

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Brooks P. Goldsmith, Circuit Court Judge

HECTOR J. CASES VAZQUEZ,

RECEIVED

APR 26 2019

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001912

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

TRANSCRIPT OF RECORD

February 23, 2015

STATE OF SOUTH CAROLINA,)

2014-GS-26-2135

Plaintiff,)

vs.)

HECTOR J.C. VAZQUEZ,)

Defendant.)

STATE OF SOUTH CAROLINA,)

2014-GS-26-2133

Plaintiff,)

vs.)

HECTOR CASES-CARRERAS,)

Defendant.)

B E F O R E :

Honorable Michael G. Nettles
Horry County Courthouse
Conway, South Carolina

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

David P. Caraker, Jr., Esquire
Attorney for Plaintiff

Dean N. Mureddu, Esquire
Attorney for Defendant Carreras

W. Thomas Floyd, Esquire
Attorney for the Defendant Vazquez

Dixie C. Eubank
Circuit Court Reporter

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15	<u>E X H I B I T S</u>	
16	<u>No.</u>	<u>ID</u> <u>EV</u>

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18 (No Exhibits were marked during hearing.)

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State v. Carreras and Vazquez - 2014-GS-26-02133,02135
BY THE COURT

3

1 (FEBRUARY 23, 2015)

2 THE COURT: Yes, sir. You are recognized.

3 MR. CARAKER: Thank you, Your Honor. May it please the
4 Court. Your Honor, we have the State of South Carolina,
5 County of Horry versus Hector Vazquez and Hector Javier Cases
6 Carreras. Mr. Vazquez is charged in true-billed indictment
7 2014-GS-26-02135 for trafficking in heroin over 28 grams.
8 Likewise, Mr. Carreras is charged in 2014-GS-26-02133 for
9 trafficking heroin 28 grams. It's my understanding that they
10 wish to enter a plea to the lesser included offense, each one
11 of them, to trafficking in heroin 4 to 14 grams -- 4 to 14
12 grams, first offense, Your Honor.

13 THE COURT: Might I have the sentencing sheet?

14 MR. CARAKER: Yes, sir, Your Honor. With regard to Mr.
15 Vazquez, we have made a negotiated sentencing range of fifteen
16 to eighteen years. And with regard to Mr. Carreras, there's
17 been a negotiated eighteen to twenty years.

18 THE COURT: Carreras is -- yes, sir, do you represent Mr.
19 Carreras?

20 MR. MUREDDU: Yes, sir, Your Honor. Dean Mureddu on
21 behalf of Mr. Cases Carreras.

22 THE COURT: Have you explained to him the offense of
23 trafficking in heroin, the potential penalties, elements of
24 the offense, potential defenses and his constitutional rights?

25 MR. MUREDDU: I have, Your Honor.

State v. Carreras and Vazquez - 2014-GS-26-02133,02135
BY THE COURT

4

1 THE COURT: How does he wish to plea?

2 MR. MUREDDU: My understanding, he wishes to plead
3 guilty, Your Honor.

4 THE COURT: Does he understand the collateral
5 consequences of this plea in that it is a violent offense and
6 a serious offense?

7 MR. MUREDDU: I have explained to him the classification
8 of the offense, Your Honor.

9 THE COURT: And the fact that this is non-paroleable?

10 MR. MUREDDU: We have gone over the fact that he will not
11 be parole eligible.

12 THE COURT: Very good.

13 Yes, sir. Do you represent Mr. Vasquez?

14 MR. FLOYD: Yes, sir, I do. Thomas Floyd.

15 THE COURT: Have you explained to him the offense of
16 trafficking in heroin, the elements of the offense, the
17 potential defenses and his constitutional rights?

18 MR. FLOYD: Yes, sir.

19 THE COURT: And how does he wish to plead?

20 MR. FLOYD: Wishes to plead guilty.

21 THE COURT: Do you agree with his decision to do so?

22 MR. FLOYD: Yes, sir.

23 THE COURT: Do you feel if called upon to do so, the
24 State could prove him guilty beyond a reasonable doubt?

25 MR. THOMAS: Yes, sir.

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CARRERAS AND VAZQUEZ - EXAMINATION BY THE COURT

1 THE COURT: He understands the collateral consequences of
2 this plea?

3 MR. FLOYD: Yes, sir.

4 THE COURT: He understands it's a violent and serious
5 offense and that it's non-paroleable?

6 MR. FLOYD: Yes, sir.

7 THE COURT: Do you agree with his decision to do so?

8 MR. FLOYD: Yes, sir.

9 THE COURT: Do you feel if called upon to do so, the
10 State could prove him guilty beyond a reasonable doubt?

11 MR. FLOYD: Yes, sir.

12 THE COURT: All right. Let's place Mr. Carreras and Mr.
13 Vazquez under oath if we could.

14 HECTOR CASES-CARRERAS AND HECTOR J.C.

15 VAZQUEZ, HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

16 THE COURT: Are you under the influence of any drugs or
17 alcohol here today, Mr. Carreras?

18 MR. CARAKER: Your Honor, I apologize for interrupting.
19 Do we need to swear the interpreters as well?

20 THE COURT: Yes, that would be -- yes, if we could.

21 I'm gonna ask the interpreters if we could to raise your
22 right hands while the Clerk administers the oath.

23 CLERK: Do you solemnly swear or affirm that you will
24 accurately interpret the language requested in this courtroom
25 of the Defendants without additions thereto or detractions

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CARRERAS AND VAZQUEZ - EXAMINATION BY THE COURT

1 therefrom or any other amendments of your own interpretations
2 so help you God?

3 MS. LESTER: I do.

4 MR. HUNT: I do.

5 CLERK: Thank you.

6 MS. LESTER: And for the record, my name is Lydia Lester.

7 MR. BRITT: And Britt Hunt, B-R-I-T-T H-U-N-T.

8 EXAMINATION OF HECTOR CASES-CARRERAS AND HECTOR J.C. VAZQUEZ
9 BY THE COURT:

10 THE COURT: Are you under the influence of any drugs or
11 alcohol here today, Mr. Carreras?

12 (REPORTER'S NOTE: Responses of Carreras are through the
13 interpretation of Ms. Lester. Responses of Vazquez are
14 through the interpretation of Mr. Hunt.)

15 MR. CARRERAS: No, sir.

16 THE COURT: Mr. Vazquez.

17 MR. VAZQUEZ: No, sir.

18 THE COURT: Are you experiencing any kind of physical or
19 mental problem that could prevent you from understanding
20 what's going on here today? Mr. Carreras?

21 MR. CARRERAS: No, sir.

22 THE COURT: Mr. Vazquez?

23 MR. VAZQUEZ: No, sir.

24 THE COURT: Pay very close attention to the State
25 summarize the facts that bring us here today. I'm gonna ask

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CARRERAS AND VAZQUEZ - EXAMINATION BY THE COURT

7

1 if you could go a little bit slower, you're about to run the
2 interpreters hot.

3 MR. CARAKER: Yes, sir, Your Honor.

4 THE COURT: Just slow it down.

5 MR. CARAKER: I apologize. Thank you, Your Honor. May
6 it please the Court. On November 16, 2013, in the Myrtle
7 Beach section of Horry County, Mr. Vazquez and Mr. Carreras
8 were found to be in possession of 298 grams of heroin. This
9 was discovered pursuant to a lawfully issued search warrant.
10 The drug report from SLED has returned a weight of 298 grams
11 and confirmed that it was heroin. And, Your Honor, if I may,
12 for the record, just so we have it on the record, the State's
13 witnesses are here and they're present ready to move forward
14 in the event that something does break down here.

15 THE COURT: Are those facts true and accurate, Mr.
16 Carreras?

17 MR. CARRERAS: Yes, sir.

18 THE COURT: Are you indeed guilty of trafficking in
19 heroin 4 to 14 grams first offense.

20 MR. CARRERAS: Yes, sir.

21 THE COURT: Are those facts true and accurate, Mr. Hector
22 Vazquez?

23 MR. VAZQUEZ: Yes, sir.

24 THE COURT: Are you indeed guilty of trafficking in
25 heroin 4 to 14 grams first offense?

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CARRERAS AND VAZQUEZ - EXAMINATION BY THE COURT

1 MR. VAZQUEZ: Yes, sir.

2 THE COURT: Each of you are standing before me pleading
3 guilty but you don't have to plead guilty to anything. You
4 could exercise your right to a jury trial. In that process,
5 the jury would determine whether or not the State can actually
6 prove you guilty beyond a reasonable doubt. I would charge
7 the jury as a matter of law that you're presumed to be
8 innocent. No one can require that you take the witness stand.
9 However, if you wanted to, you could. You could subpoena
10 witnesses on your behalf. In addition to that, you and your
11 lawyer could cross examine the State's witnesses. You'd have
12 an opportunity to eyeball them and confront them as they
13 testified against you. Do you realize by pleading guilty
14 you're giving up all these rights, Mr. Carreras?

15 MR. CARRERAS: Yes, sir.

16 THE COURT: Mr. Vazquez?

17 MR. VAZQUEZ: Yes, sir.

18 THE COURT: All right. I understand plea negotiations
19 with regard to Mr. Carreras is a negotiated range between
20 eighteen and twenty years?

21 MR. CARAKER: Yes, sir, Your Honor.

22 THE COURT: Is that your understanding?

23 MR. MUREDDU: Yes, sir, it is, Your Honor.

24 THE COURT: With regard to Mr. Vazquez, is it your
25 understanding this is a negotiated range between fifteen and

State v. Carreras and Vazquez - 2014-GS-26-02133,02135
CARRERAS AND VAZQUEZ - EXAMINATION BY THE COURT

9

1 eighteen years?

2 MR. FLOYD: Yes, sir.

3 THE COURT: Mr. Carreras, are you satisfied with your
4 lawyer?

5 MR. CARRERAS: Yes.

6 THE COURT: Any complaints against your lawyer, law
7 enforcement or this Court?

8 MR. CARRERAS: No.

9 THE COURT: Do you need any additional time to confer
10 with your lawyer?

11 MR. CARRERAS: No.

12 THE COURT: Mr. Vazquez, are you satisfied with your
13 lawyer?

14 MR. VAZQUEZ: Yes, sir.

15 THE COURT: Any complaints against your lawyer or law
16 enforcement or this Court?

17 MR. VAZQUEZ: No.

18 THE COURT: Do you need any additional time to confer
19 with your lawyer?

20 MR. VAZQUEZ: No, sir.

21 THE COURT: Has anybody promised you anything, threatened
22 you, pressured you, mistreated you in any way, shape or form
23 in an effort to get you to plead guilty here today, Mr.
24 Carreras?

25 MR. CARRERAS: No, sir.

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CARRERAS AND VAZQUEZ - EXAMINATION BY THE COURT

1 THE COURT: Mr. Vazquez?

2 MR. VAZQUEZ: No, sir.

3 THE COURT: Have you understand all my questions, Mr.
4 Carreras?

5 MR. CARRERAS: Yes, sir.

6 THE COURT: Mr. Vazquez?

7 MR. VAZQUEZ: Yes, sir.

8 THE COURT: Have your answers been truthful, Mr.
9 Carreras?

10 MR. CARRERAS: Yes, sir.

11 THE COURT: Mr. Vazquez?

12 MR. VAZQUEZ: Yes, sir.

13 THE COURT: Each of you understand that you have ten days
14 to appeal this decision? Mr. Carreras?

15 MR. CARRERAS: Yes, sir.

16 THE COURT: Mr. Vazquez?

17 MR. VAZQUEZ: Yes, sir.

18 THE COURT: Based on your testimony, I find there is a
19 substantial factual basis for your plea. That your decision
20 was freely and voluntarily made, knowingly and intelligently
21 with the consent of competent counsel with whom you say you
22 are satisfied. I will accept your pleas and I will be glad to
23 hear from the State with regard to sentencing if you have
24 anything to add.

25 MR. CARAKER: Thank you, Your Honor. The only thing the

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BY MUREDDU

1 State would have to add with regard to sentencing is that the
2 sheer amount of heroin that these two gentlemen had in their
3 possessions is close to 300 grams. The maximum weight for a
4 heroin trafficking charge is 28 grams. To give you an idea of
5 where they fall on the spectrum, it's somewhere in the
6 neighborhood, and I'm guessing, about \$220,000 worth of heroin
7 if it's bagged up and sold by the slip on the street and we
8 would just ask Your Honor to take that into consideration when
9 going through the sentencing range. Thank you, Your Honor.

10 THE COURT: Mr. Carreras, be glad to hear from you, your
11 lawyer or anybody who would like to speak on your behalf.

12 BY MUREDDU:

13 MR. MUREDDU: Your Honor, may it please the Court. My
14 client is forty-two years old. He is originally from Puerto
15 Rico. He is married and has six children. That is his son
16 with him right now. That is one of them. They -- he has
17 other concerned family members in the back who love him and
18 care about him. I believe he's a good husband, father, a good
19 person. Your Honor, he has been residing in the State of
20 Florida during this proceeding, after it began and I think at
21 that time he was living there as well. He has been gainfully
22 employed. He works as a supervisor in the maintenance of
23 commercial trucking vehicles, I think that haul trash and
24 involved in the sanitation business. He is -- his role is
25 working on the trucks, supervising other employees.

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BY MUREDDU

1 Your Honor, I mean, this is clearly an unfortunate
2 situation for my client and his family. The recommendation
3 that we are asking you to follow here today is going to
4 require him to serve a number of years in prison. As the
5 Court knows and I have made my client aware that he is in the
6 no-parole eighty-five percent category. So, basically, what
7 you give him here today is what he will have to serve with the
8 South Carolina Department of Corrections.

9 Your Honor, the language barrier in reviewing the
10 evidence has not been impossible but I think the way it has
11 shown itself is that we are entering into what I would call
12 kind of a plea, guilty plea at the eleventh hour. I do not
13 think that it's occurring because these two defendants were
14 not trying to accept responsibility for their wrong actions.
15 They are in fact accepting responsibility and have indicated
16 to myself and Mr. Floyd their remorse not for just getting
17 caught but for involving themselves in this transaction and
18 what went up to it.

19 Your Honor, we would ask the Court to sentence in the
20 minimum range here for the various reasons given by me. The
21 minimum sentence as it is being recommended is eighteen years.
22 That is a substantial penalty for this offense. I think that
23 if you take into consideration the totality of the
24 circumstances, I think that eighteen years would be a just
25 sentence and that's what we would ask the Court to impose here

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BY THE COURT

1 today.

2 THE COURT: Does Mr. Carreras have a significant criminal
3 record? If so, what is it?

4 MR. CARAKER: No, sir, Your Honor. The only thing I
5 could find on his NCIC was a charge of aiding others to
6 possess cocaine with intent to distribute that stemmed from it
7 looked like a charge in Puerto Rico.

8 THE COURT: Very good.

9 MR. CARAKER: That's it for Mr. Carreras.

10 BY THE COURT:

11 THE COURT: Mr. Vazquez -- and would Mr. Carreras like to
12 say anything or anybody on his behalf?

13 MR. CARRERAS: I just wanted to ask for, for forgiveness
14 for what I did. I didn't mean to do it because, well, I
15 didn't want to do it, I didn't do it with bad intentions. And
16 I would very much appreciate any consideration that you could
17 have for me in this.

18 THE COURT: Very good. Anything further from the Defense
19 with regard to Mr. Carreras?

20 MR. MUREDDU: Nothing, Your Honor.

21 THE COURT: Mr. Vazquez, be glad to hear from you and
22 your lawyer and anybody who would like to speak on your
23 behalf.

24 BY MR. FLOYD:

25 MR. FLOYD: May it please the Court, Your Honor. Hector

State v. Carreras and Vazquez - 2014-GS-26-02133, 02135 14
BY FLOYD

1 is twenty-four years old. He is original from Puerto Rico,
2 been living here in this area for a couple of year now. He is
3 working. He works construction as well as working for
4 Glasstec. He is married. He has one child, a relatively
5 newborn. He has absolutely no prior record. He stands before
6 you, Judge, today, of course, as you've heard, he's got family
7 here in the courtroom. I can tell you I have watched them
8 together, they all care about one another greatly. The
9 State's negotiation here is for a sentence in the range of
10 fifteen to eighteen years. As I've stated, Hector has got no
11 prior record. He's a very young man at twenty-four years old
12 and has a newborn that's gonna be grown when he completes this
13 sentence. And I'd ask you to consider coming in at the
14 fifteen-year mark which would be the minimum as recommended by
15 the State. Thank you.

16 BY THE COURT:

17 THE COURT: Mr. Vazquez, would you like to say anything?

18 MR. VAZQUEZ: Yes, sir. I'd just like to apologize to
19 the State of South Carolina. And my family, ask for
20 forgiveness. And I'm sorry for everything and it was a lack
21 of respect. And if you could have some consideration, I would
22 thank you very much for that.

23 THE COURT: Are they entitled to any time of
24 incarceration prior to this hearing?

25 MR. CARAKER: Your Honor, that I'm aware of, they weren't

State v. Carreras and Vazquez - 2014-GS-26-02133,02135 15
BY THE COURT

1 under any ankle monitor, home detention or anything like that.

2 THE COURT: How long did it take for them to get a bond?

3 MR. CARAKER: They may be able to answer that a little
4 better than I can, Your Honor.

5 MR. MUREDDU: Your Honor, my bond paperwork says that
6 they were arrested on November the 16th of 2013 and it appears
7 they bonded out -- it looks like the bonding paperwork was
8 executed on the 21st of November. The bond was actually set
9 on the 17th, so ---

10 THE COURT: Six days maybe?

11 MR. MUREDDU: That sounds about right.

12 MR. CARAKER: Yes, sir, Your Honor.

13 THE COURT: How about Mr. Vazquez?

14 MR. CARAKER: It's the same for him as well, Your Honor.

15 MR. FLOYD: He tells me he was in almost a month, Judge,
16 before he made his bond.

17 THE COURT: Is it correct Mr. Carreras bonded out
18 significantly earlier?

19 MR. VAZQUEZ: That's right.

20 THE COURT: Probably of all the drugs that come before
21 this Court, heroin is the most dangerous. When I practiced
22 law, I did a lot of State court criminal defense work and I
23 can only recall handling two cases of heroin. It's making a
24 comeback and it's a terrible thing because so many people --
25 you don't know how potent it is and then once you start using

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SENTENCE OF THE COURT

1 it, you become habituated to it and you start using more and
2 then you wake up dead the next morning. It's a terrible
3 thing. It ruins people's lives and people spend every dime
4 they have not to get high but just to stay -- keep from
5 getting sick. It's a terrible thing. It's a terrible plague
6 on our society. And obviously, Mr. Carreras and Mr. Vazquez,
7 y'all are going to have to pay the very dear price for that.

8 SENTENCE OF THE COURT:

9 On indictment 2014-GS-02133, trafficking in heroin, the
10 sentence of the Court is that you be committed to the State
11 Department of Corrections for a period of eighteen years and
12 you're given credit for six days.

13 Mr. Vazquez, on indictment 2014-GS-26-02135, trafficking
14 heroin, the sentence of the Court is that you be committed to
15 the State Department of Corrections for a period of fifteen
16 years, given credit for twenty-six days.

17 Good luck to both of you.

18 MR. CARAKER: Thank you, Your Honor.

19 MR. FLOYD: Thank you, Judge.

20 MR. MUREDDU: Thank you, Your Honor.

21

22 (ADJOURNED.)

23

24

25

State v. Carreras and Vazquez - 2014-GS-26-02133,02135
CERTIFICATE OF COURT REPORTER

17

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Hector J.C. Vazquez and Hector Cases-Carreras, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 23, 2015, taken by Dixie C. Eubank.

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



Kay H. Richardson

Official Court Reporter

December 29, 2015.

18
JAB

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

HECTOR J. CASES VAZQUEZ # 363140
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

15

7980

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE County Correction Institution
2. Name and location of Court which imposed sentence Horry County Judicial Building
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) 2014 GS 26 D2135 TRAFFICKING HEROIN FIRST OFFENSE
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) FEBRUARY 23, 2015 15 YEARS
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere YES
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Not advise by Counsel, nor the Court
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (c) SEE ATTACHMENT

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

- (a) SEE ATTACHMENT (d) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (c) SEE ATTACHMENT

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

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

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

- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Constitutional violations, issues were not presented and
- (b) Fundamental Rights violations, counsel was ineffective for not
- (c) raising grounds.
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. W. Thomas Floyd, Esq.,
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment and Plea
- ii. Sentencing
- iii. _____
19. State clearly the relief you seek in filing this application:
Vacate Conviction and Remand for Resentencing Trial
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

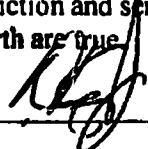
County of Horry)

VERIFICATION

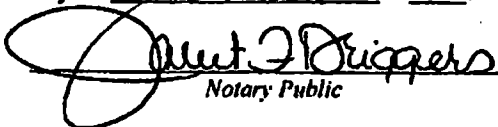
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I, Hector Vazquez, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction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



SWORN to and subscribed before me this 2ND
day of NOVEMBER, 2015.

 (L.S.)
Notary Public

My Commission Expires: 11-05-2019

NOTARY PUBLIC
COMMISSION - 5 PM 2:02
11-05-2019

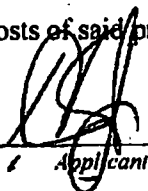
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

15

7980

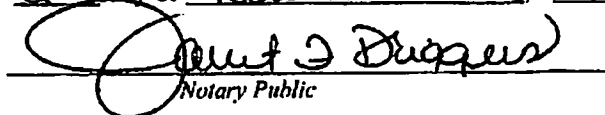
I, Hector Vazquez, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.


Applicant

SWORN or affirmed to and subscribed before me this

2ND day of NOVEMBER, 2015.


Notary Public

My Commission Expires: 11-05-2019

2015 NOV 11 PM 2:02

Cognizable claims under the Uniform Post Conviction Procedure Act, grounds on which Applicant are being held in custody unlawfully;

ATTACHMENTS: NUMBER 10 & 11.

(a) Trial / Plea Counsel was ineffective for failing to challenge substantial Fourth Amendment violation warrantless search and seizure; and failing to protect rights guaranteed him by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

Trial / Plea Counsel was ineffective for failing to advise Applicant that he had Fourth Amendment right against unreasonable search and seizure; and Fifth Amendment right not to be deprived of life, liberty, or property, without due process of law.

State and Federal case laws establish that when the government violated the Fifth Amendment guarantee him when taking away his life, liberty, and property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes is unconstitutional. The Applicant's Indictment [No.2014-GS-26-2135], Caption Reference "CDR 0149, 44-53-0370(e)(3)(c)", and the body of indictment at pertinent part read, "...A controlled substance all within the meaning of §44-53-110, et. SEQ., S.C. Code of Law 1976 as amended, in violation of Section 44-53-0370(e)(3), S.C. Code of Laws, 1976, as amended for the crime of Trafficking". However, §44-53-0370(e)(3)(2) reference Second Offense, and subsection (c) is ANNEX as

a fixture of Subsection 44-53-0370(e)(3)(2). If viewed in another punitive form would constitute ambiguousness, uncertainty of meaning, or intention as a Statutory Provision, and raise a doubtful meaning. Lawmakers are not infallible, and inevitably discover gaps...conflicts and ambiguities in Statutory Provisions, [see Kerr v. State, 547 S.E.2d 494, S.C.2001]. The Applicant submits that he were indicted pursuant to §44-53-0370(e)(3) S.C. Code of Law 1976, for First Offense. However, as numerated Sentencing Provision and/or Statutory Provision is guess work, and places those provisions in constitutional doubt and plagued by vagueness. It is incumbent and imposed as a duty of competent Attorney be devoted to their client, and inform on imposing laws, and accused should be made aware of possible defenses at least where attorney, or court is made aware of facts that would constitute such a defense (4th and 14th Amend),

Second, on November 13, 2015, Agent Philips obtained a search warrant for [REDACTED] Cedar Street, unit [REDACTED] Myrtle Beach. However, on November 16, 2013 Agent Philips decided and proceeded to set up a "buy bust" and surveillance was also set-up at complex approximately 1700 hour. Approximately 1835 hours Agent Philips decided to abandon the original "buy bust" plan, and instructed all Agents and officers to converge on [REDACTED] Cedar Street unit [REDACTED] to execute the search, smashing through Hector Vazquez apartment door with weapons drawn, immediately arresting the occupants and hang-cuffing and thoroughly search each room, closets, clothing, bags and kitchen cabinet, seizing evidence not in plain-sight. Subsequently Agent Philips was notified via wireless communication device. The premises searched was registered to Hector Vázquez. ..whom was not served with search warrant, during nor after force entry by

officers, although the record is silent on when Agent Philips arrived (approximately 1900 hour), and omit whether search warrant were delivered, whereby the summary of document [search warrant] ordered specific instruction at pertinent part:

"A copy of this search warrant shall be delivered to the person in charge of the premises at the time of such search if practicable..."

No exigent circumstances existed...and no consent given. The record fail to monitor/mention upon whom...when...or who allegedly served search warrant. The Fourth Amendment of the United States prohibit said conduct by government. The Applicant submits he first saw search warrant when given copy of Discovery Rule 5 Motion by his counsel. A common preception that Law Enforcement always follow procedure/protocol has proven otherwise since installing body cameras. Counsel failure to use reasonable sound professional judgment when he abandon Fourth Amendment claim.

Trial / Plea Counsel was furthered ineffective for failing to envoke/advice him regarding Exclusionary Rule that excludes/supress evidence obtained in violation of his constitutional rights. In accordance with the Exclusionary Rule, the Court should not admit the drugs into evidence, because they had been obtain during a warrantless search of his premises. The deterrence of unreasonable searches is a major purpose of the Exclusionary Rule, but the Rule serves other purposes as well. There is for example...the imperative of judicial integrity...namely that the Court do not become accomplices in willful disobedience of a constitution they are sworn to uphold, [See, Judge

Guido Calabresi, Supra note at 113 ...notes that the police frequently lie in court to evade the Exclusionary Rule]. An additional purpose of the Exclusionary Rule is that of assuring the people, all potential victims of unlawful government conduct that the government not profit from its lawless behavior, and minimizing the risk of seriously undermining public trust in the government, Elkins v. U.S., 80 S.Ct. 1437(1960; U.S. v. Calandra, 94 S.Ct. 613(1974). The Applicant submits he was deprived of rights guaranteed him by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

ATTACHMENTS: NUMBERS 10 & 11.

(b) Trial / Plea Counsel was ineffective for conducting merely a cursory investigation; coerced Applicant to plead guilty; failure to withdraw plea when spoken agreement came into discord and plea was not knowingly, or intelligently entered.

The Applicant submits that he was coerced into plea under duress of circumstance; and threat of erroneous/groundless trafficking charge against his fiancée [Julia Lopez] whom is actually innocent, as a pretext to induce and force the plea. The government did fabricate charges [Drugs/Trafficking in Heroin, Morphine, etc., 28grs. or more, §44-53-0370(e)(3)(c); Drugs/Manufacture, possession of other sub. in sch. I, II, III or flunitrazepam or analogue, w.i.t.d., 1st offense, §44-53-0370(b)(2)] void evidence of drug activity involving her. Agent Philips' "Case Investigative Reptot," makes no mention of [Julia Lopez], or her roll in drug scheme,

aiding, abetting, or assisting in the commission through some overt act. Furthermore, mere presence/association with charged defendant(s) for drug trafficking is insufficient to tie [Lopez] to a scheme of drug activity without more, State v. Thompson, 647 S.E.2d 702(2007). Whereby on November 12, 2013 Agent Willard, Miller, Roberts, set-up surveillance at complex, however said report made no mention of Lopez at all times relevant, yet she was arraigned on extremely harsh charges. The Fourth Amendment strictly forbid issuance of warrant without probable cause, and the Fifth Amendment forbid self-in-crimination under compulsion, as was the case.

Secondly, the Applicant was offered plea bargain May 2014 that he refused on record August 25, 2014, however, prior to plea Applicant was told to enter plea bargain, and charges against my fiance [Lopez] would be dismissed. In concert, Lopez's initial lawyer William Isaac Diggs advised her that his aim is to have all charges against her dismissed, because of lack of evidence, lack of actual involvement, and did not consciously participate in event or transaction and should not be named. However, Attorney Diggs was erroneously release void conflict of interest, and an inferior Counsel (Barbara Pratt, Esq.) was appointed, whom refuse to defend Lopez innocence, instead coerced her to commit "perjury" induce by threat and fear of imprisonment, in addition to persuading Lopez to surrender her innocence through fear, in violation of the Fifth Amendment of the United States Constitution...directly effecting Applicant's purpose and inducement to enter a plea. Furthermore, Applicant's Counsel and Prosecutor coerced and dupe him because he was unaware charges against Lopez had not been dismissed until he had already entered pleas, which was the contingent factor to accept/enter a plea bargain. Moreover,

Applicant's counsel failed to withdraw plea after government refuse to honor all components of plea agreement as the Applicant understood them to be. For said reasons pleas was not knowingly and intelligently entered, Boykins v. Alabama, 395 U.S. 238; and both fundamental and constitutional rights was violated pursuant to Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

Third, Counsel fail to thoroughly investigate facts surrounding his charges...and culpability for possible defenses, to defend against formal accusation as a preliminary step; and furthered ineffective for failing to object to government assessing excessive charges against defendant, and facts to be used as a reference point to ~~assess~~ the Applicant's guilt and punishment, or different aspect of the defendant and charged trafficking charges. Whereby, on November 6, 2013 the Applicant allegedly sold 4 grams of Heroin...and again on November 12, 2013, 14 grams of Heroin totalling a mere 18 grams of Heroin, no other actual sales recorded...yet counsel erroneously advised him that he face a 40 years sentence without parole, when he actually face a possible 7 years minimum to 25 years maximum.

Trial / Plea Counsel fail to devote full effort to his defense, and representation when he fail to:

- (a). Advise Applicant of the minimum and maximum penalties.
- (b). Advise / explain certain elementary and essential elements charge(s).
- (c). Explain double pleading...or alleging two or more matters in one plea.
- (d). Explain conspiracy, and elements or degree of trafficking

drugs.

(e) Motion for Reconsideration of Sentence.

The Applicant further submits that for said reasons his plea was not knowingly and intelligently entered. At all times relevant he acted individually. In Criminal Law Conspiracy is a separate offense [not put on notice/charged] from the crime that is the object of the conspiracy.

Fourth, culpability as defense, Applicant submits that "Investigative Report" asserts that on November 16, 2013, approximately 1830, Agent Roberts noted a dark colored sedan pulled into a parking space directly in front of Cases-Vasquez's apartment...and a Hispanic male was viewed getting out of the driver's side and removing a bag from the front passenger side, someone other THAN Cases-Vasquez. Less than five minutes afterward Agent and Polices made entry into the apartment, and approximately 316.7 grams of light brown substance in multiple plastic wrappers was seized, however Cases-Vasquez fingerprint(s) was not found on any of the items surface seized. Applicant submits that he never had actual control over physical substance, therefore he should not have been charged with possession of 28 grams or more of said Heroin...nor should he had plead under S.C. Code. §44-53-0370(e)(3)(c), Violent-Serious classification lesser included offense of 28 grams or more...instead under lesser included offense of S.C. Code. §44-53-0370(e)(3)(a)(1), 1st offense. In addition, the government used deceitful manipulating tactics and created a bogus appearance of a greater charge in an deceptive and "Scienter" manner, to induce plea. Culpability is used as a reference point to assess the defendant's guilt and punishment, and in the two contexts culpability denotes different aspects of the defendant and

misdoing. Pursuant to the "Manifest Weight of the Evidence" in instant matter required Counsel's object / protest...and possible reversal/disregard by the Court when another outcome is obviously correct, and the verdict is unsupported by the evidence. The Applicant submits he was denied guaranteed rights pursuant to Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

ATTACHMENTS: NUMBER 10 & 11.

(c) Trial / Plea Counsel was ineffective for failing to call into question the veracity of Agent Philips Arrest Warrant Affidavit/move to Annual Warrant; and move to Quash Indictment obtained upon flawed information and tampering with evidence; and prejudicing Defendant by deliberately pleading him to a greater charge while dismissing lesser offense, denied due process and Equal Protection of the Law.

The Applicant submits that he did not receive effective assistance of counsel at all times relevant. Initially Trial / Plea Counsel was delinquent in failing to make Preliminary Objections, or moving to annul flawed arrest warrant, and compel anew...and Quash indictment prior to trial/plea (pursuant to Gentry v. State, S.E.2d.), and make inquiry/motion challenging sufficiency of indictment, and review Grand Jury Reports/Minutes for information that both determines whether there is probable cause to support Applicant committed crime(s) charged, which amount to more than a bare suspicion, or mere presence. The Inference - on - Inference Rule principle, that a presumption based on another presumption cannot serve as a basis for

determining an ultimate fact, and provides protection against unfounded prosecutorial misconduct. Challenges should have been brought on due process and Equal Protection of Law.

First, Agent P. Philips confirm that Applicant's Arrest Warrant[#2013-A-2610203555, etc.] Affidavit Narrative is flawed, at pertinent part reads, "...117.7 grams for Cases-Vazquez and Santiago Lopez...", and "...116.7 grams for Casses-Carreras...". However, the Investigation Report of Agent P. Philips at pertinent part reads, "...the total weight of Heroin charged to Casses-Vazquez and Santiago-Lopez as a direct result of the search warrant should be 317.7 grams. The total weight of Heroin charged to Cases-Carreras as a direct result of the search warrant should be 316.7 grams," and noted that the "Solicitors' Office was notified of [defect] discrepancy." Furthermore, said weight contrast...dissimilarities and unlikeness...diverse weight differing from one another, are additional defective facts that fail to meet minimum standard of sufficiency and accuracy required, thus, spoils, infect and contaminated indictment process; and reasonable suspicion supported by specific and articulate facts for suspecting tampering with [Heroin] evidence was at some point tampered and altered to make improper charges.

A valid Arrest Warrant requires sworn written affidavit and accurate/truthfulness of statement of facts, rather than the mere oath or affirmation required by constitutional standards. The Courts' held the false affidavit was the equivalent of not having an affidavit at all. (See State v. Jones, 536 S.E.2d 675(2000)). No Supplemental Affidavit was made in addition to previous warrant to supply additional facts by the Affiant.

Second, Trial / Plea Counsel should have made evidentiary challenges to

bogus possession charge of 28 grams or more of Heroin, that he never had control, dominion, or possession over said substance, despite appearance and government groundless accusatory pleading for "Possession Unity" against all three occupants in apartment. However, Agent P. Philips' Investigative Report surrounding facts/events dispute speculation that Applicant ever had possession, said Report read at pertinent part, "...less than four minutes later...Agents and Polices smash through door storming into apartment immediately arresting three occupants. Agent P. Philips and Assistant Solicitor David Caraker, Jr., "Maliciously scrambled" erroneous possession allegations/charges in arrest warrant...and testimony information before Grand Jury against all defendants on account of their exercising Fifth Amendment right...refuse to be compel to engage in self-in-crimination, and as a results the government became highly irritated and abused the process for improper purpose with malicious motive for bringing a prosecution other than to do Justice, and tainted with racism as determinant factor...and the Grand Jury votes was derived and deduce from those bias. Counsel for the defense should have sought dismissal of Indictment for reasons of contaminate, corruption and deprave reasons...given the totality of the circumstances, he was denied guaranteed rights pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

The United States Supreme Court held that the Fourth and Fourth and Fourteenth Amendments of the United States Constitution gave defendant the right in certain circumstances to challenge the veracity of arrest warrant affidavit after the warrant had been issued and executed. See, Franks v. Delevare, 438 U.S. 154; State v. Missouri, 524 S.E.2d 394(1999).

Third, Applicant submits that had it not been for his Counsel's coercing, he would have demanded a Jury Trial, and had no intention to plea to the greater charge [28 grams or more Heroin], thought he was pleading under 4 grams but less than 14 grams...lesser included offense. Counsel never advised him of the constituent element and essential components of offense(s). Had he elected a Jury Trial the lesser included offense charge would have been an optional Jury Instruction, therefore Applicant was unduly prejudice when his Counsel plead him to the greater of offense(s)...and where the Horry County Drug Enforcement Unit illegally used "Derivative Entrapment" tactic in which the government used a private person acting as an agent of the government to induce and heighten charge, and elevate for sentencing a defendant who is predisposed to commit a lesser offense, but who is unlawfully induced to commit a more serious offense that carries a more severe sentence. Furthered denied the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments infilment.

In addition, the Applicant entered a "Special Plea in Bar" rather than addressing the merits and denying the facts alleged...[an silent implied confession which does not plead guilty, but invokes the Mercy of the Court]. Applicant submits his plea was not an agreement in the sense of a subjective meeting of the mind, but was instead a series of external acts giving the objective semblance of an agreement. For said reasons his plea should be withdrawn.

ATTACHMENTS: NUMBER 10 & 11.

(d). Trial / Plea counsel was ineffective for failing to object to unconstitutional search and seizure, and fail to protect his Fourth and Fourteenth Amendments

rights of the United States Constitution.

The Applicant submits that he was denied effective assistance of Counsel when his Counsel fail to make objections to unreasonable searches and seizure, and consider defenses that could be drawn from existing facts that warrant review by the Court. Whereby on November 16, 2013, the Horry County Drug Enforcement United and Police Officers smash through the Applicant's apartment door conducted an "No-knock Search", without knocking and announcing their presence and purpose before entry...and without a warrant in hand (emphasis added). A no-knock Search Warrant must be issued by a judge's written Order under limited circumstances, as when a prior announcement would lead to the destruction of the objects searched for, or would endanger the safety of the police officer, or another person. A search warrant must be specific as to place to be search and individual(s) sought...and must be delivered to the person in charge of the premises searched at time of such search if practicable, however since no exigent circumstance then existed [except for what they created] there was no justification. In addition the "General Search Warrant" that appear in Record was never served, or delivered to the Applicant in charge of the premises searched...and such a general search warrant is invalid/unconstitutional because it fail to meet the Fourth Amendment's specificity requirements, (see, Money v. Leach, Cite Omitted). Said warrant only correctly describe the building and Cases-Vazqueze's 1996 Honda Accord, yet unspecified places, person, and automobile was searched, that included but not limited to, a Toyota Camry with Florida license plate [REDACTED]; Juliana Santiago-Lopez; retrieve information from GPS device and cellular phones, void warrant required by law. Agent Philips Report mention having stake-out said

premises on numerous occasion, yet no female was seen, or mention in any prior incident.

For said reasons Trial / Plea Counsel was ineffective and fail to exercise customary skills and diligence that a reasonable competent attorney would perform under similar circumstances, denying Applicant guaranteed rights pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

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7980

ENCLOSED MY DCR AND A ENVELOPE. PLEASE
NOTIFY ME WHEN MY PCR APPLICATION HAS BEEN
RECEIVED, THIS IS A VERY IMPORTANT MATTER
THANK YOU FOR YOUR TIME AND ASSISTANCE WITH
THIS MATTER.

RESPECTFULLY SUBMITTED

S

HECTOR VAZQUEZ # 363120
LEE C.I. F4-B # 2289
990 WISAKY HWY
BISHOPVILLE S.C. 29010

On day of 29 Month of OCT 2015

JOHNS COUNTY
2015 OCT -5 PM 2:02
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	
Hector J. Cases Vazquez,	)	Case No. 2015-CP-26-07980
S.C.D.C. No. 363120,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed November 5, 2015 the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted the Applicant at the May 2014 term of General Sessions for trafficking in heroin over 28 grams (2014-GS-26-2135). W. Thomas Floyd, Esquire represented the Applicant.

On February, 23 2015, the Applicant pled guilty to the lesser included offense of trafficking in heroin 4 to 14 grams, first offense. The Honorable Michael G. Nettles sentenced the Applicant to fifteen (15) years imprisonment, based on a negotiated sentence of 15-18 years. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Horry County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel.
 - a. "Failing to challenge substantial Fourth Amendment violation warrantless search and seizure; and failing to protect rights guaranteed him by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution."
 - b. "Ineffective for merely a cursory investigation; coerced [sic] Applicant to plead guilty; failure to withdraw plea when spoken agreement came into discord and plea was not knowingly or intelligently entered."
 - c. "Failed to advise Applicant of the minimum and maximum penalties."
 - d. "Failed to advise / explain certain elementary and essential elements charge(s)."
 - e. "Failed to explain double pleading...or alleging two or more matters in one plea."
 - f. "Failed to explain conspiracy, and elements or degree of trafficking drugs."
 - g. "Failed to motion for Reconsideration of Sentence."
 - h. "Failing to call into question the veracity of Agent Philips Arrest Warrant Affidavit/move to Annual Warrant; and move to Quash Indictment obtained upon flawed information and tampering with evidence; and prejudicing Defendant by deliberately pleading him to a greater charge while dismissing lesser offense, denied due process and Equal Protection of the Law."
 - i. "Failing to object to unconstitutional search and seizure, and fail to protect his Fourth and Fourteenth Amendments rights of the United States Constitution."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant

must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

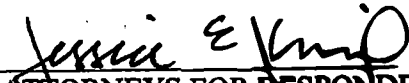
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

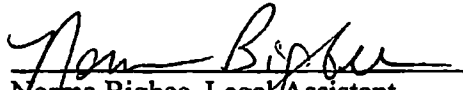
Feb 4, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2015-CP-26-7980
HECTOR J. CASES VAZQUEZ, #363120	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Steven W. Fowler, Esquire
1019 Highway 17 South #222
North Myrtle Beach, SC 29582

DATED this 4th day of February, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO: 2015-CP-26-07980

3 PCR HEARING

4 B E F O R E: The Honorable John C. Hayes
5 November 15, 2016

6
7 HECTOR J.C. VASQUEZ,
8 Petitioner/Applicant,
9 vs.

 ORIGINAL

10 STATE OF SOUTH CAROLINA,
11 Respondent.

12
13 APPEARANCES:

14 Steven Fowler, Esq.
15 For the Petitioner.

16
17 Jessica Kinard, Esq.
18 For the Respondent.
19 Attorney General's Office

20
21 Court Reporter:
22 Natalie Dahl, RPR
23
24
25

I-N-D-E-X

APPLICANT'S WITNESSES

HECTOR J.C. VASQUEZ

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RESPONDENT'S WITNESSES

THOMAS FLOYD, ESQ.

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E-X-H-I-B-I-T-S

EXHIBITS

MARKED & ADMITTED

(NO EXHIBITS MARKED)

P-R-O-C-E-E-D-I-N-G-S

MR. FOWLER: We have an interpreter in this case. Before she calls the case, I just want you aware of that.

THE COURT: Okay. We'll swear the interpreter in. We have the interpreter sworn first.

(MIRIAM BERROUGET, having been sworn as the certified court interpreter, interpreted the following testimony as follows:)

MS. KINARD: May it please the Court, this is Hector Vasquez, Case No. 2015-CP-26-7980. We're before the Court on an application for post-conviction relief filed November 5, 2015. The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to an order of commitment from the Horry County Clerk of Court. The Horry County Grand Jury indicted him May 2014 term for trafficking heroin over 28 grams. He was represented by Thomas Floyd. On February 23, 2015, Applicant pled guilty to the lesser included offense of trafficking in heroin 4 to 14 grams first offense. The Honorable Michael G. Nettles sentenced the Applicant to 15 years in prison based on a negotiated sentencing range of 15 to 18 years. The Applicant did not appeal. He subsequently filed this application for post-conviction relief

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER
1 raising multiple grounds of ineffective assistance of
2 counsel. The State is present and is ready to
3 proceed, and the Applicant is present and represented
4 by Steven Fowler.

5 THE COURT: Mr. Fowler.

6 MR. FOWLER: Yes, Your Honor. I would like to
7 call Hector Vasquez to the stand please.

8 (HECTOR J.C. VASQUEZ, having been duly sworn
9 testified as follows:)

10 DIRECT-EXAMINATION

11 BY MR. FOWLER:

12 Q Please state your name for the Court.

13 A Hector Javier Vasquez.

14 Q Can you spell that?

15 A H-E-C-T-O-R, J-A-V-I-E-R, C-A-S-A-S,
16 V-A-S-Q-U-E-Z.

17 Q Mr. Vasquez, you pled before the Court on
18 February 23, 2015; is that correct?

19 A Yes.

20 Q But when you pled, there were certain things you
21 were unaware of that you brought to our attention
22 today; is that correct?

23 A Yes.

24 Q Who was your attorney at that pleading?

25 A Thomas Floyd.

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER

1 Q In your application for post-conviction relief,
2 you mentioned several things that you brought to the
3 Court's attention today. One of those things was an
4 unreasonable search and seizure in regard to the
5 charges against you?

6 A Yes.

7 Q Are you saying now that -- strike that. Are you
8 saying that you found out about the unreasonable search
9 and seizure after you pled?

10 A Yes.

11 Q Tell us about the facts about unreasonable search
12 and seizure as you understand them to be.

13 A The unreasonable search and seizure was when the
14 police broke down the door of my house with --- they
15 didn't identify themselves at the door. They had guns
16 outside. They arrested me and took us out of the
17 apartment, and they went in and took things apart.

18 Q Are you saying that they did not have the proper
19 documentation to do that?

20 A No, they never showed me anything neither before
21 or after.

22 Q Did you discuss this with your attorney?

23 A No.

24 Q Why not?

25 A We never had a professional meeting.

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER

1 Q What do you mean by that, you never had a
2 professional meeting?

3 A I called his office to make appointments, but I
4 never received an answer, and every time I had an
5 appointment at court, I saw him 20 minutes before I was
6 to appear.

7 Q Did he ever go to the jail to visit you?

8 A Never.

9 Q So you didn't know a lot about the legal aspects
10 of the case, did you?

11 A We never talked about my case.

12 Q Well, when you said you never talked about your
13 case, why did you proceed with a plead on February 23,
14 2015?

15 A Because I was threatened. Because they were
16 going to give the time to my girlfriend if I didn't say
17 I was guilty, and I asked for him to leave the case,
18 and whether I like that or not, he was going to have my
19 case, and I was between a rock and a hard place.

20 Q Let's break that down a little bit. You said you
21 were coerced to plead guilty; is that correct?

22 A Yes.

23 Q Who were you threatened by?

24 MS. KINARD: I'll object to this. Involuntary
25 guilty plea is not an allegation presented by this

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER
1 application.

2 MR. FOWLER: We're not saying it is an
3 involuntary guilty plea just yet, Your Honor. We're
4 trying to get background how this came to pass and why
5 we are here today in general, and it does go to the
6 facts of his application.

7 THE COURT: And it alleges what?

8 MS. KINARD: Only ineffective assistance.

9 MR. FOWLER: In my opinion, that kind of comes
10 under the umbrella of ineffective assistance in terms
11 of not giving him proper information.

12 THE COURT: Overruled. I'll let you proceed.

13 Q (MR. FOWLER) So to reiterate the question, you
14 said that you were threatened to plead guilty?

15 A I was threatened.

16 Q By your attorney, or someone else?

17 A By my attorney.

18 INTERPRETER: Interpreter would like the attorney
19 to say the question again.

20 Q (MR. FOWLER) Why did he threaten you, in your
21 opinion?

22 A Because he never talked with me about my case or
23 showed me paperwork, he just told me that by his
24 experience it would be best for me to say I was guilty.

25 Q So it would take that case off of his desk,

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER

1 wouldn't it?

2 MS. KINARD: Object, argumentive.

3 THE COURT: Sustained.

4 A What do you mean?

5 Q (MR. FOWLER) Let me rephrase that. In your
6 opinion, did he put the proper amount of work into
7 your defense to defend you?

8 A No, sir.

9 Q Is that why you said that he threatened you or
10 told you to plead?

11 A The threat was that if I didn't accept the offer
12 of 15 years,, that they were going to give those 15
13 years to my girlfriend, my fiancée.

14 Q So you were concerned about your fiancée as well,
15 correct?

16 A Yes, because she was pregnant.

17 Q Was she ever named the defendant in this case?

18 A Yes.

19 Q Were her charges dropped?

20 A They gave her two years probation.

21 Q Let me ask you this question. You are saying in
22 your application that there was a discrepancy whether
23 you were charged with a first or second offense; is
24 that correct?

25 A Yes.

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER

1 Q So are you telling me that when you pled, you
2 didn't know whether it was a second or first offense
3 you were pleading to?

4 A I don't know.

5 Q Do you feel like it was your attorney's
6 responsibility to let you know?

7 A Yes.

8 Q And he did not let you know whether it was first
9 offense or second offense you were pleading to?

10 A We didn't talk about the case.

11 Q Let me ask you this question. Was there already
12 an interpreter present when you spoke with your
13 attorney, or not?

14 A Sometimes. On occasions.

15 Q Were there occasions where there was not an
16 interpreter?

17 A No. He tried to talk to me without an
18 interpreter, but I asked him to get an interpreter so I
19 could understand him.

20 Q Was the language issue a problem with you in
21 dealing with your attorney?

22 A He didn't want to listen. We just wanted him to
23 work, but just all the time it was guilty.

24 Q So when you say "just all the time it was
25 guilty," what do you mean by that?

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER

1 A Every time he came to talk to me, it was sign
2 this offer because it was the best option for me.

3 Q So you were not given any options to go to trial;
4 is that correct?

5 A He didn't mention anything about a trial, nor did
6 he offer me other defenses for my guilt.

7 Q And that was each time he met with you, or just
8 one time?

9 A Every time we saw each other.

10 Q How many times was that, roughly?

11 A Three to four times, approximately.

12 Q Were those very long discussions?

13 A If I tell you 20 minutes, that is a lot.

14 Q It is less than 20 minutes?

15 A Yes.

16 Q One of the things you mentioned in your
17 application for post-conviction relief is the
18 exclusionary rule. You are saying by the search
19 warrant, some items should have been excluded from the
20 search of your house, right?

21 A Yes.

22 Q And that was not done, correct?

23 A I never saw a copy of the discovery or any paper
24 or proof.

25 Q So it was not an informed decision where you pled

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER
1 guilty in February 2015; is that correct?

2 INTERPRETER: The interpreter is going to repeat
3 the question.

4 A It was under pressure.

5 Q (MR. FOWLER) And you state in your application
6 it was under duress of circumstances, correct?

7 A Yes.

8 Q So it was not the evidence against you,
9 necessarily, it was also the --

10 MR. FOWLER: Go ahead and state that to the
11 client, please.

12 Q (MR. FOWLER) So it was not the actual facts of
13 the case, but it was a potential charge against your
14 girlfriend, in part, that led you to plead guilty,
15 right?

16 A I did it for her, and also because they didn't
17 show me proof. They didn't show me anything.

18 Q As to your case, right?

19 A As to my case.

20 Q Did you ever talk about removing your attorney,
21 Mr. Floyd?

22 A Yes.

23 Q How did you go about doing that?

24 A What do you mean, like if he talked to me?

25 Q Did you ever ask him -- did you ever discuss with

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER

1 him replacing him as your attorney in this case?

2 A Yes.

3 Q Did you tell him personally, or did you apply to
4 the court? How did you want to remove him?

5 A In person. In a room of the court, a couple
6 minutes before seeing the judge.

7 Q Why did you do that?

8 A Because I felt all of my Constitutional rights
9 had been violated.

10 Q But, yet, you went forward with him as your
11 attorney, correct?

12 A I didn't have another option. It was either
13 continue with him and go to trial, and my girlfriend
14 was in the middle.

15 Q But you did want to replace him, correct?

16 A Yes.

17 Q And you did indicate that to him, correct?

18 A Yes.

19 Q You mentioned several more legal terms in your
20 memorandum, such as there was no probable cause, Page
21 5? The phrasing may have been wrong, application.
22 Were these things you learned after you pled?

23 A Yes.

24 Q How did you -- strike that. Why did you learn
25 about these things after you pled?

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER

1 A Going to the legal library of the institution and
2 from other people.

3 Q So you had concern about the legal aspects of
4 your case, correct?

5 A Yes.

6 Q Did you feel you were short changed or had a bad
7 experience after you pled? Do you feel like you did
8 the wrong thing?

9 A I'm sorry?

10 Q After you pled, did you feel like you did the
11 wrong thing?

12 A Yes.

13 Q Why?

14 A Because after studying and reading and
15 researching the law and reading the rights of the
16 Constitution.

17 Q But your lawyer did not do that for you before
18 you pled, correct?

19 A Never did he do it.

20 Q In your application, you mentioned that he never
21 advised you of the minimum or maximum penalties of the
22 crime you pled to, correct?

23 A He never explained to me about the minimum or
24 maximum penalties.

25 MR. FOWLER: May I approach?

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER

1 THE COURT: Sure.

2 MS. KINARD: Can I see what you are presenting?

3 Q (MR. FOWLER) On Page 6 of your application, you
4 mention several things -- Page 6 and 7 -- you
5 mentioned several legal elements that he did not go
6 over with you; is that correct?

7 A Yes.

8 Q And as you mentioned, it includes the minimum and
9 maximum penalties for the charge?

10 A Yes.

11 Q This includes the elementary and essential
12 elements of the charges?

13 A Yes.

14 Q Explains the double pleading?

15 A Yes.

16 Q And he did not explain conspiracy, the elements
17 or degree of trafficking drugs, right?

18 A Yes.

19 Q And there was no motion for reconsideration of
20 the sentence, correct?

21 A True.

22 Q There was a mention in your application about a
23 dark color sedan. My understanding is that could have
24 caused some kind of doubt, that it was not your dark
25 color sedan; could you explain that to the Court? It

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER
1 is on Page 7 of the application.

2 MS. KINARD: I don't see how this is relevant to
3 ineffective assistance of counsel.

4 MR. FOWLER: I think it shows there was a
5 situation where there might have been another person,
6 a defendant, that could have been named. It is in the
7 application. The Attorney General had plenty of time
8 to look at it, Your Honor.

9 THE COURT: Page 7?

10 MR. FOWLER: Yes, sir, the typewritten section.

11 THE COURT: Motion to reconsideration for
12 sentence?

13 MR. FOWLER: Yes, sir. At the top. Where I'm
14 reading is, Culpability of the defendants. Within the
15 four corners of the application. I'm just asking
16 about it.

17 THE COURT: Overrule. Go ahead.

18 Q (MR. FOWLER) Going back, just to reiterate. On
19 Page 7 of your application, the typewritten section,
20 you mentioned that there was --

21 MR. FOWLER: If I may approach, Your Honor?

22 Q You mentioned culpability as a defense, correct?

23 A Yes.

24 Q And it talks about a dark color sedan; is that
25 correct?

HECTOR J.C. VASQUEZ- DIRECT EXAMINATION MR. FOWLER

1 A Yes.

2 Q Can you explain about this paragraph and how it
3 relates to your representation -- his representation of
4 you?

5 A Because they said they saw a Hispanic man getting
6 out of a dark color sedan.

7 Q And do you feel there could have been confusion
8 why that was you or someone else?

9 A Yes.

10 Q Was that ever -- did you and your attorney ever
11 discuss that as a defense in your case?

12 A Never.

13 Q Did he provide you any information about that
14 brown color sedan -- dark color sedan, excuse me?

15 A We didn't talk about the case.

16 Q So you are basically saying you didn't talk about
17 the case with your attorney much at all?

18 A We never talked about it.

19 Q And that includes the arrest warrant, correct?

20 A Yes.

21 Q You didn't discuss any potential clause with
22 that, correct?

23 A Never.

24 Q And you never discussed any evidentiary
25 challenges to the weight of the potential drugs in this

HECTOR J.C. VASQUEZ - CROSS-EXAMINATION - MS. KINARD

1 case, correct?

2 A We never talked. But if my attorney and I
3 discussed that question?

4 Q Did you discuss that question?

5 A No, because every time I went without knowing.

6 Q Do you feel like your attorney did a good job for
7 you?

8 A No.

9 Q Do you think -- strike that. Do you think that
10 if he had done a better job, you would not have pled
11 guilty?

12 A Yes.

13 Q Do you think that because of his alleged lack of
14 performance is why you are here today and you pled
15 guilty?

16 A Yes.

17 MR. FOWLER: Nothing further, Your Honor.

18 THE COURT: Cross-examination.

19 MS. KINARD: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. KINARD:

22 Q Mr. Vasquez, your plea, do you remember the
23 occurrences? Do you remember the questions you were
24 asked?

25 A Yes.

HECTOR J.C. VASQUEZ - CROSS-EXAMINATION - MS. KINARD

1 Q Do you remember waiving your Constitutional
2 rights?

3 A Under threat.

4 Q Do you remember testifying that you were
5 satisfied with your attorney?

6 A Under pressure.

7 Q Did you tell the judge you were under pressure?

8 A No, because I don't know anything about the laws.

9 Q Did you ask the judge for additional time to talk
10 to your lawyer?

11 INTERPRETER: Interpreter is going to ask the
12 witness to restate what he said.

13 (Interpreter speaks to witness.)

14 INTERPRETER: Interpreter would like to ask the
15 attorney to say the question again.

16 Q (MS. KINARD) Did you ask the judge for more time
17 to speak to your attorney?

18 A No, because I asked my attorney for options and
19 he told me -- and he told me that today was the final
20 day, that if I didn't sign the paper, we would go to
21 trial and I would get 40 years.

22 Q Did you know that you were pleading to a sentence
23 of 15 to 18 years?

24 A Under pressure and negotiations --

25 INTERPRETER: Interpreter would like to ask for

HECTOR J.C. VASQUEZ - CROSS-EXAMINATION - MS. KINARD

1 clarification of a term.

2 Interpreter speaks to witness.)

3 A I knew about the sentence because that is what
4 they were offering me if I declared myself guilty, so
5 that they could get my girlfriend off of the case.

6 Q So a big factor in your pleading guilty was to
7 help your girlfriend?

8 A She was pregnant and I know it wouldn't matter to
9 them to convict her while she is innocent and pregnant.

10 Q Was that the main reason you plead guilty?

11 A No, because I wasn't represented like I should
12 have been.

13 Q Did you tell the judge you wanted a different
14 lawyer?

15 A No, because I wasn't given the option and it was
16 the day, and I was under a lot of pressure, and that's
17 it. Yeah.

18 Q But you realize you were pleading guilty that
19 day?

20 A Because the deal was they would give me 15 years
21 and release my girlfriend.

22 MS. KINARD: Nothing further. Thank you.

23 THE COURT: Redirect?
24
25

HECTOR J.C. VASQUEZ - REDIRECT EXAMINATION - MR. FOWLER

1 REDIRECT-EXAMINATION

2 BY MR. FOWLER:

3 Q You are not a lawyer, are you?

4 A No.

5 Q So you don't understand the specific procedures
6 of a courtroom as we have here today without relying on
7 a lawyer, do you?

8 MS. KINARD: I'll object. That is outside of
9 cross.

10 MR. FOWLER: I think it is exactly in the scope
11 of cross. She asked specific questions about did he
12 want more time, did he tell the judge certain things.
13 I mean, these are only specialized things that only an
14 attorney or person with legal knowledge would ask, and
15 she's holding him to a higher standard than an average
16 layperson. She raised the issues about did you ask --

17 THE COURT: Overrule. Go ahead.

18 MR. FOWLER: Thank you, Your Honor.

19 Q (MR. FOWLER) Restating my case, you did not know
20 the specifics of courtroom procedures without relying
21 on an attorney, correct?

22 A True.

23 Q So you relied on your attorney's knowledge in
24 this case, correct?

25 A Yes. Because that is the person that is supposed

HECTOR J.C. VASQUEZ - REDIRECT EXAMINATION - MR. FOWLER
1 to represent me, no?

2 Q Right. And were you under the impression that
3 your attorney would bring up any issues that were
4 relevant to your case?

5 A Yes.

6 Q And that is including asking for more time or
7 asking for a new attorney?

8 A Yes.

9 Q She stated you were trying to help your
10 girlfriend, but is that just one part of -- strike
11 that. You are saying that you did not know how helping
12 your girlfriend related to the lack of information that
13 was given to you by your attorney on your legal
14 matters, correct?

15 MS. KINARD: Object, misstating prior testimony.
16 I don't believe that was testified to.

17 MR. FOWLER: She asked about helping the
18 girlfriend, Your Honor, and I'm trying to clarify that
19 he perhaps did not understand how all of these things
20 interacted.

21 THE COURT: Overruled.

22 A Repeat the question, please.

23 Q (MR. FOWLER) You relied on your attorney to
24 assist you in your legal presentation to the Court on
25 the day you pled, correct, how you pled?

HECTOR J.C. VASQUEZ - RECROSS-EXAMINATION - MS. KINARD

1 A Yes.

2 Q And you relied on him to incorporate both
3 assisting your girlfriend, and in the other legal
4 aspects of your case; is that correct?

5 A Yes.

6 Q And you don't speak English, do you?

7 A No.

8 Q And you relied on an interpreter here today,
9 correct?

10 A Yes.

11 Q How long have you been in the United States?

12 A Five years. Approximately five years.

13 Q How old are you?

14 MS. KINARD: Outside the scope.

15 A 25.

16 Q (MR. FOWLER) I wanted to clarify.

17 THE COURT: It is outside of the scope of cross.

18 MR. FOWLER: Strike that, Your Honor. No further
19 questions.

20 RECROSS-EXAMINATION

21 BY MS. KINARD:

22 Q You just testified that you were under the
23 impression that it was your lawyer's job to do things
24 like ask for more time or ask for a new attorney; is
25 that correct?

HECTOR J.C. VASQUEZ - RECROSS-EXAMINATION - MS. KINARD

1 A I asked him, but since he was negative and didn't
2 want to work on my case, I couldn't do anything. I was
3 caught between a rock and a hard place.

4 Q But you did testify that the judge asked you
5 those questions directly?

6 A That the judge asked me, or the attorney?

7 Q The judge.

8 A Ask me the question? I thought it was the
9 lawyer.

10 Q Do you recall the judge asking you directly if
11 you needed more time?

12 A No.

13 Q You also just testified that you trusted your
14 attorney to protect your girlfriend as well as help
15 you; is that correct?

16 INTERPRETER: Interpreter would like to ask you
17 to restate.

18 Q (MS. KINARD) Did you just testify that you
19 trusted your attorney to help protect your girlfriend
20 as well as help you?

21 A Yes.

22 Q Did Mr. Floyd represent your girlfriend?

23 A No.

24 MS. KINARD: Thank you. No further questions.

25 Also, Your Honor, just for purposes of the record, I'm

MOTION - MS. KINARD

1 pointing to Page 9 where the judge asked Mr. Vasquez
2 if he needed more time.

3 THE COURT: I read the transcript. Thank you.
4 You may step down.

5 Call your next witness.

6 MR. FOWLER: Nothing further.

7 THE COURT: State.

8 MS. KINARD: We move for a non-suit. I don't
9 believe that Mr. Fowler represented anything to the
10 Court that would satisfy the allegations of
11 ineffective assistance of counsel. I believe that
12 some information has been provided directly from the
13 Applicant, that he pled guilty to help his girlfriend,
14 and that was a large portion of his deciding factor.
15 I don't believe the burden has been carried by the
16 Applicant at this point.

17 MR. FOWLER: Your Honor, the Attorney General is
18 inserting the word "help" instead of "informed." My
19 understanding is that he was relying on his attorney
20 to inform him of what needed to be done in his case.
21 He never said -- my questioning to him was not about
22 helping the girlfriend, it was from informing him
23 about the different aspects of the case, and I think
24 that is being misrepresented at this point.

25 This case has come before the Court today. We

MOTION - MS. KINARD

1 have gone through the application of post-conviction
2 relief and thoroughly talked about the various issues
3 where the prior attorney did not represent him on
4 these issues, did not go over these things mentioned
5 in the application, including the unreasonable search
6 and seizure, the dark sedan mentioned on Page 9, or
7 thereabouts, arrest warrants, things like that. We
8 have gone through very thoroughly, in my opinion, and
9 we showed that his former attorney did not go over
10 these things with him, not once, but several times.
11 It appears from my interpretation of it that this was
12 just kind of a -- this is my personal opinion, but it
13 is kind of a quick case with no in-depth discussion
14 between my client and his former attorney.

15 So I think we have met our burden and gone
16 through the application thoroughly showing that there
17 are numerous flaws in the reputation by Mr. Floyd of
18 my client in the previous case.

19 THE COURT: Didn't one of the attorneys advise
20 the Court that while it may appear that this was a
21 brief put-together, last-moment plea, that it was not
22 the truth? Seems like I read it in the transcript.

23 MR. FOWLER: What was your question again?

24 THE COURT: It was not stated very well. Didn't
25 one of the attorneys advise the courts -- you all read

THOMAS FLOYD - DIRECT EXAMINATION - MS. KINARD

1 this -- it might appear as though it was a last-minute
2 deal, put-together, but it wasn't the truth?

3 MS. KINARD: I'm not recalling that, but I'm
4 trying to find it. I'm more than happy to present
5 Mr. Floyd. It is just a motion in limine regarding
6 the Applicant's case.

7 MR. FOWLER: I don't think that my client ever
8 testified to that, Your Honor. I think it is a
9 standard transcript.

10 THE COURT: Let's hear from the attorney.

11 MS. KINARD: Thank you, Your Honor. State calls
12 Tom Floyd.

13 (THOMAS FLOYD, having been duly sworn,
14 testified as follows:)

15 THE COURT: The statements I was referring to is
16 on Page 12. I don't know that it is significant.

17 MR. FOWLER: What line?

18 THE COURT: Begins on 9.

19 DIRECT-EXAMINATION

20 BY MS. KINARD:

21 Q I would like to go over brief background
22 information. How long have you been practicing
23 criminal law?

24 A Since 1989.

25 Q How did you become involved in this matter?

THOMAS FLOYD - DIRECT EXAMINATION - MS. KINARD

1 A I was appointed.

2 Q And you are with the Public Defender's Office?

3 A Yes, ma'am.

4 Q Did you file a Rule 5 or Brady motion, was one
5 filed by your office?

6 A One was filed by my office.

7 Q Did you receive discovery?

8 A Yes, ma'am.

9 Q Did it seem complete, based on your knowledge?

10 A Yes.

11 Q Did you review all of that discovery with the
12 Applicant?

13 A I did at some point. There was a couple of
14 meetings that were scheduled in my office that he
15 apparently didn't show up for, and I know that we met
16 at the courthouse one time where an offer was
17 discussed, and he was present for that. I know we also
18 had what they -- they called it an arraignment, but it
19 is a formal plea rejection, and I know that I would
20 have gone over it with him then, also.

21 Q And that is going over the -- the discovery as
22 well as any plea offers?

23 A Yes, ma'am.

24 Q Did he seem to understand everything that you
25 talked about?

THOMAS FLOYD - DIRECT EXAMINATION - MS. KINARD

1 A Yes, ma'am.

2 Q Did you use an interpreter during these meetings?

3 A I did on the arraignment, or plea rejection. I
4 don't think there was an interpreter when we were
5 discussing the plea offer.

6 Q Did he seem to understand everything regardless
7 of that?

8 A He understood.

9 Q Did you discuss the elements of the charges
10 against him?

11 A Yes, ma'am. There is actually four charges.

12 Q Can you describe how we got down to the one plea?

13 A He only pled guilty to one, and that was in
14 exchange for a plea. That was with a little bit of
15 help from the Court. One of the charges was
16 trafficking heroin over a hundred grams. He was
17 looking at minimum mandatory of 25 to 30. I think the
18 court personnel helped us get a plea.

19 Q Prior to this, in any of your meetings, did you
20 discuss any of the defenses the Applicant may have?

21 A I didn't see a defense.

22 Q Did he tell you his version of the facts?

23 A Not really. He more listened when I talked.

24 Q What do you mean?

25 A To kind of tell you about the case --

THOMAS FLOYD - DIRECT EXAMINATION - MS. KINARD

1 Q Please do.

2 A Hector was involved, and Hector's father was
3 involved. Hector's father was apparently the person
4 that went and got the heroin. Hector was apparently
5 the one that met with the confidential informant. They
6 had two trafficking weight buys and possession with
7 intent to distribute weight buy. Based on that, the
8 detectives got a search warrant. They then were going
9 to do another buy bust, but Hector's father didn't have
10 as much heroin as they wanted to buy, so Hector's
11 father had to go to Florida to get the heroin.

12 MR. FOWLER: Objection. I don't think it relates
13 to how he interacted with his client on these matters,
14 it is just general background information. I prefer
15 the testimony to be about the specific communications
16 between his client and himself.

17 THE COURT: Overrule. I'll permit it.

18 A They got a search warrant. They were actually
19 watching Hector's apartment. They were sitting there.
20 The CI was on the phone with Hector's father. When the
21 father pulled in and got the brown paper bag out of the
22 car -- and I believe I'm getting this right -- went
23 into the apartment, they scrapped their plans to do
24 another buy and executed a search warrant. They found
25 118 grams of heroin, something like that.

THOMAS FLOYD - DIRECT EXAMINATION - MS. KINARD

1 Q (MS. KINARD) Did the Applicant ever provide any
2 facts that would lead to help you find a way to get
3 him a quilty of this charge?

4 A I didn't see any avenue.

5 Q Did you ever consider challenging the validity of
6 the search warrant?

7 A It didn't seem to have any problems with it. It
8 seemed to be done right all the way down to the term
9 being timely filed.

10 Q Did he provide you leads or witnesses to
11 investigate?

12 A No, ma'am.

13 Q And you don't seek any on your own?

14 A No, ma'am.

15 Q Did you review his Constitutional rights with
16 him?

17 A Yes, ma'am.

18 Q And he seemed to understand those?

19 A Yes, ma'am.

20 Q And he seemed to understand what he was entering
21 into the guilty plea?

22 A Yes, ma'am.

23 Q And that was a negotiated range of 15 to 18
24 years?

25 A I believe that is correct.

THOMAS FLOYD - DIRECT EXAMINATION - MS. KINARD

1 Q And this was a result of negotiations on his
2 behalf you had with the State?

3 A Yes, ma'am.

4 Q You believe this was a fair offer?

5 A I guess so. I wanted an offer better than that
6 when I was originally talking with the State, but then
7 they rejected the plea offer, which was, I believe, 12
8 to 15 years. We got to the courtroom going to trial
9 for a mandatory 25, and when you put it in that light,
10 then, yes, it was fair.

11 Q So to make sure I understand. The Applicant
12 rejected a 12- to 15-year offer?

13 A Yes, ma'am.

14 Q And you never really were planning on going to
15 trial; is that correct?

16 A I was ready if we wanted to.

17 Q And it was, of course, the Applicant's call to
18 make whether he pled or went to trial?

19 A That's correct.

20 Q And you supported him in his decision to plead?

21 A Yes, ma'am.

22 Q Briefly, did you advise him of the minimum or
23 maximum penalties that the charge carried?

24 A Yes, ma'am.

25 Q And he knew the classifications, as far as how

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 much time he would serve and --

2 A Yes.

3 Q Did he talk to you about trying to protect his
4 girlfriend in terms of the charges she faced?

5 A I don't recall that being the conversation. I
6 remember the conversation that they weren't going to
7 try to put her in prison, but we did discuss his
8 girlfriend's status.

9 Q So the end result of that, tell me if I'm wrong,
10 was that you knew he wanted to protect her in --

11 MR. FOWLER: Objection, leading.

12 THE COURT: I'll sustain the objection.

13 Q (MS. KINARD) What was your understanding of
14 Mr. Vasquez' intent to try to help his girlfriend?

15 A I didn't want her to go to prison.

16 Q That was his main objective?

17 A I believe so.

18 MS. KINARD: Nothing further at this time.

19 THE COURT: Cross-examination?

20 CROSS-EXAMINATION

21 BY MR. FOWLER:

22 Q Good afternoon, Mr. Floyd.

23 A Good afternoon.

24 Q Tell me about the plea offer discussion you had
25 with Mr. Vasquez. You said you did not have an

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 interpreter on the plea offer discussion, tell me about
2 that meeting.

3 A I think I just told him that the plea offer was
4 12 to 15 years, and I actually wrote that we had a
5 come-back sheet for him, and I actually wrote out there
6 in numbers 12 dash -- 12 dash 15 years.

7 Q You said -- I guess my question is this. You
8 said you met with him, and even if you wrote it out,
9 you said you had a meeting with him; is that correct?

10 A Yes.

11 Q Where was the meeting?

12 A Actually, I think we met in my office one time,
13 but my notes do not reflect that. But we would have
14 definitely met with an interpreter on.....

15 (A brief pause in the proceedings.)

16 Q (MR. FOWLER) Let me ask you my question again,
17 and I'm not being disrespectful, but you said earlier
18 on direct examination that you did not have an
19 interpreter on the plea offer; is that still your
20 testimony?

21 A Yes. There never -- I don't think I ever seen an
22 interpreter there. His girlfriend did speak -- because
23 I know a couple of times she was there that we talked.

24 Q But did you bring her in specifically to
25 interpret, or not? I mean, you didn't have a licensed

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 interpreter with you on that plea offer discussion, did
2 you?

3 A Not on that. I would have had one there on
4 August 25th when we went over what they referred to
5 -- actually, Mercedes was there, the interpreter, so I
6 would have had one there that day.

7 Q You said -- I'm trying to be clear here. You
8 said when you discussed the plea offer, you did not
9 have an interpreter there?

10 A That is what I said.

11 Q And then you said he understood what you were
12 talking about. I'm kind of confused how someone who
13 doesn't speak English can understand when there is no
14 interpreter present. So you are saying there was --
15 you contend there was no interpreter when you discussed
16 the plea offer with him, correct?

17 A That day there was not a licensed interpreter
18 there.

19 Q Do you think -- you understood he did not speak
20 English?

21 A He speaks a little bit.

22 Q Well, that is not -- I speak a little Spanish,
23 but only a few words. The thing about it is you said
24 he understood even though there was not an interpreter
25 -- licensed interpreter? How do you know he

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 understood?

2 A It was my impression he understood.

3 Q Even though he does not speak English fluently?

4 A I can't answer that question.

5 Q So in this important negotiation about the plea
6 offer, you didn't have an interpreter -- licensed
7 interpreter there, correct?

8 A Not that day. I would have on August 25, and
9 that was the day he signed the come-back sheet to come
10 back on, so I'm guessing he understood what we were
11 talking about signing the come-back sheet.

12 Q But you don't know?

13 A Since he showed up on August 25th, obviously he
14 understood what I was saying to him.

15 Q Well, showing up at a court date is different
16 than understanding the legal technicalities of what is
17 going on on that court date, correct?

18 A Well, a number is a number.

19 Q But there was activity going on on that date,
20 correct, about the legal status of his case, correct?

21 A There was a plea offer.

22 Q When you said earlier the court personnel helped
23 get the plea, what do you mean by that?

24 A The judge said 25 years is a lot of time.

25 Q So the judge told him that?

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 A Told the Solicitor that, and the Solicitor and us
2 kind of got in a room and started talking about plea
3 negotiations.

4 Q You said you didn't see a defense on my client's
5 situation?

6 A That is correct.

7 Q You didn't see a defense in total for him, in any
8 avenue on these matters?

9 A I didn't see a viable defense.

10 Q You were in the courtroom when we went over the
11 PCR application with my client?

12 A I think I was.

13 Q We talked about the unreasonable search and
14 seizure, correct?

15 A Yes.

16 Q Go ahead and answer, I apologize.

17 A I was going to answer, yes, sir.

18 Q And he raised several issues on his direct
19 examination about the potential search warrant and how
20 it was not specific to the premises in question, which
21 is detailed on Pages 1 through 3 of his application.
22 So you didn't see an issue with an unreasonable search
23 and seizure as a defense?

24 A I didn't see a problem with the search warrant.

25 Q Why not?

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 A Because it is either right or wrong. I didn't
2 see anywhere where they messed up in terms of the
3 search warrant.

4 Q Even in terms of delivering to the person in
5 charge on the premises in terms of the search?

6 A They signed off that they did.

7 Q Okay.

8 A And I can tell you from trying these cases that
9 is how they would have testified. Now, did they
10 actually do that? I can't say.

11 Q In terms of this being a first or second offense,
12 which one was it?

13 A First offense.

14 Q Did he plead to that, or second?

15 A First offense.

16 Q When did you go over the difference of first and
17 second with my client?

18 A I don't think I ever did. I don't think it was
19 ever an issue about it being a second offense.

20 Q You said earlier on direct examination that he
21 listened when you talked; is that correct? What do you
22 mean by that statement?

23 A It appeared to me that he was listening to me
24 when I talked.

25 Q Was that with and without an interpreter?

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 A Yes.

2 Q But it is conceivable that he could listen and
3 not truly understand, correct?

4 A I guess that is correct.

5 Q Is there a difference between listening and
6 understanding?

7 A That is correct.

8 Q In terms of the duress -- strike that. In terms
9 of dealing with the girlfriend in this case, you didn't
10 represent her, did you?

11 A No. According to my notes, Bill Diggs was
12 appointed to represent her.

13 Q As a good potential father, my client did inquire
14 about how she related to this case; is that correct?

15 A No.

16 Q So he never mentioned the girlfriend at all?

17 A Other than she wasn't involved in anything.

18 Q On the warrant, was there -- this may go over
19 what we discussed earlier, but are you saying there was
20 probable cause for the warrant that caused this issue?

21 A The search warrant?

22 Q Yes.

23 A I felt there was.

24 Q Let me ask you this question. Was there any
25 discussions about you advising him he could face a

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 40-year sentence without parole, where he would
2 actually only face a 7- to 25-year sentence on this?

3 A I think that I did mention that, but it was when
4 we were dealing with trafficking over a hundred grams.

5 Q How does that relate to what he pled to?

6 A He pled to trafficking 4 to 14 grams.

7 Q So you did advise that at one point he could face
8 40 years without parole?

9 A I believe I did.

10 Q Earlier, on direct examination, there was a
11 discussion about a dark color sedan and potential
12 confusion with another person other than my client here
13 today; are you familiar with that situation?

14 A I know there was two cars involved.

15 Q Tell me about that.

16 A I believe there were two different cars.

17 Q Was there any confusion about someone else, other
18 than my client, being involved or identified in this
19 case?

20 A Not that I recall.

21 Q Okay. Did you make any evidentiary challenges to
22 the possession charge of 28 grams or more of heroin,
23 that he didn't have any control or dominion over it?

24 A No, I didn't.

25 MR. FOWLER: If I may have a moment, Your Honor?

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 THE COURT: All right, sir.

2 Q (MR. FOWLER) What was the exact weight of the
3 drugs that he was being charged with? Was there a
4 discrepancy with what he was originally charged with
5 and what he actually pled to, or a change or some
6 change of number value?

7 A According to the notes that I've got here,
8 without going through and trying to find the drug
9 reports, on November 6th there were 4.2 grams sold to
10 the informant. On November 12, 14.8 grams sold to an
11 informant. November 16 is when they had the brown bag
12 and had 117.7 grams.

13 Q What did he plead to?

14 A Pled to trafficking 4 to 14 grams, first offense.

15 Q And you went over that November 16 -- I think you
16 said 117 grams, did you give him options if he was
17 charged with that, or how did that relate?

18 A He was charged with that. That is what we were
19 going to go to trial on.

20 Q That was dismissed?

21 A Null prosed as a result of the guilty plea, that
22 charge and other charges. There were also 255.7 grams
23 of marijuana.

24 Q Was that dropped?

25 A That was dismissed.

THOMAS FLOYD - CROSS-EXAMINATION - MR. FOWLER

1 Q There was a discrepancy with what he was charged
2 with and what he pled to, correct?

3 A Well, I would have to look at the dates, because
4 he pled trafficking 4 to 14 grams, and one of the sales
5 is 4.2 grams.

6 Q So do you think that was clearly shown to him in
7 terms of how much he was actually pleading to when he
8 did plead before the Court? You threw out a lot of
9 numbers there.

10 A Sorry. I was trying to answer your question.

11 Q I appreciate it, thank you. But was there a
12 clear delineation of if you are charged with this
13 amount, this number, you would get this amount of years
14 potentially? Was it broken down?

15 A Absolutely.

16 Q Did you go through an interpreter -- licensed
17 interpreter?

18 A Absolutely. That was the day of the guilty plea.
19 We were drawing a jury.

20 Q Let me ask you this question. He did mention
21 that he wanted to replace you as his attorney, correct?
22 Tell me about that situation.

23 A He never said that to me. Today is the first
24 time I ever heard anything about it.

25 Q So even though -- you never heard about that

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1 before in terms of replacing you?

2 A Excuse me, I think he did say that the day that
3 we were getting ready to try the case.

4 Q What did he say to you?

5 A Something to the effect of I want another
6 attorney, and I think I said we're getting ready to try
7 your case.

8 Q Did you mention that to the judge that he
9 mentioned that he wanted a new attorney?

10 A I don't believe I did.

11 MR. FOWLER: Nothing else, Your Honor.

12 MS. KINARD: No redirect. State rests.

13 THE COURT: Anything in reply?

14 MR. FOWLER: Your Honor, Mr. Floyd mentioned on
15 direct examination by the State that there was
16 discussions with my client, without a licensed
17 interpreter. Obviously, here today we have a licensed
18 interpreter. Obviously, they were important charges
19 that he pled to. English is not his first language,
20 and he did not have the benefit of a licensed
21 interpreter to explain this to him. We walked through
22 the application, I think, thoroughly. There are
23 discrepancies in terms of -- apparently the arrest
24 warrant, search and seizure. None of those things
25 were mentioned in discussion with his client,

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1 according do my -- with his attorney, according to my
2 client's testimony.

3 Mr. Floyd said a few moments ago that my client
4 indicated to him that he wanted a new attorney, and I
5 think Mr. Floyd said on the day of the plea. Mr. Floyd
6 did not mention it to the Court at all in the
7 transcript about wanting a new attorney, therefore --
8 and my client indicated he was not familiar with the
9 legal processes of court and was relying on the
10 knowledge and expertise of his attorney to guide him
11 through that.

12 So it is almost -- there is a situation where my
13 client did not understand the charges against him, his
14 attorney did not use interpreters on a regular
15 basis -- licensed interpreters on a regular basis, and
16 my client -- Mr. Floyd said he listened when I talked,
17 but as Mr. Floyd said on the stand, there is a
18 difference between understanding and comprehending, in
19 my words, and listening. I can listen to Germans talk
20 all day, but I don't understand it if they are
21 speaking in their native language.

22 So, basically, what I have is a situation where I
23 have a client whose English is not his first language.
24 He relied on the expertise of his attorney, Your
25 Honor. He did, to his great credit, in my opinion, in

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1 his application mention several things that are very
2 astute in this case, including unreasonable search and
3 seizure, the arrest warrant and lack thereof,
4 exclusionary rule, and also outside of the
5 application, I believe, we talked about him wanting
6 his attorney to leave, and he did not, nor did
7 Mr. Floyd mention that to the Court that day. I think
8 that would be an important thing no note that if my
9 client did not want me continuing on as his attorney,
10 I would bring it to the Court's attention and let the
11 Court decide or tell me what to do or give my client
12 various options.

13 So I think it makes for a substantive case, and I
14 think we have proven our burden of proof in this
15 matter and we also think that we met the Strickland
16 standard in terms of attorney's negligence, in terms
17 of not using an interpreter and various other things
18 that he says. He did not see a defense. He did not
19 go -- by his own admission on the stand today -- a
20 very vigorous search for a defense opportunity for my
21 client, and but for that alleged negligence, my client
22 would not be sitting here today. He would be in a
23 different situation. So we ask that you rule in our
24 favor, and thank you for your attention.

25 THE COURT: Thank you. Madam Attorney General.

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1 MS. KINARD: Thank you, Your Honor. I think it
2 is clear by the presentation of the testimony that
3 occurred here today that the Applicant has not carried
4 his burden of proof as far as proving the Strickland
5 test. When it comes to ineffective assistance of
6 counsel, as Your Honor knows, first there must be
7 proof of a deficient performance, and that simply
8 hasn't been shown today. Mr. Floyd took all the
9 information available, reviewed it with his client and
10 informed his client he did not see any potential
11 defenses. As he described the situation, there is a
12 drug buy with a confidential informant, the search
13 warrant was executed properly, and that seemed to be
14 properly issued. In the first place, Mr. Floyd has
15 experience with law enforcement in this county, and he
16 testified that he is aware when a search warrant
17 appears as this, there is -- pretty much -- that you
18 won't get testimony different from the warrant on its
19 face. He used his experience and knowledge of the
20 case and the facts provided to clearly weigh the
21 evidence, and advised his client to plead guilty. His
22 client took this advice in order to save himself the
23 risk of getting ever more time in prison, based on the
24 potential time that his other charges carried, and he
25 ended up getting a sentence of 15 years, the lower end

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1 of the negotiated range and far less than the other
2 trafficking charges could have carried.

3 Some information has been presented regarding
4 potential evidence that could have been presented at
5 trial; however, by pleading guilty Mr. Vasquez waived
6 the right to challenge all of this evidence, and
7 Mr. Vasquez further expressed his desire and choice to
8 plead guilty. He did that many times during testimony
9 today, whether it was to take the lesser of two evils,
10 so to speak, or protecting his girlfriend, both which
11 are valid reasons to plead guilty.

12 Because of all of this evidence and testimony,
13 the State doesn't believe that the Applicant presented
14 a case worthy of meeting the Strickland standards as
15 there is no deficient performance presented, and no
16 prejudice caused to Mr. Vasquez; therefore, the State
17 requested that this Court deny any relief that
18 Mr. Vasquez is seeking. Thank you.

19 THE COURT: I find the Applicant failed to meet
20 his burden of proof in this case. I agree with the
21 position stated by the Attorney General, and ask if
22 you will prepare an order in 30 days. Thank you.

23 (Whereupon, the proceedings concluded.)
24
25

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CERTIFICATE OF REPORTER

State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 15th day of November, 2016.

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

January 21, 2018



Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	
Hector J. Cases Vazquez,	)	Case No.: 2015-CP-26-07980
S.C.D.C. No. 363120,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

2016-11-9 PM 12:54

This matter comes before the Court by way of an application for post-conviction relief filed by Hector J. Cases Vazquez ("Applicant") on November 5, 2015. Respondent made its return on or about February 4, 2016. The Court convened an evidentiary hearing into the matter on Tuesday, November 15, 2016, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Jessica E. Kinard, Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, W. Thomas Floyd, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2014 term of the Horry County Grand Jury for trafficking in heroin, 28 grams or more (2014-GS-26-

02135). W. Thomas Floyd, Esq. represented Applicant, and David P. Caraker, Jr., Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 23, 2015, Applicant pled guilty to the lesser-included offense of trafficking in heroin, between 4 and 14 grams. Pursuant to a range of 15 to 18 years negotiated between the Applicant and the State, the Honorable Michael G. Nettles sentenced Applicant to imprisonment for a term of 15 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective assistance of counsel:

- a. "Failing to challenge substantial Fourth Amendment violation warrantless search and seizure; and failing to protect rights guaranteed him by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution."
- b. "Ineffective for merely a cursory investigation; coerced Applicant to plead guilty; failure to withdraw plea when spoken agreement came into discord and plea was not knowingly or intelligently entered."
 - i. "Failed to advise Applicant of the minimum and maximum penalties."
 - ii. "Failed to advise / explain certain elementary and essential elements charge(s)."
 - iii. "Failed to explain double pleading . . . or alleging two or more matters in one plea."
 - iv. "Failed to explain conspiracy, and elements or degree of trafficking drugs."
 - v. "Failed to motion for Reconsideration of Sentence."
- c. "Failing to call into question the veracity of Agent Philips Arrest Warrant Affidavit/move to Annual Warrant; and move to Quash Indictment obtained upon flawed information and tampering with evidence; and prejudicing Defendant by deliberately pleading him to a greater charge while dismissing lesser offense, denied due process and Equal Protection of the Law."

- d. "Failing to object to unconstitutional search and seizure, and fail to protect his Fourth and Fourteenth Amendments rights of the United States Constitution."

At the evidentiary hearing, Applicant proceeded forward on allegations listed under "b" above.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a

defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Investigate

Applicant alleges Counsel was ineffective for failing to investigate his case, instead conducting only a cursory review. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Upon inquiry by Judge Nettles at the plea proceeding, Applicant affirmed he was satisfied with the performance of his attorney, had no complaints about his performance or the actions of law enforcement, and did not need any additional time to consult with Counsel. (Tr. 9, 11, 12-20). Applicant further denied that he was promised anything, threatened, pressured, or mistreated into pleading guilty. (Tr. 9-10).

At the evidentiary hearing, Applicant asserted that the search executed by law enforcement was unlawful because they never identified themselves at the door before breaching and arresting Applicant and his father. Applicant testified he never discussed the subject with his attorney because they never had a professional meeting. Applicant claimed he made efforts to make appointments to meet with Counsel, but never received any answers and was never visited



by Counsel while he was in jail. Applicant testified he and Counsel never talked about his case, but that Counsel only appeared with plea offers and advice to accept the offers. Applicant claimed he proceeded with pleading guilty in order to alleviate consequences faced by his girlfriend, who was also arrested and charged.

Counsel testified he has practiced criminal law since 1989. Counsel recalled that he did review all discovery with Applicant "at some point." Counsel noted that Applicant failed to appear for meetings at Counsel's office, but that Counsel was able to discuss matters with him at the courthouse on two occasions—when a plea offer was extended and when the offer was rejected on the record. Counsel testified that Applicant never offered his version of what occurred on the day of his arrest. Counsel opined that no defense was available to Applicant and recalled the facts of the case in detail. In particular, Counsel recalled that law enforcement already had a search warrant for Applicant's apartment based on a prior controlled buy through a confidential informant and were conducting surveillance of the location. The understanding was that while Applicant had met with the CI, Applicant's father was the one responsible for securing their supply of heroin. Though law enforcement had planned to conduct another controlled buy, then bust, Applicant's father did not have the supply and left to Florida to replenish. Applicant's father appeared at the apartment with a brown paper bag while on the phone with the CI, at which time law enforcement scrapped the plans for the controlled buy and instead executed the search warrant immediately after Applicant's father had replenished the heroin supply. Roughly 120 grams of heroin was recovered. Counsel did not see any deficiencies in the search warrant or its execution. On cross-examination, Counsel noted that law enforcement had signed off that they delivered the warrant to the person in charge of the premises, and expressed his belief that

law enforcement would have testified to identifying themselves, based on his experience in trying cases of this kind and character.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. The Court finds Counsel reviewed the discovery, reviewed the search warrant, and in the proper exercise of his professional judgment and experience determined there were no meritorious challenges to the search warrant executed on Applicant's apartment. Counsel demonstrated a thorough command and familiarity with the underlying facts of the case. Upon opportunity to closely observe and consider the testimony of the witnesses, the Court finds Applicant's claim that law enforcement did not identify itself to be not credible. Even if it were, the Court finds Applicant never communicated his version of the facts to Counsel, such that the factual predicate to the only theory of defense presented by Applicant (liberally construing his testimony to mean that the search warrant was an impermissible no-knock raid) would not have been made known to Counsel. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

2. Failure to Explain Plea, Elements of Offenses Charged, Sentencing Ranges

Applicant alleges Counsel was ineffective for failing to explain to him the terms of the plea deal, the elements of the offenses charged as compared to the elements of the offense to which he pled, and the minimum and maximum sentencing exposure in each instance.

At the plea proceeding, the State called the case by indicating the charges indicted, as well as the lesser-included offenses to which Applicant and his co-defendant father were pleading. (Tr. 3, ll. 3-12). The State explained Applicant was pleading in exchange for a negotiated sentencing range of 15 to 18 years. (Tr. 3, ll. 14-17). The plea court observed the sentencing range, at which time Counsel affirmed the negotiated range. (Tr. 8-9). As previously



noted, Applicant affirmed he was satisfied with the performance of his attorney, had no complaints about his performance or the actions of law enforcement, and did not need any additional time to consult with Counsel. (Tr. 9, ll. 12-20). The sentencing sheet, signed by Applicant, reads that he was pleading to "Trafficking in Heroin, 4—14 grams, 1st offense."

At the evidentiary hearing, Applicant testified Counsel never talked to him about his case or showed him any paperwork, but only relied on experience and told Applicant he should plead guilty. Applicant expressed that he did not know at the time of his plea whether he was pleading to a first or second offense, and that Counsel never told him anything on the topic. Applicant testified Counsel never would listen, offered no defenses, and didn't mention anything about a trial, but only advised that he should accept the plea offers provided by the State. Applicant asserted Counsel never told him the minimum and maximum penalties for the charge, the essential elements of the charges, or the degree of the charges.

Counsel testified he used an interpreter in speaking with Applicant during the plea rejection, but did not use an interpreter when discussing the first plea offer with Applicant. Counsel observed Applicant understood everything they discussed in both circumstances. Counsel testified he discussed the elements of each charge against Applicant, and originally faced a mandatory minimum sentence of at least 25 years. Counsel affirmed he explained to Applicant his constitutional rights, and that Applicant understood his rights. Counsel recalled Applicant rejected an initial offer to plead guilty in exchange for a sentence between 12 and 15 years. Counsel testified he advised Applicant of the minimum and maximum penalties each charge carried, and that Applicant knew the classifications of each charge. Counsel testified Applicant's main object was ensuring his girlfriend did not go to prison, which Counsel recalled discussing with Applicant. On cross-examination, Counsel asserted Applicant speaks some

English, and that Counsel's impression was that Applicant understood their discussions. Counsel further noted that there was never an issue about the charges potentially being classified as a second offense—they were always a first offense. Counsel explained a number of other charges were dropped as part of the plea, and that Applicant pled as they were preparing to draw a jury for trial.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. The Court finds Counsel properly explained to Applicant the charges against him, the elements of the offenses charged, the minimum and maximum sentence exposure, and the classifications of each charge. The Court finds Counsel explained the terms of both plea offers, the first of which was rejected by Applicant, and the second of which was ultimately accepted. The Court finds little, if anything, credible in Applicant's testimony. The Court finds Counsel's testimony highly credible. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

3. Failure to File Motion to Reconsider Sentence

Applicant alleges Counsel was ineffective for failing to file a motion to reconsider the sentence. The Court will not belabor this allegation—Applicant was sentenced to the minimum possible under the terms negotiated between Applicant and the State, such that the Court could not have revised its sentence lower. Applicant has not, and cannot, meet his burden as to either prong of Strickland on this ground, and his request for relief by way of this allegation is **DENIED**.



III. CONCLUSION

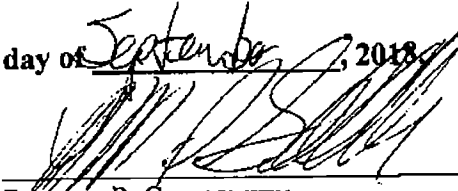
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of September, 2018.


BROOKS P. GOLDSMITH
Presiding Judge
Fifteenth Judicial Circuit

_____, South Carolina

WITNESSES

Phillips 15th Circuit Drug Enforcement Unit

DOCKET NO. 2014-GS-26- 2135

The State of South Carolina

County of Horry

David P. Carsker, Jr.
13H05890

COURT OF GENERAL SESSIONS

May, 2014 TERM

ARREST WARRANT NUMBER

2013A2610203555

CDR: 0149 44-53-0370(e)(3)(c)

DOA: 11/17/2013

THE STATE

VS.

ACTION OF GRAND JURY

Hector Vazquez
H/ M



Foreperson of Grand Jury
Date: MAY 22 2014

ATTORNEY:

VERDICT

Indictment for

Trafficking in Illegal Drugs (Heroin)

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

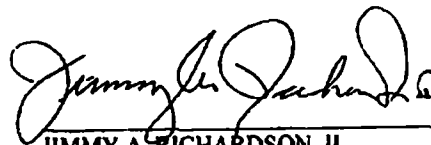
At a Court of General Sessions, convened on May 22, 2014, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING IN ILLEGAL DRUGS
(HEROIN)

CDR: 0149 44-53-0370(e)(3)(c)

That Hector Vazquez did in Horry County on or about November 16, 2013, sell, deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was knowingly in actual or constructive possession of a quantity of Heroin in an amount of twenty-eight grams or more, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(e)(3), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

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



JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

FILED
 Horry County
 2015 FEB 23 PM 3:29
 Clerk of Court
 COURT DATE
 PLED GUILTY/TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Hector Vazquez

AKA:

Race: HISPANIC Sex: M Age: 24

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2602135

A/W#: 2013A2610203555

Date of Offense: 11/16/2013

S.C. Code § : 44-53-0370(e)(3)(c)

CDR Code #: 0149

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in Heroin, 4--14 grams, 1st offense☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0370(e)(3)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2361

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State. 5-18

ATTEST:

Caraker, Jr., David P.

100039
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 26 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-16 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 8.40
TOTAL		\$ 288.40

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 03/23/2013

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

02/23/15

2140