak up, if

17 you don't mind. She's got to hear you and I do, too. So

18 you are a graduate of Woodland High School?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And what education, any other job

21 training or anything like that past high school?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right, sir. And, Mr. Mosley, were

24 you born in New York?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. And the first number in your  
2 Social Security is [REDACTED]?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And when did you move down here?

5 THE DEFENDANT: When I was eight.

6 THE COURT: When you were eight?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So you went through the schools right  
9 down here?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, sir. Mr. Mosley, have you  
12 ever been treated for any mental health issues?

13 THE DEFENDANT: I've been to rehab before.

14 THE COURT: You've been at rehab?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You had drug treatment?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: For what drug?

19 THE DEFENDANT: Cocaine and crack cocaine.

20 THE COURT: Okay. How long ago was that?

21 THE DEFENDANT: Like a year -- about two years ago.

22 THE COURT: Two years ago?

23 MR. LOY: He's currently on parole for a burglary  
24 third and I suspect the treatment was a condition of that  
25 probation or parole.

1 THE COURT: Is that correct, Mr. Mosley?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. But you've never gone and had --  
4 you don't have depression, schizophrenia, anything like  
5 that, no mental health issues?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. Today are you under the  
8 influence of any alcohol or illegal drugs?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you taking any kind of medication?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. So you are thinking clearly  
13 today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You know exactly what's going on today,  
16 you know exactly what's happening?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, Mr. Loy has indicated that he has  
19 met with you and reviewed with you the evidence that the  
20 State has against you regarding these two charges.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: He's explained to you the law that  
25 applies in this situation?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You know if you plead guilty to these  
3 two charges on the trafficking cocaine base you are  
4 facing a minimum three-year charge?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Up to 10 years in jail. Do you  
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And the possession of a weapon during a  
10 violent crime you are facing up to five years.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. All right, sir. Now, Mr. Loy  
13 has also advised you of your constitutional rights; is  
14 that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you understood everything he's  
17 told you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You understand if you plead guilty to  
20 this charge you give up your right to remain silent  
21 because you have to admit to me that you are, in fact,  
22 guilty; you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Sir?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: You also understand that you give up  
2 your right to present any defenses you may have to this  
3 charge and you give up your right to require that the  
4 State prove you are guilty beyond a reasonable doubt; do  
5 you understand that?

6           THE DEFENDANT: Yes, sir.

7           THE COURT: And you are giving up those rights and  
8 want to go forward?

9           THE DEFENDANT: Yes, sir.

10          THE COURT: You don't want a jury trial on these  
11 two charges?

12          THE DEFENDANT: No, sir.

13          THE COURT: You understand that we got a jury  
14 waiting for you if you want one?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: But you want to go forward with these  
17 pleas?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: Okay. Now, my sentencing sheet says  
20 that this plea is without negotiations or  
21 recommendations; is that correct?

22          MR. WARD: That's correct, Your Honor.

23          THE COURT: And is that your understanding,  
24 Mr. Mosley?

25          THE DEFENDANT: No. I didn't understand that.

1 THE COURT: Okay. That means the State has not  
2 made any recommendation. Like, sometimes the State will  
3 come up here and tell me that they are recommending a  
4 10-year sentence, a eight-year sentence, a five-year  
5 sentence. They could recommend concurrent sentences, all  
6 kind of things like that or different things that they  
7 can recommend, but right now they are not recommending  
8 anything. It's in my hands. Is that your understanding?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has anybody promised you anything to  
11 get you to plead guilty here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Has anybody threatened you or forced  
14 you in any way to get you to plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you doing this freely and  
17 voluntarily?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You know exactly what you are doing?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay.

22 MR. LOY: Your Honor, just for clarity sake, if I  
23 heard correctly I believe Your Honor told Mr. Mosley he  
24 was facing up to five years on the pistol charge?

25 THE COURT: Yeah.

1           MR. LOY: My understanding is that this is a  
2 five-year sentence, that I've told him that if he pleads  
3 to that charge he will get a five-year sentence. I don't  
4 think up to five.

5           THE COURT: Okay. Okay. That's why it's  
6 underlined?

7           MR. WARD: That's correct, Your Honor.

8           THE COURT: Okay. So now I know when you put a  
9 five and underline that means that's what you've got to  
10 get.

11          MR. WARD: Yes, sir.

12          THE COURT: See, I learn these little notes as I go  
13 along. Okay.

14          And, Mr. Mosley, I want to make sure you understand  
15 that, too. You are facing five years on that.

16          THE DEFENDANT: Yes, sir.

17          THE COURT: Okay. Does that change your potion at  
18 all?

19          THE DEFENDANT: No, sir.

20          THE COURT: Okay. All right. Are you satisfied  
21 with the services of your attorney?

22          THE DEFENDANT: Yes, sir.

23          THE COURT: Okay. Do you need any more time to  
24 talk with him?

25          (There was no response.)

1 THE COURT: Do you need any more time to talk --

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You do?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You want to ask him something?

6 MR. LOY: I don't know how much time. Can we just  
7 step aside a moment?

8 THE COURT: Yeah. Step over there and talk to him  
9 for a second.

10 (WHEREUPON, Mr. Loy has a brief private discussion  
11 with the Defendant.)

12 MR. LOY: Thank you, Your Honor. And, again, just  
13 a moment. I know the Court is aware, but it's not  
14 dilatory behavior on his part. As I told you earlier,  
15 the sheer terribleness of this situation is hard for him  
16 to really bear up under and accept.

17 THE COURT: I understand.

18 MR. LOY: We are prepared to proceed.

19 THE COURT: Okay. All right. Mr. Mosley, Mr. Loy  
20 answered your question then?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. And you are ready to continue?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Mr. Ward?

25 MR. WARD: Thank you, Your Honor. On April 11,

1 2014 the Dorchester Narcotics Unit was contacted by the  
2 Harleyville Police Department in reference to helping  
3 them with some narcotics complaints. While they were  
4 conducting surveillance in the Harleyville area at an  
5 apartment complex they observed a White Ford Escort  
6 station wagon enter that location and stayed for a short  
7 period of time, and they saw three black males leaving  
8 that area and getting into the car.

9           Detective Allen and Detective Tanner were able to  
10 conduct a traffic stop on that vehicle for an inoperable  
11 brake light and failure to maintain their lane. They  
12 made contact with the driver of the vehicle who appeared  
13 very nervous and avoided eye contact.

14           Detective Allen asked the driver to step out and  
15 asked for a consent to search his person and the vehicle,  
16 which consent was granted.

17           Mr. Mosley was the passenger in the back seat.  
18 Detective Allen then went to Mr. Mosley and asked him if  
19 he had any weapons on his person. At that point,  
20 Mr. Mosley stated that he had a strap on him, and he then  
21 lifted up his shirt and he had a .38 revolver in his lap.

22           When he was then arrested for unlawful carrying of  
23 a pistol prior to that search incident to arrest  
24 Detective Allen asked him if he had anything else illegal  
25 on him and Mr. Mosley stated to him that he had crack in

1 his back pocket. There was a search conducted and in his  
2 back pocket there was a white rock-like substance that  
3 was in his back pocket that has been analyzed by SLED and  
4 came back as 10.97 grams of cocaine base.

5 And his prior record, as you heard, Your Honor, he  
6 has in 2011 he pled a burglary first degree down to  
7 burglary third for probation.

8 THE COURT: And that's it?

9 MR. WARD: That's his only record, Your Honor.

10 THE COURT: Okay. All right. And the trafficking  
11 cocaine base is a violent and a serious offense?

12 MR. WARD: That's correct, Your Honor.

13 MR. LOY: And the SLED weight was slightly over 10  
14 grams, it's 10.9.

15 THE COURT: It just made the trafficking.

16 MR. LOY: Their lab analysis indicated trafficking  
17 weight.

18 THE COURT: Okay. All right. Mr. Mosley, you  
19 understand -- you heard what the solicitor told you about  
20 the circumstances that lead to your arrest; is that  
21 correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you agree with generally what I was  
24 told?

25 MR. LOY: Is that what happened?

1 THE DEFENDANT: I mean, I don't know about narcotic  
2 investigation but I know that we got stopped and I had  
3 the dope and the pistol in my possession.

4 THE COURT: You had the dope and you had the pistol  
5 on you; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And you knew it was cocaine  
8 base, didn't you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. All right. That's what I needed  
11 to know. All right. And, Mr. Mosley, your prior record  
12 is a burglary third?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: That you got probation for?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you understand that pleading to the  
17 trafficking charge is a violent and serious offense and  
18 counts as a strike against you; you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And, Mr. Loy I know explained that to  
21 you.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you understand that three strikes  
24 and you run the real possibility of going to prison for  
25 the remainder of your life; you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. All right. Both of these  
3 indictments have been true billed, Mr. Mosley. The  
4 indictment ending in -- the 2014-508 is possession of a  
5 weapon during the commission of a violent crime. The  
6 allegations in that indictment are that you did in  
7 Dorchester County on or about April 11, 2014 have on your  
8 possession a handgun in violation of the laws of this  
9 State; do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. How do you plead to possession  
12 of a weapon during a violent crime, guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: All right. Indictment 2014-507 is the  
15 indictment for trafficking cocaine base 10 grams or more  
16 but less than 28 grams. It occurred on the same date  
17 here in Dorchester County, and the allegations are that  
18 you had actual possession of more than 10 grams of  
19 cocaine base on you, again, in violation of the laws of  
20 this State. Do you understand the allegations in the  
21 indictment?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right, sir. How do you plead to  
24 the charge of trafficking cocaine base 10 grams or more  
25 but less than 28 grams, first offense?

1 THE DEFENDANT: Guilty.

2 THE COURT: Okay. Mr. Mosley, you understand if I  
3 accept your guilty plea to these two charges there will  
4 be two convictions on your record; do you understand  
5 that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand, as I mentioned earlier,  
8 that the trafficking charge is a serious offense and  
9 counts as a strike against you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. And we've gone over the  
12 sentencing that you are facing; you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you understand you've got 10 days  
15 from today's sentence to appeal my decision if you  
16 believe that's appropriate; do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you want me to accept your guilty  
19 plea to these two charges?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Mosley, I find your decision to  
22 plead guilty to these two charges is freely, voluntarily  
23 and intelligently made. I find you've had the advise and  
24 counsel of a competent attorney. I find that you're  
25 satisfied with the services of your attorney. I find

1 there is a factual basis on which to base your guilty  
2 plea to both of these charges. I am going to accept your  
3 guilty plea to both of them.

4 Mr. Loy?

5 MR. LOY: Thank you, Your Honor. First, I'd ask  
6 the Court to continue during the -- or to keep in mind  
7 during the course of the plea that while he's pleading  
8 guilty trafficking weight it's 10 to 28 grams and I think  
9 it's to some degree a matter of capriciousness that he  
10 ended up in the trafficking mode, that is he has more  
11 than 10 grams, and he concedes that he has less than 11.

12 He's barely over the line and I don't think -- you  
13 know, he's set out and he's nowhere near to top and I  
14 don't think in the classical sense he'd qualify as a  
15 trafficker. In the ordinary course of affairs he might  
16 be up for a possession or possession with intent to  
17 distribute and that would be dispositive, obviously, of  
18 the possession of a gun during the violent crime, which  
19 is as much of a problem as he's got here today.

20 Your Honor, you heard he's 23 years of age. He's  
21 from Harleyville. He's lived in that area his whole  
22 life. He is employed. He works as a painter. He's been  
23 doing that for a couple of years. He does that interior  
24 and exterior, inside and out.

25 He's a father of two children. They are five years

1 of age and one. Both are in the custody, legal custody  
2 of their mother. He does reside with the mother of his  
3 baby, and she's here in court today, comes back and forth  
4 with him. He has family support out there. I mean, he's  
5 not one of those guys who is just flying solo out in the  
6 world and has burned all of his bridges. It's not the  
7 circumstance that he's in.

8 He is on a YOA parole. Obviously, they are going  
9 to revoke the YOA parole. That will happen  
10 administratively at another proceeding, and I have told  
11 him that.

12 The mother of his child is a hardworking person  
13 also. She works at Wal-Mart and has for a good deal.  
14 And he doesn't have charges pending in other charges or  
15 other jurisdictions, so hopefully we'll be able to round  
16 his situation up.

17 I think he's more a victim of -- that he's more a  
18 victim of his behavior than anything else. He's  
19 certainly boxed himself in and put himself in a bad  
20 circumstance where he's left the Court -- while he's left  
21 the Court little room for leniency, in my opinion, he  
22 certainly has left the Court plenty of room to up the  
23 nature of his sanctions, that is he knows that he faces  
24 some really potentially serious sanctions.

25 I'm not going to ask the Court here today for the

1 moon and stars. Frankly, as I discussed with the Court  
2 earlier, I don't think it's available to you, as far as  
3 the moon and stars go. I think if you abide by the law  
4 he goes out a different door than the one he came in.  
5 He's aware of that and he stands here before the Court  
6 willingly.

7 We discussed this downstairs. He went out front,  
8 he discussed it with his child's -- with his fiance. He  
9 went through the circumstance when the Court indicated to  
10 me, well, we are prepared to go forward he was in the  
11 hallway waiting. I mean, all I did was go open the door  
12 and tell him, Mr. Mosley, it's our time up.

13 He's accepted the serious nature of the  
14 circumstance. He has stood up, accepted responsibility  
15 for what he's done. I think the cocaine charge with the  
16 three to 10 is probably a more appropriate range for  
17 sentencing for him.

18 I know that the Court is going to give him five or  
19 I believe is going to give him five on the pistol. I'm  
20 asking you wholeheartedly to consider whether or not five  
21 is an adequate sentence for these charges.

22 THE COURT: All right. Mr. Mosley, what I'm going  
23 to do on both of these is the sentence of this Court is  
24 you are committed to the State Department of Corrections  
25 for a period of five years. Those sentences are

1 concurrent and I will give you credit for the time you've  
2 served.

3 MR. LOY: Thank you very much, Your Honor.

4 THE COURT: Good luck to you.

5 MR. WARD: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the First 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 14th day of September 2015.

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

November 7, 2016



SHARON L. VIZER

CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Dorchester )

2016-CP-18-1612

#359640 )

Frederick, Bernard Mosley Jr )  
Full name and prison number (if any) of Applicant )

v. )

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF **CERTIFIED COPY**

8-11-16  
Cheryl Graham  
Clerk of Court  
Dorchester County

**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 Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Dorchester Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 14-GS-180508
  - (b) 14-GS-180507

DOUGLAS COUNTY  
CLERK OF COURT

*[Handwritten Signature]*

2-17-10

CERTIFIED COPY

(c) \_\_\_\_\_

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

(a) 9-14-15 5 years for trafficking first and a mandatory

(b) five years for possession of weapon in commission of

(c) Violet crime. Sentences to run concurrent

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) Trial attorney never informed me that I could 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 trial counsel
- (b) Involuntary plea
- (c) Illegal sentence

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

- (a) Failure to inform me that, a Trafficking first, 10-28 grams is a
- (b) Non-violent offense.
- (c) Trial Judge was without jurisdiction to sentence me for poss. fire Arm during  
Commission of violent crime being that Trafficking first, 12g or less is non-violent.

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) First opportunity to do so
- (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? \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
\_\_\_\_\_

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

(a) the name and address of each attorney who represented you:

i. John Loy : 107 W. 6<sup>TH</sup> North Street Suite 100  
Summerville, SC. 29483

- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. Plea
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

Correction of sentence or vacate conviction

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

NO

STATE OF SOUTH CAROLINA )  
County of Dorchester )

VERIFICATION

I, Frederick Bernard Mosley # 359640, 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.

Frederick B. Mosley

SWORN to and subscribed before me this 3rd day of August, 2014.

Catherine A. Combs (L.S.)  
Notary Public

My Commission Expires: ~~My Commission Expires~~ December 22, 2018

2016-CP-18- 1162

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

I, Frederick Bernard Mosley Jr. <sup>#359640</sup>, 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.

Frederick B. Mosley  
Applicant

SWORN or affirmed to and subscribed before me this  
3<sup>rd</sup> day of August, 2016.

Cedric A. Amoser  
Notary Public

CERTIFIED COPY

8-11-16  
Cheryl Graham  
Clerk of Court  
Dorchester County

My Commission Expires: ~~My Commission Expires~~ December 23, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
Fredrick B. Mosley, Jr., #359640,	)	Case No.: 2016-CP-18-1612
	)	
Applicant,	)	
	)	<b>RETURN AND PARTIAL</b>
v.	)	<b>MOTION TO DISMISS AND</b>
	)	<b>MOTION FOR A MORE</b>
State of South Carolina,	)	<b>DEFINITE STATEMENT</b>
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on August 11, 2016, would respectfully show this Court:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. In October 2014, the Dorchester County Grand Jury indicted Applicant<sup>1</sup> for unlawful carrying of a pistol, (2014-GS-18-0506), trafficking in cocaine, 10-28 grams, first offense (2014-GS-18-0507), and possession of a weapon during the commission of a violent crime (2014-GS-18-0508). John M. Loy, Esquire, represented Applicant. Kyle L. Ward, Esquire, and Donald N. Sorenson, Esquire, of the Solicitor's office prosecuted the case. On September 14, 2015, Applicant pleaded guilty as indicted to trafficking cocaine and possession of a weapon during the commission of a violent crime before the Honorable Edgar W. Dickson. The indictment for unlawful carrying of a pistol was *not proessed*. Judge Dickson sentenced Applicant to imprisonment for concurrent terms of five years each for trafficking cocaine and possession of a weapon during the commission of a violent crime. Applicant did not appeal his conviction or sentence.

<sup>1</sup> Applicant's name is spelled "Frederick" on the indictment, arrest warrants, and sentencing sheets, and is spelled "Fredrick," on his application and in the SCDC records.

The facts underlying the charges are as follows: On April 11, Applicant was a passenger in a vehicle that was pulled over during a traffic stop. Plea Tr. 14:25-15:17. The officers conducting the traffic stop asked the Applicant if he had any weapons, to which Applicant informed the officers "he had a strap on him" and lifted his shirt, revealing a .38 revolver in his lap. Id. at 15:19-21. When asked if he was in possession of any other illegal items, he informed the officers he had cocaine in his pocket. Id. at 15:24-16:1. The officers found a bag that was later determined to contain 10.97 grams of cocaine base.

Attached to this Return and incorporated by reference 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, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## **II. ALLEGATIONS**

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

1. "Ineffective Assistance of Counsel," in that:
  - a. Counsel failed "to inform me that a trafficking, first, 10-28 grams (charge) is a non-violent offense;"
2. "Involuntary Plea;"
3. "Illegal Sentence," in that
  - a. "Trial judge was without jurisdiction to sentence me for poss. (of) a firearm during commission of violent crime being that trafficking first, 28 or less is nonviolent."

## **III. INVOLUNTARY GUILTY PLEA**

Applicant asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of

his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

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

#### **IV. MORE DEFINITE STATEMENT**

Respondent hereby moves for a more definite statement regarding Applicant’s allegation of involuntary guilty plea. Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

#### **V. MOTION TO DISMISS**

Respondent submits that Applicant's allegations of ineffective assistance of counsel and illegal sentence should be dismissed as Respondent is entitled to judgment as a matter of law.

Under the Uniform Post-Conviction Procedure Act:

The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

S.C. Code Ann. § 17-27-70(C). Summary disposition of a PCR application is appropriate "when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief." Pelzer v. State, 378 S.C. 516, 519, 662 S.E.2d 618, 619 (Ct. App. 2008); *see also* Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 734 S.E.2d 161 (2012) ("Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law.").

Applicant alleges that his conviction for possession of a weapon during the commission of a violent crime was illegal because trafficking in cocaine is a non-violent offense. Applicant also alleges his counsel was ineffective for failing to inform Applicant that cocaine trafficking is a non-violent offense. These allegations are demonstrably false. South Carolina Code Annotated includes trafficking in cocaine, as defined in Section 44-53-375(C) as a violent crime. S.C. Code Ann. § 16-1-60 (Supp. 2016). Indictment 2014-GS-18-0507 lists the charge as "Trafficking in Meth. or Cocaine Base," and cites Section 44-53-375(C) as the relevant statute. Applicant alleges no other deprivations for ineffective assistance of counsel or illegal sentence. As such, even viewing the evidence and all inferences which can be reasonably drawn therefrom in the light most favorable to Applicant, no genuine issue of material fact remains, and the Court should hold Respondent is entitled to judgment as a matter of law.

## VI. AMENDMENTS

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), SCRPC. 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, SCRPC. 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), SCRPC.

## VII. CONCLUSION

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

[Signature block on following page]

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

RUSTON W. NEELY  
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

July 26, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 FREDRICK B. MOSLEY, JR., #359640 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent, )  
 )

IN THE COURT OF COMMON PLEAS


2016-CP-18-1612

AFFIDAVIT OF SERVICE BY MAIL

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

**Rodney Wade Richey, Esquire**  
**Richey & Richey, PA**  
**PO Box 10916**  
**Greenville, SC 29603-0916**

DATED this the 26<sup>th</sup> day of July, 2017.

  
 \_\_\_\_\_  
 Deonna Rogers, Legal Assistant  
 For Respondent

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
 2 COUNTY OF DORCHESTER ) CASE NO. 2016-CP-18-1612  
 3 FREDRICK B. MOSLEY, )  
 4 JR., )  
 5 Plaintiff, ) Transcript of Record  
 6 vs. )  
 7 THE STATE OF SOUTH ) Date: December 11, 2017  
 8 CAROLINA, )  
 9 Defendant.

9 \* \* \* \* \*

10

11 B E F O R E:

12 The Honorable Kristi Harrington

13

14

15

16 \* \* \* \* \*

17

18 Denise J. Lauder, RPR

19 Ninth Judicial Circuit

20

21

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E X H I B I T S

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(No Exhibits Proffered)

1                   (The following proceedings were had  
2 12/11/2017, Dorchester County Court, Moseley v.  
3 State, 11:14 a.m.)

4                   MR. DAVIS: Your Honor, if I could have  
5 just a moment.

6                   (Brief pause)

7                   Thank you very much, Your Honor.

8                   THE COURT: Are you Frederick Mosley?

9                   THE APPLICANT: Yes, ma'am.

10                  THE COURT: Could you please state your  
11 full name for the record and spell your last name?

12                  THE APPLICANT: Frederick Bernard  
13 Mosley, M-O-S-L-E-Y.

14                  THE COURT: Miss Becky, would you place  
15 him under oath?

16                                 FREDERICK BERNARD MOSLEY,  
17 being first duly sworn, testified as follows:

18                  THE COURT: All right. Mr. Neely, you  
19 have an announcement for the Court?

20                  MR. NEELY: Yes, Your Honor. This is  
21 first State's motion to dismiss on the first and  
22 third allegations. Applicant'S first allegation --  
23 and this is case 2016-CP-18-1612 -- is that counsel  
24 failed to inform him that a trafficking, first  
25 offense, 0 to 28 grams, charged a nonviolent

1 offense. That is inaccurate.

2           According to South Carolina Code  
3 16-160, which defines the violent crimes. In  
4 16-160, it defines 4453, I believe it's 370, which  
5 is the trafficking cocaine, 370(e), as a violent  
6 offense. So that is an inaccurate statement of  
7 law; trafficking cocaine or meth, 0 to 28 grams, is  
8 a violent offense.

9           His allegation that counsel failed to  
10 inform him it was a nonviolent offense is  
11 inaccurate. So if counsel had informed him as he  
12 wished him to inform him, it would have been an  
13 inaccurate statement of the law. So the State  
14 would motion to dismiss on that allegation.

15           As to the illegal sentence, comes back  
16 to the exact same point, in that trafficking  
17 cocaine or meth, 0 to 28 grams, is a violent  
18 offense --

19           THE COURT: Let me stop you right  
20 there.

21           Mr. Davis, you had indicated previously  
22 in our confusion that you were withdrawing that  
23 ground; is that correct?

24           MR. DAVIS: As to the last one, yes,  
25 Your Honor. If the State's arguing for the first

1 one as well, we would argue again that it would be  
2 included in the involuntary plea, the ineffective  
3 assistance of counsel, and we should be able to go  
4 forward.

5 THE COURT: I agree. I will allow you  
6 to flesh that issue out. You're removing the issue  
7 about the illegal sentence that the trial judge was  
8 without jurisdiction to sentence, and it was --  
9 this was actually a plea, correct?

10 MR. DAVIS: It was, Your Honor.

11 THE COURT: And then that your client  
12 additionally is seeking correction of the sentence;  
13 is that correct?

14 MR. DAVIS: I'm sorry, Your Honor?

15 THE COURT: What's the fourth ground?  
16 Is there anything additional?

17 MR. DAVIS: No, Your Honor.

18 THE COURT: So we're here on an overall  
19 ineffective assistance of counsel to include, but  
20 not be limited to a failure to inform really what  
21 -- trafficking first is a violent or nonviolent  
22 offense. I'm assuming that's really what your  
23 client is asking.

24 MR. DAVIS: Among other certain things;  
25 failure to meet thoroughly, failure to fully inform

1 about the consequences. Just the whole lead-up to  
2 what we're going to argue that he was ineffectively  
3 prepared for him to make that decision.

4 Just the general nature of counselling  
5 leading to the choice.

6 THE COURT: And that's fine. I just  
7 need to make sure that the State -- that we are  
8 clear as to what we're going forward on.  
9 Ineffective assistance of counsel, as you know, is  
10 very broad.

11 So I wanted to make sure that, first of  
12 all, Mr. Neely is prepared to go forward on all  
13 claims of ineffective assistance of counsel. Are  
14 you?

15 MR. NEELY: Well, that is also why the  
16 State's Return included a motion for a more  
17 definite statement. I believe -- I read the entire  
18 transcript, Your Honor. I believe I'm prepared to  
19 go forward on anything that Mr. Davis puts forward.

20 I will note for the Court, that the  
21 plea judge in his colloquy informed the defendant  
22 applicant correctly that it was a violent offense.  
23 And so even if counsel had incorrectly informed him  
24 that it was a nonviolent offense, the judge's  
25 colloquy would have cured that, and so the record

1 by itself would have fixed the problem. And so  
2 that's why the State made a motion to dismiss.

3 I don't think there's anything that the  
4 applicant could bring up that would show that the  
5 court correctly informed him it was a violent  
6 offense.

7 THE COURT: And so, Mr. Neely, what I  
8 like to do is before we really get -- before we get  
9 started with any testimony or further arguments, I  
10 would like to know exactly what the grounds are for  
11 going forward so that we don't have an issue like  
12 the previous PCR that those issues aren't addressed  
13 in my order.

14 So I just want to make sure you're  
15 ready because I don't want Mr. Davis to bring  
16 something up that you're not prepared to argue here  
17 today. What I heard you tell me, as long as we're  
18 confined to what is contained in the transcript,  
19 you are prepared to argue all of those issues; is  
20 that correct.

21 MR. NEELY: That's correct, Your Honor.

22 THE COURT: And so if there is another  
23 ineffective assistance of counsel argument outside  
24 of the scope that you believe to be contained in  
25 the transcript, then you are not prepared for that;

1 is that correct?

2 MR. NEELY: That would be correct.

3 THE COURT: Okay.

4 MR. DAVIS: If I may, Your Honor.

5 THE COURT: Yes.

6 MR. DAVIS: I'll be happy -- I have not  
7 my list of questions, but the list of points. I'll  
8 be happy to give a copy to the State --

9 THE COURT: What I want to do is, if  
10 you're raising something that we need to take a  
11 break, I'd rather just do it all at one time  
12 instead of having two or three -- and having him  
13 come back.

14 MR. DAVIS: I understand.

15 THE COURT: So as long as -- let's just  
16 contain it, and if there is anything that is  
17 outside the scope of the transcript that you're  
18 going to raise, then Mr. Neely will raise that and  
19 we'll address it at the appropriate time.

20 MR. DAVIS: And for the Court's  
21 indulgence, Mr. Neely and I have handled these on  
22 multiple terms of court, but with all due respect,  
23 every case is factually a little different.

24 This is a rudimentary ineffective to a  
25 decision to plead guilty. The issue should be very

1 familiar to Mr. Neely.

2 THE COURT: It's been a long time since  
3 I've been in Dorchester and done PCRs, and I  
4 haven't had the pleasure of -- Mr. Neely seems very  
5 prepared and organized and you seem ready to go  
6 forward. So let's get started.

7 MR. DAVIS: Your Honor, if we could on  
8 the record before I call my first witness, I have  
9 certainly talked to Mr. Mosley about this, but to  
10 lay out the brief procedural history, he was  
11 convicted for unlawful carrying of a pistol and for  
12 trafficking cocaine, 10 to 28 grams, first offense.

13 The trafficking cocaine, 10 to 28  
14 grams, first offense, is a three to ten range. And  
15 he was sentenced by Judge Dixon five years on each.

16 I've talked to him about the fact that  
17 the remedy of a PCR, if we are successful, is to  
18 vacate and start over. Since he was not sentenced  
19 to the maximum, if you could just simply you go  
20 over the risks and benefits on the record as a  
21 precaution. I would appreciate it being on the  
22 record.

23 EXAMINATION

24 BY THE COURT:

25 Q. Mr. Mosley, you understand what -- what

1 would happen here today? If I granted the relief  
2 that you were seeking, it doesn't mean that the  
3 case goes away. All it simply means is that you go  
4 back to square one, you start over?

5 THE COURT: First of all, I understand  
6 there was a charge that was dismissed pursuant to  
7 the plea; is that correct, Mr. Davis?

8 I'm showing an unlawful carrying of a  
9 pistol that was dismissed.

10 MR. DAVIS: I apologize, I misspoke;  
11 that was dismissed. He was convicted of the  
12 possession during the commission of a violent crime  
13 which, of course, is a flat five. He received five  
14 which is in the middle range, roughly, of the  
15 trafficking.

16 THE COURT: Okay.

17 MR. DAVIS: So it's possible he could  
18 get a larger sentence.

19 BY THE COURT:

20 Q. And so on the trafficking cocaine base,  
21 10 grams, but less than 28 grams, the Court could  
22 have sentenced you from three years up to ten years  
23 and fined you up to \$25,000, or both. Do you  
24 understand that was the possible punishment on that  
25 indictment?

1           A.    Yes, ma'am.

2           Q.    And on the possession of a weapon  
3 during the commission of a violent crime, also  
4 punishable by up to -- well, punishable by five  
5 years. Do you understand that's the possible  
6 punishment?

7           A.    Yes.

8           Q.    And the unlawful carrying of a pistol  
9 that was dismissed pursuant to your plea was  
10 punishable by up to one year and a fine up to  
11 \$1,000. So if you were given the maximum sentence  
12 which -- and they would run consecutive, you're  
13 facing 16 years in the Department of Corrections  
14 and a \$26,000 fine. Do you understand that?

15          A.    Yes, ma'am.

16          Q.    That's potentially what you're facing.  
17 So, again, do you understand there -- it may be of  
18 benefit to you. You may -- I may rule in your  
19 favor and these perhaps at some point would go back  
20 to the State, and the State would decide not to  
21 pursue them, but you also do need to understand  
22 that if I rule in your favor and they go back and  
23 the State decides to peruse them, that you are  
24 potentially facing 16 years.

25                   And I'm not really good at math, Mr.

1 Mosley, but I do know that 16 is more than five.  
2 So do you want to talk to your attorney for just a  
3 moment?

4 A. No, I'm straight.

5 Q. You still wish to go forward?

6 A. (Nodding head.)

7 Q. Is that yes?

8 A. Yes, ma'am.

9 Q. This is my court reporter. She is  
10 amazing, but she needs -- if you could help her do  
11 her job, Mr. Mosley, and speak out loud for me so  
12 your record is abundantly clear. And I'm sure that  
13 you have seen the transcript and know how important  
14 it is that every word is correct on that  
15 transcript.

16 A. Yes, ma'am.

17 Q. Can you do that for me? Thank you.

18 THE COURT: All right. Mr. Davis, I  
19 have advised him thoroughly. It appears that he  
20 wishes to go forward and understands the benefits  
21 and consequences hereof today.

22 Mr. Mosley, you may have a seat.

23 THE COURT: Mr. Davis.

24 MR. DAVIS: We would call Mr. Mosley as  
25 the first witness.

1 THE COURT: All right. Mr. Mosley, I  
2 remind you that you are still under oath.

3 DIRECT EXAMINATION

4 BY MR. DAVIS:

5 Q. Mr. Mosley, can you tell the judge,  
6 first of all, how old you are?

7 A. Twenty-five.

8 Q. And how far did you go in school?

9 A. To the 11th grade.

10 Q. Did you ever get your diploma or GED?

11 A. I got my GED and I got my diploma.

12 Q. Are you okay about reading and writing?

13 A. Yes.

14 Q. Now, as you heard, we just talked to  
15 the judge and the judge had some questions for you  
16 about your convictions of trafficking in cocaine  
17 and possession of a weapon during the commission of  
18 a violent crime. Who was your attorney when that  
19 case was pending?

20 A. Mr. John Loy.

21 Q. Do you see him in the courtroom here  
22 today?

23 A. Uh-huh.

24 Q. I need a yes or no.

25 A. Yes, sir.

1 Q. Thank you. And you have certain  
2 complaints about how he handled your case?

3 A. Yes, sir.

4 Q. Okay. Let's start out with this, can  
5 you tell Judge Harrington how many times Mr. Loy  
6 met with you before your conviction?

7 A. Twice.

8 Q. And were you out on bond or did you  
9 stay in jail until you went to court for the guilty  
10 plea?

11 A. I was out on bond.

12 Q. And so would both of those meetings  
13 have been in the courthouse or office, or where?

14 A. One time been at the courthouse and one  
15 time at the office.

16 Q. The one time at the courthouse, was  
17 that in addition to when you pled guilty or was  
18 that the time you pled guilty?

19 A. That was before I pled guilty.

20 Q. Okay. So if we add in the guilty plea,  
21 would it have been three times total?

22 A. Yeah, I guess.

23 Q. Now, other than when you were in the  
24 courtroom in front of the judge, at these other two  
25 meetings with Mr. Loy, did he ever review with you

1 what the elements of trafficking in cocaine were?

2 A. No, sir.

3 Q. Did he ever review with you what the  
4 elements of unlawful carrying of a pistol were?

5 A. No, sir.

6 Q. Did he ever talk to you about what the  
7 elements of possession of a weapon during the  
8 commission of a violent crime were?

9 A. No, sir.

10 Q. On any of these two meetings before  
11 court, did he review the discovery or the Rule 5  
12 paperwork with you?

13 A. No, sir.

14 Q. Were you ever given a copy of that  
15 either in person or in the mail?

16 A. Yes, sir.

17 Q. Okay. During any of these meetings,  
18 was there ever a discussion about the potential  
19 punishment for trafficking cocaine, 28 to 100  
20 grams, first offense?

21 A. No, sir.

22 Q. In addition to potential sentence, was  
23 there ever a discussion on that charge, on the  
24 trafficking charge, about whether it was violent or  
25 nonviolent? Did you have a conversation with Mr.

1 Loy about that?

2 A. We talked about a plea.

3 Q. Okay.

4 A. I ain't got the full understanding of  
5 trafficking.

6 Q. Okay. So he didn't tell you what it  
7 was and he didn't tell you what the range of  
8 sentence was. Is that what you're testifying to?

9 A. Yes, sir.

10 Q. Did he ever talk to you about whether  
11 that crime was violent or nonviolent? Do you  
12 remember a discussion about that?

13 A. No, sir.

14 Q. Okay. And so based on those  
15 discussions, or lack of discussions, what was your  
16 understanding about your eligibility for parole  
17 before your guilty plea on trafficking?

18 A. We never talked about parole. We  
19 talked about a five-year sentence, though.

20 Q. That that was what the offer was?

21 A. Yes, sir, for armed robbery.

22 Q. And so what did you understand that to  
23 mean? If he would have said to you, nonviolent,  
24 how did you think that affected things?

25 A. I thought I was going to do like two

1 years and come home.

2 Q. Was there anything that Mr. Loy  
3 indicated to you that would have had you believe it  
4 was going to be more than two years or so?

5 A. If I went to trial, yeah.

6 Q. And so what was his indication about  
7 that? If you had gone to trial, what was his  
8 comments on that?

9 A. He never gave me no time or anything.  
10 He just told me I probably wasn't going to win.

11 Q. So he did advise you to plead guilty,  
12 correct?

13 A. Yes, sir.

14 Q. As to the possession of a weapon during  
15 the commission of a violent crime, did he talk to  
16 you on that particular charge about the possible  
17 sentence, possible range of time?

18 A. No, sir.

19 Q. Okay. Did he talk to you on that  
20 charge about any issue as far as parole eligibility  
21 on that charge?

22 A. No, sir.

23 Q. So, again, even if you pled to that and  
24 the trafficking, what was your understanding about  
25 how long you would likely serve?

1 A. Five years.

2 Q. And of the five, how much did you think  
3 you would do before you were eligible for parole?

4 A. Two years.

5 Q. In these meetings you had with Mr. Loy  
6 before you went to court, did you and he ever  
7 discuss possible defenses if you were to not plead  
8 guilty but go to trial? Did you talk about that?

9 A. No, sir.

10 Q. Did he ever mention to you a strategy  
11 he had for you if you wanted to go to trial?

12 A. No, sir.

13 Q. Did he share with you any investigation  
14 or research that he had done to prepare for trial?

15 A. No, sir.

16 Q. If you had asked for a trial, do you  
17 think he was prepared to go forward?

18 A. No.

19 Q. After the -- after you went to court in  
20 front of Judge Dixon, did you have a chance to talk  
21 to Mr. Loy after that?

22 A. No, sir.

23 Q. Was there any appeal done in your case?

24 A. No, sir.

25 Q. Did you ask Mr. Loy to appeal anything?

1           A.    No, sir.

2           Q.    Now, Mr. Mosley, had Mr. Loy told you  
3 that trafficking cocaine, ten to -- 10 to 28 grams,  
4 first offense, was a violent offense, would that  
5 have affected your decision whether to enter the  
6 plea or not?

7           A.    Yes, sir.

8           Q.    And had you known that, would you have  
9 pled guilty or not pled guilty?

10          A.    I probably wouldn't have pled guilty.

11          Q.    If Mr. Loy told you that possession of  
12 a weapon during the commission of a violent crime  
13 was a flat five-year sentence, got to do five  
14 years, if you had known that before you pled  
15 guilty, would that have affected your decision to  
16 plead guilty?

17          A.    Yes, sir.

18          Q.    Had you known that, would you have pled  
19 guilty or not pled guilty?

20          A.    No, sir.

21          Q.    Would you have pled guilty --

22          A.    I wouldn't have pled guilty.

23          Q.    And you've already testified a couple  
24 of times it was your understanding and your belief  
25 that you would be parole eligible in a couple of

1 years or so; is that right?

2 A. Yes, sir.

3 Q. Had you understood that you would not  
4 be eligible for parole in a couple of years or so,  
5 would that have affected your decision to plead  
6 guilty or not plead guilty?

7 A. Yes, sir, it would.

8 Q. Would you have pled guilty or not pled  
9 guilty?

10 A. I would not have pled guilty.

11 MR. DAVIS: Your Honor, if I could have  
12 just one moment.

13 THE COURT: Take your time.

14 BY MR. DAVIS:

15 Q. Mr. Mosley, to give Judge Harrington a  
16 little fuller picture, you had previously been to  
17 court for another charge; is that correct?

18 A. For another charge?

19 Q. Prior to that --

20 A. A pending charge?

21 Q. No, prior to this.

22 A. Yes, sir.

23 Q. Okay. And just to be clear --

24 THE COURT: He was on parole; is that  
25 what you're referring to?

1 MR. DAVIS: It is.

2 BY MR. DAVIS:

3 Q. So you had a case that was a burglary,  
4 first, and you pled to burglary, third; is that  
5 right?

6 A. Yes, sir.

7 Q. And on that, were you young enough that  
8 you got a YOA sentence?

9 A. Yes.

10 Q. And did you actually serve the YOA or  
11 were you put on probation?

12 A. Probation.

13 Q. Did you, in fact, have to serve some of  
14 the YOA, though?

15 A. Yes, sir.

16 Q. Okay. And how did you end the YOA  
17 sentence, by maxing it out or by being paroled?

18 A. Paroled.

19 Q. So other than that sentence -- other  
20 than that conviction and sentence for burglary,  
21 third degree, have you served -- and this, other  
22 than those two, have you served any time in prison  
23 other than those two?

24 A. No, sir.

25 Q. Since Mr. Loy did not advise you of the

1 sentence or parole eligibility, were you relying on  
2 that experience when you come up with this two  
3 years or so?

4 A. Yes, sir.

5 MR. DAVIS: Thank you, Your Honor.

6 Thank you, Mr. Mosley. Answer any  
7 questions that the attorney general might have.

8 THE COURT: Mr. Neely.

9 MR. NEELY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. NEELY:

12 Q. Mr. Mosley, I have a few questions for  
13 you. It seems from the gist of your answers that  
14 you are unhappy with the amount of time that you're  
15 serving on your plea; is that correct?

16 A. Yes, sir.

17 Q. Do you recall the day you got arrested?

18 A. Yes, sir.

19 Q. Isn't it true that they found the gun  
20 in your waistband, that you showed the police?

21 A. Yes, sir.

22 Q. And the crack was actually in your  
23 pocket?

24 A. Yes, sir.

25 Q. And you told the police that you had

1 it?

2 A. Yes, sir.

3 Q. And you told them what it was?

4 A. Yeah.

5 Q. And do you recall -- you said that you  
6 got the discovery from your attorney; is that  
7 correct?

8 A. Yes, sir.

9 Q. Do you recall the SLED report in there  
10 saying it was 10.9 grams?

11 A. I don't recall how many grams it was.  
12 I know -- I remember getting it though.

13 Q. Right. But you would agree it was in  
14 your pocket and you gave it to the police?

15 A. Yes.

16 Q. Okay. During your guilty plea, do you  
17 recall discussion about the trafficking offense  
18 being a violent offense?

19 A. I remember him saying that the  
20 possession of a weapon during the commission of a  
21 violent crime would have been a violation.

22 Q. I don't think they said that.

23 A. I mean, not a violent offense.

24 Q. I think the violent offense they  
25 charged you with was the trafficking in cocaine

1 charge. Does that sound right to you?

2 A. Yes, sir.

3 Q. And the judge told you that it was a  
4 violent and a serious offense?

5 A. Yes, sir.

6 Q. And, in fact, you actually told the  
7 judge that you and your attorney discussed the fact  
8 that it was a violent offense, didn't you?

9 A. I don't remember that.

10 MR. NEELY: Your Honor, may I approach?

11 THE COURT: You may.

12 Any objection, Mr. Davis, to him  
13 approaching?

14 MR. DAVIS: No, Your Honor.

15 BY MR. NEELY:

16 Q. Mr. Mosley, I'm going to ask you to  
17 take a look at lines 16 to -- 22.

18 THE COURT: On what page?

19 MR. NEELY: 17, Your Honor.

20 THE APPLICANT: Yes, sir.

21 BY MR. NEELY:

22 Q. So when the judge was talking to you  
23 about a violent and serious offense and asked if  
24 Mr. Loy explained it to you, you said yes?

25 A. Yes, sir.



1 MR. DAVIS: No further questions, Your  
2 Honor.

3 THE COURT: Sir, you may step down.  
4 Thank you.

5 MR. DAVIS: If I could confer with my  
6 client for just a moment.

7 (Brief pause)

8 MR. DAIS: Thank you. That would be  
9 the applicant's presentation.

10 THE COURT: Thank you.

11 Mr. Neely, do you have any witnesses?

12 MR. NEELY: Your Honor, the State would  
13 call Mr. Loy to the stand.

14 THE COURT: Mr. Loy, come forward and  
15 be sworn.

16 JOHN MATTHEW LOY,  
17 being first duly sworn, testified as follows:

18 THE COURT: Mr. Neely, your witness.

19 MR. NEELY: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. NEELY:

22 Q. Mr. Loy, how long have you been  
23 practicing as a criminal defense attorney?

24 A. Since 1988.

25 Q. And since 1988, how much of your

1 practice has been criminal defense?

2 A. I came out of law school 1988. From  
3 1988 to '90, I was an assistant solicitor in  
4 Berkeley County, and that was an exclusive  
5 full-time job. From '90 to '93, I was the sole  
6 public defender in Dorchester, both juvenile and  
7 adults, and that was also a full-time job.

8 Subsequent to that, I went into private  
9 practice and I did more domestic than I wanted, but  
10 I did a good bit of criminal defense and I tried to  
11 do as much as I could.

12 I, also, was a municipal judge in  
13 Summerville for about eight years. In municipal  
14 court all we dealt with was criminal law. And  
15 since the -- oh, and I was a juvenile public  
16 defender in that time also for maybe eight or  
17 nine years, and that was a part-time position.

18 With the creation of the circuit-wide  
19 public defender system, I was hired at the  
20 inception and I've been full time practicing in  
21 criminal defense since then, the bulk of it. I've  
22 done other stuff when I was in private practice.

23 Q. Sufficient to say that you've done --  
24 you are very experienced in criminal defense?

25 A. Yes, sir, I'm experienced.

1           Q.    And if there are elements of the charge  
2 that affect the sentence, violence, serious, most  
3 serious, things that take away parole eligibility,  
4 do you go over those with your client as well?

5           A.    Yes.

6           Q.    And in this case, it was a violent and  
7 serious offense; is that correct?

8           A.    That was my understanding.

9           Q.    Okay.  And that would be what you would  
10 convey to your client?

11          A.    I would have conveyed that to my  
12 client.  I would have pointed out when he signed  
13 the sheet, this says trafficking in cocaine, 10 to  
14 28 grams; it's checked serious, that's what this  
15 means; it's a strike, it's checked violent, and  
16 that would have various effects on where you serve  
17 and how long.

18                   And I would have pointed that out on  
19 the sentencing sheet at the time that he signs it.

20          Q.    Is it your practice to tell the clients  
21 as to when they would leave SCDC?

22          A.    No.  It is my practice if -- if we  
23 address that, to tell them that I can leave --  
24 particularly, in the courtroom, I can go to the  
25 SCDC website, I can print the release guidelines,

1 and then show a possible parole date, as well as a  
2 possible max-out date.

3 But even those are not guaranteed; the  
4 Department of Corrections does what they want to  
5 do, in my experience.

6 Q. So even if you tell your client what  
7 you believe the incarceration in actuality is going  
8 to be, you make no guarantees?

9 A. No, because the earliest parole date  
10 assumes everything, to my understanding, good time,  
11 work time, et cetera. I can't guarantee how things  
12 are going to go once they go to the Department of  
13 Corrections.

14 Q. And, in this case, I believe one of the  
15 things Mr. Mosley mentioned was that you weren't  
16 prepared to go to trial. Do you -- do you recall  
17 with any specificity if you were prepared to go to  
18 trial in Mr. Mosley's case?

19 A. We had a jury waiting, he was up, and  
20 the solicitor's office -- our relationship with the  
21 solicitor's office is reliable enough that I'm sure  
22 I had plenty of notice, I wasn't surprised, or I  
23 would have been complaining about that on the  
24 record.

25 I certainly knew we were up first for

1 trial and perhaps the only case for trial that  
2 week. The issues in Mr. Mosley's case at trial  
3 would have essentially been an argument as to the  
4 illegality of the stop or the legality of the stop,  
5 and I was prepared to argue that.

6           If the State got over that hurdle, then  
7 it all just came down. It was a traffic stop and  
8 he was asked, do you have a weapon? And he pulled  
9 up his shirt and showed one. At that point, I  
10 think the discovery of the crack cocaine was  
11 inevitable.

12           I really think the only way to defend  
13 it would have been to convince the judge that the  
14 narcotics officers who affected the stop were lying  
15 about why they stopped the car.

16           Q. And, in your experience as a criminal  
17 defense attorney, do you think that was going to be  
18 an argument that would likely succeed?

19           A. No. I didn't feel good about that  
20 argument.

21           Q. Would you agree with Mr. Mosley's  
22 assertion that you had told him that if he went to  
23 trial, it's likely that he would be found guilty?

24           A. Yes.

25           Q. Would you qualify this as an

1 overwhelming evidence type of case?

2 A. The evidence of guilt certainly is  
3 overwhelming. Whether or not it would have been  
4 admissible having mitigated the traffic stop, I  
5 don't know, but, yes, the evidence of his guilt was  
6 overwhelming and -- yes.

7 MR. NEELY: I believe that's all the  
8 questions I have, Your Honor.

9 THE COURT: Okay.

10 CROSS-EXAMINATION

11 BY MR. DAVIS:

12 Q. Mr. Loy, all of the answers you've  
13 given as far as discussions of elements and  
14 sentencing and service of the sentence, that's your  
15 general practice of nearly 30 years of practice,  
16 right?

17 A. Yes, a long time.

18 Q. I don't believe you have Mr. Mosley's  
19 file with you here in court?

20 A. I don't. And if I could explain, I did  
21 have the file pulled and it was on my desk in the  
22 box. This morning I pulled it out and I actually  
23 looked at it and I looked at the pleading. And it  
24 seemed to me the main complaint was -- and it may  
25 have been a typo, but it seemed to me that the

1 complaint was that I did not inform him that  
2 trafficking in cocaine was nonviolent.

3 And so I was pretty sure it was  
4 violent, so I didn't really review it much further  
5 than that. But I meant to bring it and I did not.

6 Q. So I believe you testified about this  
7 earlier, specific discussions from recollection --  
8 you're having difficulty recalling specific  
9 discussions because of the number of cases that  
10 you've handled over 30 years?

11 A. Yes.

12 Q. Specifically to, though, the issue that  
13 you do recall about the case, the legality of the  
14 stop, had you filed any motions on that -- on his  
15 behalf on that issue?

16 A. I don't know.

17 Q. And do you recall whether you would  
18 have shown him the motion or at least discussed  
19 that legal issue with him prior to the guilty plea?

20 A. Yes. I certainly would have discussed  
21 the legal issue with him. And had I shown one --  
22 or had I filed one, I'm sure it would be in the  
23 court's file and he would have seen it also.

24 Everything that goes out of our office  
25 as far as correspondence, filing, et cetera,

1 clients are always copied.

2 MR. DAVIS: Thank you, Your Honor.

3 Thank you, Mr. Loy. No further  
4 questions.

5 MR. NEELY: No redirect.

6 THE COURT: You may step down. Thank  
7 you.

8 MR. NEELY: We would ask that the  
9 witness be excused.

10 THE COURT: All right. Any objection,  
11 Mr. Davis?

12 MR. DAVIS: No objection.

13 THE COURT: Mr. Loy --

14 THE WITNESS: Thank you.

15 THE COURT: -- you're excused. It  
16 appears that I have no other matters with you  
17 today.

18 THE WITNESS: I will be in the  
19 courthouse if something should arise.

20 THE COURT: Happy holidays.

21 THE WITNESS: Thank you.

22 MS. NEELY: That's the State's  
23 presentation.

24 MR. DAVIS: Can I make an argument,  
25 Your Honor?

1 THE COURT: Yes.

2 MR. DAVIS: Thank you very much.

3 Judge, we start with Mr. Loy's testimony. And,  
4 certainly, he's an experienced criminal defense  
5 attorney on both sides of the courtroom, but his  
6 testimony today is his general practice, and what  
7 matters today is what happened in this case.

8 And so we would argue that as to the  
9 legality of the stop and certainly -- certain  
10 issues about trial preparation, you have competing  
11 testimonies, but as far as the actual discussions  
12 about what is ethically required prior to a  
13 knowing, intelligent and voluntary plea, you have  
14 the testimony of Mr. Mosley, which we would argue  
15 is largely not refuted.

16 Again, Mr. Loy testified to general  
17 practices, but the testimony you heard from  
18 Mr. Mosley was that there were, at the most, three  
19 meetings. That was not disputed. We would argue  
20 that is insufficient given the nature of the  
21 offenses and the possible punishment --

22 THE COURT: Mr. Davis, how many  
23 meetings do you think are necessary?

24 MR. DAVIS: There is no set number,  
25 Your Honor, but certainly if this was on the eve of

1 trial, which both sides have testified to, three  
2 meetings before a trafficking offense trial and the  
3 consequences that could come from that, and the  
4 legality of a search is a stop issue -- and,  
5 granted, that's more of a legal issue than  
6 testimony by the client, but the client's  
7 recollection about how that played out would be  
8 crucial.

9                   So I would certainly argue that two  
10 meetings outside of the guilty plea are  
11 insufficient for preparation -- to be prepared for  
12 trial which the client needs to understand and  
13 acknowledge to be able to make a valid waiver of  
14 trial rights: My attorney is prepared, but I don't  
15 want that. And Mr. Mosley indicated that he did  
16 not have that security.

17                   And, furthermore, it's discussions that  
18 led to the guilty plea that he has indicated he was  
19 not fully advised of the direct and collateral  
20 consequences. And we would argue that Padilla and  
21 its progeny requires that attorneys do talk about  
22 not only direct consequences, but range of  
23 punishment. How much could I get on this?

24                   But if asked, they need to give  
25 appropriate information about collateral

1 consequences. Certainly, in Padilla that was an  
2 immigration issue, but in this case, it was a  
3 parole issue. The understanding of, if I plead,  
4 how quickly might -- and I do agree with Mr. --  
5 well, I think we all agree to give an exact date,  
6 we can't, but we can differentiate between serious,  
7 most serious and not; we can differentiate between  
8 no parole, 85 percent or not; and we can  
9 differentiate from flat sentence five on a  
10 possession of a weapon during the commission of a  
11 violent crime, that is day for day, or not.

12 Any experienced lawyer, and certainly  
13 Mr. Loy with 30 years, should be able to properly  
14 advise on those; however, in Padilla, they were  
15 items not discussed, or if they were, incorrect  
16 information was given.

17 For a plea to be knowingly,  
18 intelligently and voluntarily made, that  
19 information needs to be understood. The undisputed  
20 testimony is that it was not. The undisputed  
21 testimony by Mr. Mosley is had he understood it was  
22 a flat five years, that it was violent on the  
23 trafficking, that he was not going to be parole  
24 eligible in a couple of years or so, he would not  
25 have entered this plea. He would not have entered

1 it that day, certainly.

2 Now, with further discussions that he  
3 fully understands and then he decides to, fine, but  
4 he did not have the information he needed. This  
5 was not an informed consent situation. He did not  
6 have all of the information he needed to make the  
7 decision.

8 He has testified to you that the  
9 outcome would have been different, second part of  
10 the Strickland standard, he would not have pled but  
11 for the failures of his attorney. And we have  
12 shown, based on his recollection of their  
13 discussions, what was conveyed and not conveyed.

14 And while Mr. Loy can give his general  
15 practices, we would argue that specificity is  
16 needed, both in his testimony about this case now,  
17 and specificity was needed when he advised his  
18 client before the guilty plea.

19 We believe we have met our burden as to  
20 both prongs of Strickland, and we would ask you to  
21 grant relief, vacate the sentences on the two  
22 convictions that he has, and remand him to the  
23 county for further prosecution.

24 THE COURT: Mr. Davis, you would agree  
25 with me we that Judge Dixon went over all of these

1 issues and actually gave your client time when he  
2 asked if he could have -- if he could have more  
3 time to meet with his attorney on page 13 and  
4 onward? Do you agree that is correct?

5 MR. DAVIS: The record speaks for  
6 itself, yes, Your Honor.

7 THE COURT: And you would agree with me  
8 -- and while I may not agree with the decision, you  
9 would agree with me that there is case law out  
10 there that says there is no magic number, and as a  
11 matter of fact a case has been upheld where -- in a  
12 murder case where the individual only met one --  
13 and the attorney only met one time and the court  
14 has upheld that as well, that did not deviate from  
15 any professional standards.

16 MR. DAVIS: That is correct, Your  
17 Honor.

18 THE COURT: You have explained that to  
19 your client as well? We've kind of talked about no  
20 magic -- no magic number --

21 MR. DAVIS: I don't think I've used  
22 that phraseology, but certainly indicated that  
23 simply a number of meetings, while that's an issue  
24 we wanted to raise, that in and of itself would not  
25 be controlling of a decision.

1           THE COURT: And, clearly, Mr. Loy said  
2 he was ready to go to trial when Judge Dixon  
3 indicated that potentially was the only trial ready  
4 for the week; is that right.

5           MR. DAVIS: It certainly was his  
6 testimony. I would contrast that with again my  
7 client, I believe -- forgive me Your Honor, I'm  
8 sure you'll remember correctly, I believe --  
9 certainly, the nature of my question was, did he  
10 feel that if he'd asked for a trial that his  
11 attorney was prepared? That's not exactly the flip  
12 side of the same coin, but it's the argument that  
13 we would ask you to consider.

14           THE COURT: And your client indicated  
15 that he was satisfied with the services of Mr. Loy  
16 during the plea colloquy, correct?

17           MR. DAVIS: Again, the transcript  
18 speaks for itself, yes.

19           THE COURT: Mr. Neely, I'm -- I'm  
20 sorry, Mr. Davis, I will allow you rebuttal as to  
21 Mr. Neely --

22           MR. DAVIS: Not at this time, Your  
23 Honor.

24           THE COURT: Mr. Neely, I'm happy to  
25 hear from you.

1                   MR. NEELY: Thank you, Your Honor.  
2   Your Honor's covered most of the bases that I would  
3   argue. I would say that I think it's -- Mr.  
4   Mosley's testimony was lacking in credibility. I  
5   was able to show him from the transcript where he  
6   told the judge during his plea that Mr. Loy  
7   discussed the violent and serious natures of these  
8   offenses, something that he was alleging did not  
9   happen in his allegations, with his direct  
10  testimony.

11                   And I would also argue there was  
12  overwhelming evidence where you have two officers  
13  testifying as to the stop. And as Mr. Loy stated  
14  on the stand, the judge would have had to  
15  disbelieve the two officers and think they were  
16  lying to find the stop invalid. And, certainly, I  
17  don't think there's any reasonable probability of  
18  that happening.

19                   And, I think, that's what Mr. Loy  
20  conveyed to Mr. Mosley; that that is unlikely to  
21  happen and that's why he advised him that to plead  
22  guilty was in his best interest. And it certainly  
23  seems like it was in his best interest, the  
24  overwhelming evidence.

25                   Again, this was a violent offense and

1 it was described as a violent offense by the judge  
2 and by Mr. Loy. Mr. Loy said on the stand that he  
3 does discuss violent and serious repercussions with  
4 his clients, although, he will not give a specific  
5 date, and I think that's probably --

6 THE COURT: Mr. Neely, is it enough for  
7 the judge to explain the consequences, or does the  
8 attorney have an obligation to explain what violent  
9 means and the potential date for release?

10 MR. NEELY: I don't think there's any  
11 -- I don't think it's necessary for anyone to give  
12 a client a potential release date. I've had some  
13 judges who part of their colloquy tell the  
14 defendant they should treat every sentence like it  
15 is a day-for-day sentence.

16 THE COURT: That's how I advise when I  
17 do my plea for this particular reason, but my  
18 question is really more broad than that. Under  
19 Padilla, and I think, again, Mr. Davis hit the nail  
20 on the head, that had to do more specifically with  
21 immigration and those issues, but what's the  
22 obligation for the attorney to explain -- you know,  
23 I heard Mr. Loy say, I can go out and go to the DOC  
24 website and kind of calculate or estimate a  
25 release.

1                   What's the obligation for an attorney,  
2 if you know, and this may be -- because it's not  
3 really what -- but I just -- what do you believe  
4 that it would be or what does the case law show?

5                   MR. NEELY: Your Honor, parole  
6 eligibility is often changed by client's actions in  
7 jail and can be effected by things outside of the  
8 attorney's control or knowledge. I think in  
9 Padilla -- the attorney must do his best job to  
10 explain to a client the situation.

11                   Certainly, in this case, where it was a  
12 violent and serious offense, there is no parole  
13 eligibility. And my understanding of Mr. Loy's  
14 testimony is that he discusses the repercussions of  
15 a serious and violent offense with his client,  
16 which would be the lack of parole eligibility.

17                   Now, he does not remember with  
18 specificity, but the only testimony that is a  
19 contradiction to his own is testimony that was  
20 Mr. Mosley calling himself a liar at the guilty  
21 plea, saying Mr. Loy did go over those consequences  
22 and did discuss the serious and violent nature with  
23 him.

24                   I would say that if the client asks,  
25 that it is definitely in the attorney's purview to

1 find out to the best of his ability. And I would,  
2 also, say that it is well within the attorney's  
3 rights to make a qualification, as Mr. Loy said he  
4 does, that there is no guarantee this is when  
5 you'll get out, this is just my understanding.

6 But, in this case, there was no parole  
7 eligibility and it seems to me that Mr. Loy's  
8 testimony is that he would have discussed that  
9 repercussion of a serious and violent guilty plea.

10 THE COURT: Mr. Davis, anything --  
11 anything further?

12 MR. DAVIS: Just briefly, Your Honor.  
13 Because Mr. Mosley hand wrote it in his first  
14 application, we were all justifiably focused on the  
15 trafficking offense and whether it was violent or  
16 non violent.

17 I would remind the Court he's also pled  
18 guilty to the possession of a weapon during the  
19 commission of a violent crime for the flat five  
20 years. It was his testimony that on both of them  
21 he thought he would be eligible. He's never  
22 eligible on that charge, that is a day for day.

23 And if the Court would be inclined -- I  
24 do this when I open my files, but I've updated  
25 right now -- while the sentence calculator on the

1 Department of Corrections website is -- there's a  
2 disclaimer, and I don't dispute Mr. Loy's testimony  
3 at all, but his current record is on the website  
4 right now, his current status shows the two  
5 convictions, five years on both, release date 9/11  
6 of '20. He pled 9/13 of '15, five years day for  
7 day.

8                   So I would hope the Court in analyzing  
9 her ruling, there's a separate charge there that  
10 was inappropriately advised, not even discussed,  
11 that is a day is for day flat five year sentence.  
12 Mr. Mosley testified, I thought I could get  
13 released some time before the full five on both of  
14 those.

15                   So there is a separate charge that --  
16 independent of any advice on the trafficking that  
17 was not discussed appropriately.

18                   THE COURT: And, Mr. Davis, you raise a  
19 good point; he pled guilty to possession of a  
20 weapon during the commission of a violent crime.  
21 So that -- that in and of itself kind of solidifies  
22 the fact that he knew it was a violent crime to  
23 which he was pleading guilty.

24                   Anything further, Mr. Davis?

25                   MR. DAVIS: No, Your Honor.

1                   THE COURT:  Would you agree with me  
2   that under Randall v State, the parole eligibility  
3   is a collateral consequence of sentencing?

4                   MR. DAVIS:  Yes, Your Honor.

5                   THE COURT:  And, in that case, the  
6   defendant did not need to be specifically advised  
7   of that before entering a guilty.  Would you agree  
8   with me that that is how Randall could be read?

9                   MR. DAVIS:  Yes, Your Honor.

10                  THE COURT:  Anything further?

11                  MR. DAVIS:  No, Your Honor.

12                  THE COURT:  Mr. Mosley, you have made  
13   some really wonderful points, and what I would like  
14   to do is spend some more time reviewing this  
15   matter, because I understand how vitally critically  
16   important it is to you as well as to the State, so  
17   I'm going to take this matter under advisement and  
18   think about it.

19                  And, meanwhile, State, if you would  
20   submit a proposed order and provide a copy to  
21   Mr. Davis.  Yours would probably be the easier one,  
22   and I would just grant it on a Form 4.  So that's  
23   why it's vitally important that the State would  
24   articulate should I grant what they're requesting.

25                  Mr. Mosley, good luck to you.  I

1 typically will do this within ten days. Good luck  
2 to you, sir.

3 THE DEFENDANT: Thank you.

4 (These proceedings were concluded at  
5 12:07 p.m.)

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## 1 CERTIFICATE OF REPORTER

2

3

I, Carol Denise Lauder, Registered

4

Professional Reporter and Notary Public for the

5

State of South Carolina at Large, do hereby certify

6

that the foregoing transcript is a true, accurate,

7

and complete record.

8

I further certify that I am neither related

9

to nor counsel for any party to the cause pending

10

or interested in the events thereof.

11

Witness my hand, I have hereunto affixed my

12

official seal this 1 day of September, 2018 at

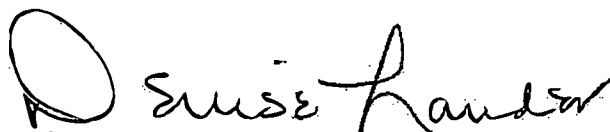
13

Charleston, Charleston County, South Carolina.

14

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16



17

S/ Denise Lauder

18

Carol Denise Lauder

19

Registered Professional

Reporter, CP

20

My Commission expires

February 27, 2028

21

22

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25



prosecuted the case. On September 14, 2015, Applicant pleaded guilty as indicted to trafficking cocaine and possession of a weapon during the commission of a violent crime before the Honorable Edgar W. Dickson. The indictment for unlawful carrying of a pistol was *not proessed*. Judge Dickson sentenced Applicant to imprisonment for concurrent terms of five years each for trafficking cocaine and possession of a weapon during the commission of a violent crime. Applicant did not appeal his conviction or sentence.

The facts underlying the charges are as follows: On April 11, Applicant was a passenger in a vehicle that was pulled over during a traffic stop. Tr. 14, l. 25 – 15, ll. 1 - 17. The officers conducting the traffic stop asked the Applicant if he had any weapons, to which Applicant informed the officers “he had a strap on him” and lifted his shirt, revealing a .38 revolver in his lap. *Id.* at 15:19-21. When asked if he was in possession of any other illegal items, he informed the officers he had cocaine in his pocket. *Id.* at 15:24-16:1. The officers found a bag that was later determined to contain 10.97 grams of cocaine base.

## II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. “Ineffective Assistance of Counsel,” in that:
  - a. Counsel failed “to inform me that a trafficking, first, 10-28 grams (charge) is a non-violent offense;”
2. “Involuntary Plea;”
3. “Illegal Sentence,” in that
  - a. “Trial judge was without jurisdiction to sentence me for poss. (of) a firearm during commission of violent crime being that trafficking first, 28 or less is nonviolent.”

At the evidentiary hearing, Applicant withdrew the above allegation #3 and modified allegations #1 and #2 to allege Counsel failed to inform Applicant the charges were violent and he would be required to serve all five years of his sentence. Applicant alleged his plea was

involuntary because he did not understand the collateral consequences of his guilty plea and would not have pleaded guilty if he had known he was pleading to a violent offense and would be required to serve five years' incarceration.

### **III. SUMMARY OF TESTIMONY**

Applicant testified Counsel met with him three times in total and he was given a copy of his discovery. Applicant claimed Counsel did not review the discovery with him or go over the elements of the offenses to which he pleaded. Applicant alleged if he had known the charge he was pleading to was violent and he would be required to serve all five years of his sentence he would not have pleaded guilty. Applicant admitted he illegally had a gun in his waistband, he had the crack cocaine in his pocket, and identified the crack cocaine when he gave it to the arresting officer. Applicant also admitted the plea judge went over the violent and serious nature of the charges to which he pleaded.

Counsel testified he was prepared to argue the legality of the traffic stop. Counsel testified he went over the elements in layman's terms and discussed the serious and violent repercussions with Applicant. Counsel testified the Court would have had to believe both officers were lying to find the traffic stop invalid and it was unlikely the court would do so.

### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary 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. This Court finds Counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered

conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4<sup>th</sup> Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

#### Involuntary Guilty Plea

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin, 395 U.S. at 243. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge, 431 U.S. at 73-74. Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford, 519 F.2d at 350. Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability, but for trial counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial instead. See Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

An applicant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy, 339 S.C. at 34, 528 S.E.2d at 421. "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874. Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the plea transcript and testimony provided at the evidentiary hearing, this Court denies Applicant's request for post-conviction relief. "The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is *not* informed of the collateral consequences. Parole eligibility typically is a collateral consequence of sentencing about which a defendant need not be specifically advised before entering a guilty plea." Brown v. State, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991)

(internal citations omitted). "Because the consequences of a violent crime are collateral, Smith's guilty plea is not rendered involuntary due to counsel's failure to inform him of the consequences of a violent crime conviction." Smith v. State, 329 S.C. 280, 286, 494 S.E.2d 626, 629 (1997). Therefore, if Counsel had failed to advise Applicant of the collateral consequences of pleading to a violent offense it would not render Applicant's plea involuntary. Here, however, Counsel credibly testified he went over the collateral consequences of the plea with Applicant. This Court finds Applicant was properly advised of all the consequences of his plea by his attorney and the plea judge.

This Court finds Applicant's assertion he did not understand the consequences of his plea lacks credibility. This Court finds Applicant has failed to prove his plea was involuntary, unknowing, or unintelligent. Therefore, this Court finds Applicant has failed to prove Counsel was deficient or he was prejudiced by any alleged deficiency of Counsel. Accordingly, this Court denies and dismisses this allegation.

#### IV. CONCLUSION

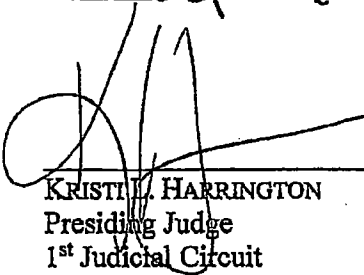
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### IT IS THEREFORE ORDERED THAT:

1. The Application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23<sup>rd</sup> day of April, 2018

  
 KRISTI L. HARRINGTON  
 Presiding Judge  
 1<sup>st</sup> Judicial Circuit

Charleston, South Carolina

**WITNESSES**

Ryan Tanner

Dorchester County Sheriff  
14-003740

**ARREST WARRANT NUMBER**  
2014A1810200049

Arrested: April 11, 2014

**ACTION OF GRAND JURY**

**TRUE BILL**

*Kashel Debra*  
Foreperson of Grand Jury  
Date: October 9, 2014

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2014GS180506**

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

**COURT OF GENERAL SESSIONS**  
October 13, 2014 TERM

**THE STATE**  
vs.

Frederick B Mosley Jr

**Indictment for**  
Unlawful Carrying of a Handgun

SC Code: 16-23-20

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.

SEARCHED  
SERIALIZED  
INDEXED  
DORCHESTER COUNTY

OCT 13 2014 9:24 AM



**WITNESSES**

Ryan Tanner

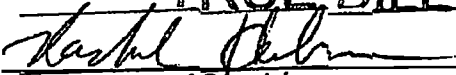
Dorchester County Sheriff  
14-003740

**ARREST WARRANT NUMBER**  
2014A1810200049

Arrested: April 11, 2014

**ACTION OF GRAND JURY**

**TRUE BILL**



Foreperson of Grand Jury  
Date: October 9, 2014

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2014GS180506**

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

**COURT OF GENERAL SESSIONS**

**October 13, 2014 TERM**

**THE STATE**  
**vs.**

Frederick B Mosley Jr

**Indictment for**

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SC Code: 16-23-20

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 - RECORDS  
2014 OCT -9 PM 2:24  
CHERYL GOSWAMI  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF DORCHESTER )

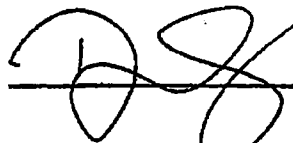
INDICTMENT  
2014GS180506

As a Court of General Sessions, convened on October 9, 2014 the Grand Jurors of DORCHESTER County present upon their oath:

**UNLAWFUL CARRYING OF A HANDGUN**

That in Dorchester County, South Carolina, on or about April 11, 2014, the Defendant, Frederick B Mosley Jr, did unlawfully carry about his person a pistol in violation of Section 16-23-20, 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, consisting of a stylized 'D' and 'S' intertwined, written over a horizontal line.

Donald N. Sorenson, Solicitor

**WITNESSES**

Ryan Tanner

Dorchester County Sheriff  
14-003740

**ARREST WARRANT NUMBER**  
2014A1810200050

Arrested: April 11, 2014

**ACTION OF GRAND JURY**

**TRUE BILL**



Foreperson of Grand Jury  
Date: October 9, 2014

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2014GS180507

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

**COURT OF GENERAL SESSIONS**

October 13, 2014 TERM

**THE STATE**  
vs.

Frederick B Mosley Jr

**Indictment for**

Trafficking in Meth. or Cocaine Base -  
10 g or More, But Less than 28 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--RECORDED  
2014 OCT -9 PM 2:24  
CHERYL D. [unclear]  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )

INDICTMENT  
 2014GS180507

As a Court of General Sessions, convened on October 9, 2014 the Grand Jurors of DORCHESTER County present upon their oath:

**TRAFFICKING IN METH. OR COCAINE BASE - 10 G OR MORE, BUT LESS THAN  
 28 G**

That in Dorchester County, South Carolina, on or about April 11, 2014, the Defendant, Frederick B Mosley Jr, 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 10 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.



Donald N. Sorenson, Solicitor

**WITNESSES**

Ryan Tanner

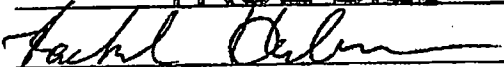
Dorchester County Sheriff  
14-003740

**ARREST WARRANT NUMBER**  
2014A1810200051

Arrested: April 11, 2014

**ACTION OF GRAND JURY**

**TRUE BILL**



Foreperson of Grand Jury  
Date: October 9, 2014

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2014GS180508**

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

**COURT OF GENERAL SESSIONS**

**October 13, 2014 TERM**

**THE STATE**  
**vs.**

Frederick B Mosley Jr

**Indictment for**

Possession of a Weapon 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  
2014 OCT -9 PM 2: 24  
CHERYL OSBORN  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF DORCHESTER )

INDICTMENT  
2014GS180508

As a Court of General Sessions, convened on October 9, 2014 the Grand Jurors of DORCHESTER County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME**

That in Dorchester County on or about April 11, 2014, the defendant, Frederick B Mosley Jr did visibly display or have in his possession a handgun during the commission of a violent crime. This offense in violation of Section 16-23-490, 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. Sorensen, Solicitor

**WITNESSES**

Ryan Tanner

Dorchester County Sheriff  
14-003740

**ARREST WARRANT NUMBER**  
2014A1810200051

Arrested: April 11, 2014

**ACTION OF GRAND JURY**

**TRUE BILL**

*Richard Halon*  
Foreperson of Grand Jury  
Date: October 9, 2014

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2014GS180508**

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

**COURT OF GENERAL SESSIONS**

**October 13, 2014 TERM**

**THE STATE**  
**vs.**

Frederick B Mosley Jr

**Indictment for**

**Possession of a Weapon 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.

1000  
OCT 13 2014  
DORCHESTER COUNTY  
CLERK OF COURT  
1000



**WITNESSES**

Ryan Tanner

Dorchester County Sheriff  
14-003740

**ARREST WARRANT NUMBER**  
2014A1810200050

Arrested: April 11, 2014

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Signature]*  
Foreperson of Grand Jury  
Date: October 9, 2014

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2014GS180507**

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

**COURT OF GENERAL SESSIONS**

**October 13, 2014 TERM**

**THE STATE**  
**vs.**

Frederick B Mosley Jr

**Indictment for**

Trafficking in Meth. or Cocaine Base -  
10 g or More, But Less than 28 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.

OCT 13 2014  
DORCHESTER COUNTY

