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APR 24 2019

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

April 24, 2019

The Honorable Daniel E. Shearouse
Clerk of Court South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Charlie Ellis Cutshaw, Jr. v. State – Civil Case No. 2017-CP-46-0190

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above-referenced post-conviction relief appeal along with proof of service and copies of the post-conviction relief judge's orders. Please be advised the State has received the transcript from the post-conviction relief hearing. Accordingly, the State's Petition for Writ of Certiorari and Appendix will be due on or before May 24, 2019. Thanks, and please let me know if you need any additional information or if I have made any errors in regard to the due date.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/cc
Enclosures

cc: Mario Anthony Pacella, Esquire
The Honorable David Hamilton, York County Clerk of Court
South Carolina Department of Corrections
Office of Appellate Defense
Victim Advocacy Division

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
APR 24 2019
S.C. SUPREME COURT

Certiorari to York County Court of Common Pleas
Roger E. Henderson, Circuit Court Judge
Civil Case No. 2017-CP-46-0190

CHARLIE ELLIS CUTSHAW, JR.,

Respondent,

vs.

THE STATE OF SOUTH CAROLINA,

Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable Roger E. Henderson's order granting post-conviction relief filed August 27, 2018. The State's motion to alter or amend that order was denied by written order filed on March 25, 2019, and received by the State on April 3, 2019.

April 24, 2019


Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-8737

Other counsel of record:
Mario Anthony Pacella, Esquire
Strom Law Firm, LLC
Post Office Box 1635
Brunswick, Georgia 31521
Attorney for Respondent
(912) 264-6465

By: 
MARK R. FARTHING
Bar Number 76901

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County Court of Common Pleas
Roger E. Henderson, Circuit Court Judge
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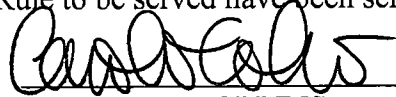
Petitioner.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Notice of Appeal on Respondent by sending two copies of the same to:

Mario Anthony Pacella, Esquire
Strom Law Firm, LLC
Post Office Box 1635
Brunswick, Georgia 31521

I further certify that all parties required by Rule to be served have been served.
This 24th day of April, 2019.



CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS
Charlie Ellis Cutshaw Jr

South Carolina State Of

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Mario Pacella	Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/Roger E. Henderson
Circuit Court Judge

2754
Judge Code

08/20/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on August 27, 2018, and a copy mailed first class or placed in the appropriate attorney's box on August 27, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

Mario Anthony Pacella PO Box 1635 Brunswick, GA
31521

Justin James Hunter PO Box 12519 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA]
COUNTY OF YORK]

CHARLIE ELLIS CUTSHAW, JR.]
Inmate No. 222532,]

Applicant,

v.

STATE OF SOUTH CAROLINA,]

Respondant.]

IN THE COURT OF COMMON PLEA
SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2017CP46-00190

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2018 AUG 27 PM 1:16

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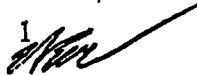
ORDER

Before this Court is the Application for Post-Conviction Relief filed by Charlie Ellis Cutshaw, Jr. The State filed a Return denying Applicant's grounds for post-conviction relief. The Court held an evidentiary hearing on the Application on April 16, 2018. In support of his Application, Mr. Cutshaw testified and also offered evidence in the form of testimony from his defense counsel Phil Smith and his prosecutor Jennifer Colton. After review of the entire record, the Court finds Mr. Cutshaw is entitled to post-conviction relief for the reasons that follow.

STATEMENT OF THE CASE

Applicant was indicted on two charges, possession with the intent to distribute methamphetamine 3rd offense¹ and trafficking methamphetamine 3rd offense under Indictment No. 2015GS4600574. Applicant pleaded guilty was sentenced to concurrent sentences of 25 years of imprisonment as to each count on January 26, 2016. At the PCR

¹ Applicant is not challenging his PWID Methamphetamine 3rd offense. Thus, to the extent that Applicant's petition challenges PWID Methamphetamine 3rd offense, that claims is dismissed per Applicant's request.

1


hearing, Applicant, his counsel Phil Smith, and Assistant Solicitor Jennifer Colton each testified that they discussed that the trafficking methamphetamine 3rd offense had a 25 year mandatory minimum but that Applicant would be required to serve only 85% of the sentence. (Tr. at 5, 7,) Mr. Smith indicated that service of 85% was an inducement to plead guilty. (Tr. at 5.) Applicant testified that if he had known that the 25 year sentence for trafficking methamphetamine 3rd would require him to serve day for day, he would have plead not guilty and insisted on a trial on all charges. (Tr. at 10.) The Assistant Attorney General indicated to the Court that the South Carolina Department of Corrections insists that trafficking methamphetamine 3rd conviction requires the offender to serve no less than 25 years.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant contends he is entitled to post-conviction relief pursuant to S.C. Code Ann. § 17-27-20 because his conviction is in violation of the United States Constitution, particularly his Fifth, Sixth, and Fourteenth Amendment rights. Application asserts that his guilty plea as to trafficking methamphetamine was not knowing, intelligent and voluntary.

“The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369, 88 L.Ed.2d 203, 208 (1985) (citations omitted). The United States Supreme Court has declared that “[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.” Brady v. United States, 397 U.S. 742, 748, 90 S.Ct. 1463,

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#2

1469, 25 L.Ed.2d 747, 756 (1970). In Brady, the Court declined to hold that "a guilty plea is compelled and invalid under the Fifth Amendment whenever motivated by the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged." Brady, 397 U.S. at 751, 90 S. Ct. at 1470. All that is required to knowingly and voluntarily enter a plea of guilty is that the defendant have a full understanding of the consequences of his plea and of the charges against him. Simpson v. State of South Carolina, 317 S.C. 506, 455 S.E.2d 175 (1995).

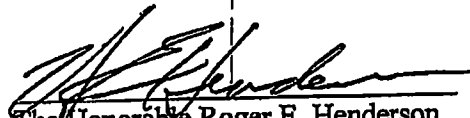
Because the Department of Corrections interpretation of the Applicant's sentence was different from the information presented to Applicant at the time of his guilty plea and because Applicant relied on the interpretation provided to him by counsel, his conviction for trafficking methamphetamine 3rd was not made knowingly, intelligently and voluntarily. Further, Applicant testified that he would have plead not guilty and insisted on a trial had he known the Department of Corrections would interpret his sentence to require him to serve a full 25 years. Accordingly, Applicant's conviction violates the Fifth and Fourteenth Amendments. Thus, the conviction for trafficking methamphetamine 3rd is unconstitutional and should be vacated.

CONCLUSION

Accordingly, the Court **GRANTS** the Application for Post-Conviction Relief. Applicant's conviction for trafficking methamphetamine 3rd offense is **VACATED**. The Application with respect to possession with intent to distribute methamphetamine 3rd offense is **DISMISSED**.

SO ORDERED, this 10th day of August, 2018.


#13



The Honorable Roger E. Henderson.
Presiding Judge
Sixteenth Judicial Circuit

#4

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP4600190**

Charlie Ellis Cutshaw Jr		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court .	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
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 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

Order Denying Motion to Reconsider Alter Or Amend

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
 Note: Title abstractors and researchers should refer to the official court order for judgment details.
 E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/Roger E. Henderson	2754	03/12/2019
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **March 25, 2018**, and a copy mailed first class or placed in the appropriate attorney's box or **March 25, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Mario Anthony Pacella PO Box 1635 Brunswick, GA.
31521

Janell H. Gregory PO Box 12519 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

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ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Charlie Ellis Cutshaw, Jr., #222532,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2017-CP-46-00190

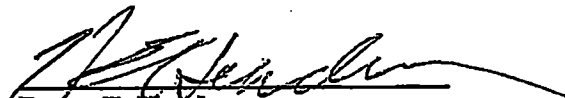
ORDER

FILED-RECEIVED
2019 MAR 25 AM 11:54
DAVID HAMILTON
C.C.C.P. & CS
YORK COUNTY, SC

Having read and considered the Motion to Reconsider, Alter or Amend filed by the Respondent, and after reviewing arguments made at the initial hearing, it is hereby

ORDERED that the Respondent's Motion to Reconsider, Alter or Amend in the above captioned case is respectfully denied.

AND, IT IS SO ORDERED.


Roger E. Henderson
Circuit Court Judge

Date: March 12, 2019
Chesterfield, South Carolina