

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Perry H. Gravely, Circuit Court Judge

JAMES D. LLOYD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002051

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

TAYLOR Z. SMITH
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 JAMES DUSTIN LLOYD,)
)
 DEFENDANT.)
 _____)

2017-GS-32-03083 & 03087

TRANSCRIPT OF RECORD

DECEMBER 5, 2017
LEXINGTON, SOUTH CAROLINA

BEFORE:

THE HONORABLE GRACE GILCHRIST KNIE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

CASEY RANKIN
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

DAVID MAULDIN, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER

16

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Produced During This Hearing)

1 **MADAME CLERK:** 2017-GS-32-3083, State versus James
2 Dustin Lloyd, indicted for possession of adulterant to
3 defeat drug test. He is pleading as charged. The
4 indictment has been true billed.

5 2017-GS-32-3087, State versus James Dustin Lloyd,
6 indicted for conspiracy to manufacture methamphetamine. He
7 is pleading as charged. He is waiving presentment to the
8 grand jury on this indictment and is represented by Mr.
9 Mauldin.

10 Raise your right hand, please. Do you swear or affirm
11 any testimony you give is the truth, the whole truth and
12 nothing but the truth so help you God?

13 **MR. LLOYD:** Yes, ma'am.

14 **PROBATION AGENT:** Judge, Mr. Lloyd is on probation and
15 was served.

16 **THE COURT:** All right. Good morning, sir.

17 **MR. LLOYD:** Good morning, ma'am.

18 **THE COURT:** Sir, I have some questions I need to go
19 over with you. And those questions are in regard to the
20 plea.

21 **MR. LLOYD:** Yes, ma'am.

22 **THE COURT:** Then I'll hear from the assistant
23 solicitor, I'll hear from your attorney and lastly I'll hear
24 -- well, and I will hear from probation, and then I'll hear
25 from you, all right?

1 MR. LLOYD: Yes, ma'am.

2 THE COURT: Okay. Sir, do you understand that the
3 purpose of your being here today is to enter a guilty plea
4 and that would be as opposed to having a jury trial?

5 MR. LLOYD: Yes, ma'am.

6 THE COURT: When you do that, you're waiving very
7 important constitutional rights. Not only are you waiving
8 your right to a trial by jury, but you're also waiving your
9 right to confront witnesses against you and your right to
10 remain silent. Do you understand?

11 MR. LLOYD: Yes, ma'am.

12 THE COURT: And, sir, if you were to have a trial, the
13 burden of proof would not be on you. The burden of proof
14 would be on the State, on the solicitor to prove every
15 element of every charge against you beyond a reasonable
16 doubt because you are presumed to be innocent until proven
17 guilty. Do you understand?

18 MR. LLOYD: Yes, ma'am.

19 THE COURT: And, lastly, if you were to have a trial,
20 all members of the jury would have to agree on the guilt for
21 you to be found guilty. Do you understand?

22 MR. LLOYD: Yes, ma'am.

23 THE COURT: Knowing all of that, sir, is it still your
24 wish that you go forward with your plea today?

25 MR. LLOYD: Yes, ma'am.

1 THE COURT: All right. Do you also understand that I
2 will be taking up a probation violation today?

3 MR. LLOYD: Yes, ma'am.

4 THE COURT: Okay. The first indictment is a waiver
5 indictment, 2017-GS-32-3087, the State versus James Justin
6 [sic] Lloyd, indictment for conspiracy to manufacture
7 methamphetamine in violation of South Carolina Code Section
8 44-53-375 (B) (1). And, sir, the potential penalty for this
9 offense is zero to seven point five (7.5) years and/or a
10 fine of zero to twelve thousand, five hundred dollars
11 (\$12,500.00). Do you have any questions with regard to this
12 offense or the potential penalty for this offense?

13 MR. LLOYD: No, ma'am.

14 THE COURT: Have you discussed with Mr. Mauldin the
15 fact that you are waiving presentment of this indictment to
16 the grand jury? You have initialed the sentencing sheet
17 indicating that you understand that.

18 MR. LLOYD: Yes, ma'am.

19 THE COURT: Do you have any questions about that?

20 MR. LLOYD: No, ma'am.

21 THE COURT: Do you wish to go forward today on this
22 offense?

23 MR. LLOYD: Yes, ma'am.

24 THE COURT: The next indictment is indictment number
25 2017-GS-32-3083. It is a true billed indictment for

1 possession of adulterant to defeat drug test in violation of
2 South Carolina Code Section 16-13-470 (A) (4) with a
3 potential penalty of zero to three years and/or a fine of
4 zero to five thousand dollars (\$5,000.00). Do you have any
5 questions with regard to this offense or the potential
6 penalty for that offense?

7 MR. LLOYD: No, ma'am.

8 THE COURT: Has anybody promised you anything,
9 threatened you or coerced you to get you to enter the plea
10 today?

11 MR. LLOYD: No, ma'am.

12 THE COURT: And don't be offended, I ask everybody the
13 next question, all right? Were you at any time during your
14 communications with your lawyer or are you today under the
15 influence of alcohol, drugs or any intoxicant that would
16 impair your judgment?

17 MR. LLOYD: No, ma'am.

18 THE COURT: Do you suffer from any mental or physical
19 infirmity that would affect your ability to understand what
20 we're doing?

21 MR. LLOYD: No, ma'am.

22 THE COURT: Do you take any prescription medications?

23 MR. LLOYD: No, ma'am.

24 THE COURT: Are you satisfied with the services of your
25 lawyer?

1 MR. LLOYD: Yes, ma'am.

2 THE COURT: Do you wish to enter your plea at this
3 time?

4 MR. LLOYD: Yes, ma'am.

5 THE COURT: And how do you plead, sir, guilty or not
6 guilty?

7 MR. LLOYD: Guilty.

8 THE COURT: Are you doing so freely, knowingly and
9 voluntarily?

10 MR. LLOYD: Yes, ma'am.

11 THE COURT: Lastly, sir, please be advised that in the
12 event you wish to appeal any aspect of your plea hearing
13 today, you only have ten days to do so in writing to this
14 Court. Do you understand?

15 MR. LLOYD: Yes, ma'am.

16 THE COURT: Okay. Thank you, Mr. Lloyd. I will accept
17 your plea. I need for you to listen to the statements of
18 the solicitor, all right?

19 MR. LLOYD: Okay. Thank you, ma'am.

20 THE COURT: Yes, ma'am.

21 MS. RANKIN: Thank you, Your Honor. As far as the
22 conspiracy to manufacture meth, that incident occurred July
23 26th of this year. Triple P was at the home at [REDACTED] Paula
24 Court in Lexington County serving an arrest warrant. Agent
25 Doyle found a plastic container that contained Oxycodone.

1 They got a search warrant for the rest of the home.
2 There were several precursors to manufacturing
3 methamphetamine in the home, blister packs of
4 pseudoephedrine, coffee filters.

5 Your Honor, there was also in a vehicle outside an
6 active one-pot. The NET Team responded to that and
7 neutralized it. They also found several acid generators and
8 two cans of starter fluid used in manufacturing
9 methamphetamine.

10 Your Honor, as far as the attempt to defeat the drug
11 test, that incident occurred May 24th. Mr. Lloyd was on
12 probation. He reported for intake with his agent. He was
13 subjected to a drug test. He was found to be wearing a
14 synthetic urine device attempting to defeat the drug test.

15 Your Honor, he has on his record a '99 trespass, 2002
16 simple possession of marijuana, 2014 open container, 2015
17 shoplifting, 2017 possession of controlled substance, burg,
18 third, and DUS, second.

19 THE COURT: Okay. Mr. Lloyd, did you hear the
20 statements of the assistant solicitor with regard to the
21 facts and circumstances surrounding the charges against you?

22 MR. LLOYD: Yes, ma'am.

23 THE COURT: Do you agree with those facts?

24 MR. LLOYD: Yes, ma'am.

25 THE COURT: Thank you, sir. Mr. Mauldin, I'll go ahead

1 and hear from probation, okay?

2 MR. MAULDIN: Yes, Your Honor.

3 THE COURT: Yes, sir.

4 PROBATION AGENT: Judge, Mr. Lloyd pled in Calhoun
5 County March 13 of 2017 to burglary, third, receiving a
6 sentence of five years suspended to two years probation. We
7 have issued three warrants, one being that he was in
8 possession of a firearm as evidenced by the warrant from the
9 Lexington County Sheriff's Department.

10 The second one addresses the attempt to fake the drug
11 test as the solicitor referenced. And the third warrant, he
12 failed to allow us to conduct a home visit. He changed his
13 address, and he had been associating with persons that have
14 a criminal record.

15 THE COURT: Thank you. Mr. Lloyd, you heard the
16 statements of our probation representative. Do you admit,
17 sir, that you have wilfully violated the terms and
18 conditions of your probation?

19 MR. LLOYD: Yes, ma'am.

20 THE COURT: Okay. Thank you. Was discovery shared
21 with Mr. Mauldin?

22 MS. RANKIN: It was, Your Honor.

23 THE COURT: Mr. Mauldin, did you have an opportunity to
24 review that with your client?

25 MR. MAULDIN: Yes, I have, Your Honor.

1 **THE COURT:** Okay. I'm happy to hear from you, sir.

2 **MR. MAULDIN:** Thank you, Your Honor. James is thirty-
3 five. He is from the Lexington area. He does have a GED
4 level of education.

5 He's mainly worked in the construction field in the
6 past eight years off and on for a place called Smith
7 Specialties. He does fabrication and welding work for them.
8 That's a job that he can go back to because he's been with
9 them for such a long time.

10 He does have three children, eight, six and four, with
11 the same lady, Brandy Campbell. She has those children now.

12 And James is thirty-five, Your Honor. And if you look
13 at his record, there's just kind of minor traffic things,
14 maybe marijuana back in '02, and then more recently, I think
15 in the past couple of years he'd gotten involved with meth
16 and the meth people. I think originally it was to help stay
17 up to do work and that kind of thing. And then that's how
18 he's gotten into this trouble. And both of these charges
19 here just stem from that addiction, Your Honor.

20 He was afraid of failing the drug test. So he brought
21 the thing in to do it. And I think it would have been less
22 trouble for him if he actually failed the drug test and
23 worked with probation on that.

24 And the house he was staying at, there's several people
25 there. And he admitted that he used meth. And there was

1 somebody there that cooks it. And he conspired with them to
2 manufacture the meth, Your Honor.

3 He just really wants help with that. He wants to be
4 able to get back to work to support his children. I don't
5 think he's hurt anybody. He's just hurting himself kind of
6 in this thing and causing, I guess, trouble for all of us
7 with the paperwork.

8 He has thirty-five days credit for the test and thirty-
9 nine for the conspiracy. He had done a short period of time
10 and bonded out on both. And his bond ---

11 THE COURT: Excuse me. How many days for the
12 conspiracy?

13 MR. MAULDIN: Thirty-nine.

14 THE COURT: Okay. And how many for the test?

15 MR. MAULDIN: Thirty-five.

16 THE COURT: Thank you.

17 MR. MAULDIN: The bonding company had put him back in
18 because he had a traffic ticket that he didn't -- he
19 couldn't pay. And then they ended up putting him back in
20 jail because he didn't pay the traffic ticket. That's why
21 he's back in jail, not for anything new.

22 But basically that's Mr. Lloyd's situation. He'd been
23 doing well for a long time. It's just the past couple of
24 years he's gotten in with this, and it's really bringing him
25 down.

1 **THE COURT:** Okay. Mr. Lloyd, is there anything you
2 would like to say?

3 **MR. LLOYD:** Yes, ma'am. My lawyer, he said it pretty
4 good. I just, like he said, have three beautiful children
5 that, you know, I'd love to get back to at home, finish
6 taking care of. And, you know, these past few years I've
7 had a little issue -- this little bit of time in jail helped
8 me realize that they're what's important. And I just hope
9 that I can get back to them. That's all. Thank you, ma'am.

10 **THE COURT:** Thank you.

11 (Pause)

12 **THE COURT:** Okay. With regard to the matter of the
13 State of South Carolina, County of Lexington versus James
14 Dustin Lloyd and indictment number 2017-GS-32-3087 as to the
15 offense of conspiracy to manufacture methamphetamine, it
16 would be the order of the Court that the Defendant be
17 committed to the State Department of Corrections for seven
18 and a half years. That will be suspended upon the service
19 of two years and two years probation.

20 He will get credit for time served of thirty-nine days.
21 The special conditions of probation are that he will submit
22 for random drug and alcohol testing and will undergo
23 substance abuse counseling.

24 A concurrent sentence is as to indictment 2017-GS-32-
25 3083, intent to defeat drug or alcohol test, first offense,

1 that the Defendant would be committed to the State
2 Department of Corrections for three years. That will be
3 provided upon the service of two years and probation for two
4 years.

5 He will be given credit for time served of thirty-five
6 days. The same special conditions of probation will apply.
7 This will run concurrently with probation violation of case
8 number 2016-09115 in which I will revoke two years and
9 terminate.

10 PROBATION AGENT: Judge, I failed to tell you because
11 it was not -- it's not on the sentence sheet, I don't know
12 why, there is restitution that's on our computer, but it's
13 not on the sentence sheet. So there was restitution on that
14 case. Would you want to convert that or would you ---

15 THE COURT: How much is it?

16 PROBATION AGENT: Twenty-three hundred dollars and some
17 change.

18 THE COURT: Can we run that with the ---

19 PROBATION AGENT: We can. We can.

20 THE COURT: All right. Mr. Lloyd, I'm not going to
21 wipe out the restitution that's owed on -- that was a
22 burglary, third, ---

23 PROBATION AGENT: Yes, ma'am.

24 THE COURT: --- offense? In Calhoun County?

25 PROBATION AGENT: Yes, ma'am.

15

1 THE COURT: I'm not wiping -- I'm not going to wipe
2 that down to zero. That will continue ---

3 MR. LLOYD: Yes, ma'am.

4 THE COURT: --- when your probation starts again. Do
5 you understand?

6 MR. LLOYD: Yes, ma'am.

7 THE COURT: Okay. Any questions?

8 MR. MAULDIN: No, Your Honor.

9 MS. RANKIN: Thank you, Your Honor.

10 MR. LLOYD: Thank you, Your Honor.

11 THE COURT: Good luck to you, sir.

12 MR. LLOYD: Thank you, ma'am.

13 (Hearing Ended at 10:26 am)

14 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Lexington County, South Carolina, on the 5th day of December 2017.

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

March 17, 2018

s/Susan W. Hudgins

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Lexington)

IN THE COURT OF COMMON PLEAS

James Dustin Lloyd #374726
Full name and prison number (if any) of Applicant)

2018CP3200358

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lexington County Jail
2. Name and location of Court which imposed sentence Lexington
- X 3. Name(s) of co-defendant(s) (if any) Candace Bass
- X 4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017GS3203087 3 yrs
 - (b) 2017GS3203083 7.5 yrs
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12/5/17 Both
 - (b) N/A

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- (c) N/A
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty 12/5/17
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No was unaware I could
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) Wasn't told by Attorney the process was
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) Strickland - vs - Washington
 (b) Lockhart - vs - State
 (c) Homax - vs - State

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

- (a) in-effective counseling / Lawyer should of caught it.
 (b) newly discovered evidence
 (c) wrong charges for which I'm held

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. N/A
 iii. N/A
 iv. N/A

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

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

(c) the disposition thereof:

- i. N/A
 ii. N/A
 iii. N/A

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iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) All of them cause my Attorney never stated it was capable

(b) just found out the new evidence

(c) charges should have never made it to court, Lack of evidence

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

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[Signature]
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- (a) your arraignment and plea? N/D
- (b) your trial, if any? none
- (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

X18. If you answered "yes" to one or more parts of (17), list:

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

i. David Mauldin Lexington SC.

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

I would like for the 7.5 yrs be reduced to 6 or less for relief

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

NO

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Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION)

I, Mr. Lay, 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 _____
day of _____, 2____.

Notary Public

(L.S.)

My Commission Expires: _____

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John L. Linn
Lex. Co. C.C.C.P. G.S. & F.C.

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

I, Mr. Logg, 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.

[Signature]
Applicant

SWORN or affirmed to and subscribed before me this
29th day of January, 2018

Katherine J. Watt
Notary Public

My Commission Expires: 9/25/2022

A TRUE COPY

[Signature]
Lex. Ch. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

James Dustin Lloyd, #374726,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-32-00358

**RETURN, PARTIAL MOTION
DISMISS AND MOTION FOR A MORE
DEFINITE STATEMENT**

Respondent, making its Return to the application for post-conviction relief filed on January 31, 2018, would respectfully show this Court:

I.

James Dustin Lloyd (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its September 2017 term, the Lexington County Grand Jury indicted Applicant for possession of an adulterant intended to defeat a drug test (2017-GS-32-03083). Assistant Public Defender David M. Mauldin, of the Lexington County Public Defender's Office, represented Applicant on this charge. Assistant Solicitor Casey Rankin, of the Eleventh Circuit Solicitor's Office, prosecuted the case. On December 5, 2017, Applicant appeared before the Honorable Grace Gilchrist Knie and pled guilty as indicted to possession of an adulterant intended to defeat a drug test, first offense. Applicant also waived present to the Grand Jury and pled guilty to conspiracy to manufacture methamphetamine. Judge Knie sentenced Applicant to a term of imprisonment of three years, provided that upon the service of two years, the balance would be suspended to probation for two years for the possession charge and seven-and-a-half years, provided that upon the service of two years, the balance would be suspended to probation for two years for the conspiracy charge. The sentences were to run

concurrently. Applicant did not appeal his convictions or sentences.

II.

On May 24, 2017, Applicant reported for intake with his probation agent¹ and was subjected to a drug test. While there, the agent discovered Applicant was wearing a synthetic urine device in order to attempt to defeat the drug test.

Thereafter, on July 26, 2017, the Department of Probation, Pardon, and Parole Services (PPP) was serving an arrest warrant at a home on Paula Court, located in Lexington County. While there, Agent Doyle found a plastic container containing Oxycodone. Based on this discovery, PPP obtained a search warrant for the home. The search of the home revealed several precursors to manufacturing methamphetamine, including blister packs of pseudoephedrine and coffee filters. Agents also found an active one-pot in a vehicle outside of the house, as well as several acid generators and two cans of starter fluid.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. *"Strickland-vs-Washington"*;
 - a. "Ineffective counseling/Lawyer should have caught it."
2. *"Lockhart-vs-State"*; and
 - a. "Newly discovered evidence."
3. *"Lomax-vs-State."*
 - a. "Wrong charges for which I'm held."

Applicant wholly fails to set forth any facts to support these general allegations.

Attached to this Return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South

¹ On March 13, 2017, Applicant pled guilty in Calhoun County to third-degree burglary and received a sentence of a term

Carolina Department of Corrections, the transcript from Applicant's guilty plea proceeding, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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

IV.

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

of imprisonment of five years, suspended to a term of two years' probation.

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

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test, particularly in light of Applicant's complete failure to list any facts to support his general allegations. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent submits Applicant's allegation of newly discovered evidence is without merit. If the Court determines that Applicant knowingly and voluntarily pled guilty, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See *Whetsell v. State*, 276 S.C. 295, 277 S.E.2d 891 (1981); *Rivers v. Strickland*, 264 S.C. 121, 213

S.E.2d 97 (1975). Furthermore, this contention is vague and general in its terms. There are no specific allegations of the nature of the evidence. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Applicant has wholly failed to show that the alleged evidence meets *any* of the requirements for after-discovered evidence. Indeed, Applicant has wholly failed to identify this newly discovered evidence. Therefore, this Court should summarily dismiss this allegation.

VI.

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

VII.

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

VIII.

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

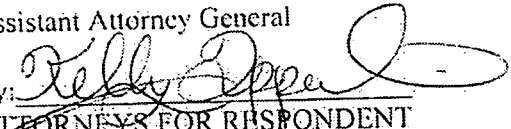
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

April 24, 2018

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

JAMES DUSTIN LLOYD, #374726

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

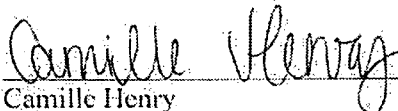
2018-CP-32-00358

AFFIDAVIT OF SERVICE BY MAIL

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

Ashley A. McMahan, Esquire
 Mac | Vance Attorneys, LLC
 Post Office Box 5501
 West Columbia, SC 29169

DATED this 24th day of April, 2018.


 Camille Henry
 Legal Assistant

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 11 th JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2018-CP-32-00358
James D. Lloyd, #374726,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on January 31, 2018, to add the following allegations:

1. Ineffective Assistance of Counsel as to David M. Mauldin, Esquire:

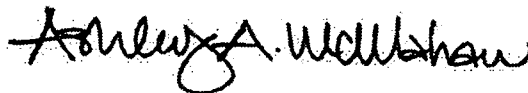
A. Rushed the Applicant through to a guilty plea. Applicant was only in jail for about three weeks and saw Mr. Mauldin once prior to guilty plea.

B. Told the Applicant that the Solicitor wasn't looking for any more time, Applicant took that to mean that he would be returning to probation and not going to SCDC.

C. Did not go over Discovery with the Applicant. Did not address how Applicant could be charged for drugs that were not found on his property but on his neighbor's property.

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110
ashley@macvance.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

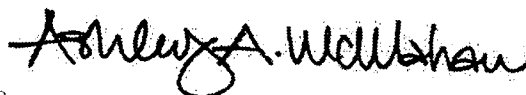
July 16, 2018

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Kelly Oppenheimer
Assistant Attorney General
koppenheimer@scag.gov

This 16th Day of July, 2018.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

1 State of South Carolina)
2 County of Lexington) In the Court
3 James Dustin Lloyd,) Of Common Pleas
4 Applicant/Plaintiff,) Case No.: 2018-CP-32-00258
5 vs.) Transcript of Record
6 State of South Carolina,)
7 Respondent/Defendant.)
8 _____)

9
10 August 1st, 2018
11 Lexington, South Carolina

12 BEFORE:

13 The Honorable Perry H. Gravely, Judge
14

15 APPEARANCES:

16
17 Ashley A. McMahan, Esquire
18 Attorney for the Applicant/Plaintiff

19 Kelly Oppenheimer, Assistant Attorney General
20 Attorney for the Respondent/Defendant

21 ALSO PRESENT:

22 James Dustin Lloyd
23
24
25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

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1 Thereupon, the following proceedings were had,

2 THE COURT: Good morning, Mr. Lloyd. All right. Be
3 glad to hear from you, Ms. Oppenheimer.

4 MS. OPPENHEIMER: Please the Court. Your Honor,
5 this is James Dustin Lloyd versus State of South
6 Carolina. Docket number 2018-CP-32-00358. During the
7 September of 2017 term of court, the Lexington County
8 Grand Jury indicted applicant for possession of an
9 adulterant and attempting to defeat a drug test. David
10 Mauldin of the Lexington County Public Defender's Office
11 represented him and Casey Smith prosecuted the case. On
12 December 5th, 2017 applicant appeared before the
13 Honorable Grace Knie, waived presentment to the grand
14 jury on two counts of manufacturing meth amphetamine and
15 pled guilty to both charges. Judge Knie sentenced
16 applicant to a term of imprisonment of seven and a half
17 years. Provided on the service of two years the balance
18 was suspended to two years probation for conspiracy to
19 manufacture meth and a term of imprisonment for three
20 years provided on the service of two years and the
21 balance was suspended to two years probation on
22 adulterant to defeat a drug test. The sentences were to
23 run concurrently. Applicant did not appeal.
24 On January 1, 2018 applicant filed an appeal for
25 post conviction relief based on ineffective assistance of

1 counsel and newly discovered evidence. On April 18, 2018
2 respondent filed a motion to dismiss defendant's
3 application and requesting an evidentiary hearing on
4 ineffective assistance of counsel. Thereafter on July
5 16th, 2018 through his counsel applicant amended his
6 application to include specific allegations of
7 ineffective assistance of counsel. Applicant is present
8 today and represented by Ashley McMahan.

9 THE COURT: Basically, ma'am, before hearing from
10 you, looking at the information I have he has a max out
11 date of November 15th, 2018; is that correct?

12 MS. McMAHAN: That's my understanding, Your Honor.

13 THE COURT: So he wants to risk that and go back and
14 ask me to send it back and let him be re-sentenced? I'll
15 be glad to hear from you.

16 MS. McMAHAN: Yes, Your Honor. In my conversations
17 with him, and if you will just allow me just a minute to
18 talk to him also.

19 THE COURT: That's fine. I'm just noting this.

20 MS. McMAHAN: He's got some federal issues, too,
21 that this relates to. That's why.

22 THE COURT: All right. I'll be glad to hear from
23 you.

24 MS. McMAHAN: The applicant calls Mr. Lloyd.

25 THE COURT: If you could just tell me the main

JAMES LLOYD - DIRECT BY MS. McMAHAN

5

1 issues that we're looking at?

2 MS. McMAHAN: The main issues, Your Honor, are on
3 the amended application.

4 THE COURT: Okay.

5 Thereupon,

6 JAMES DUSTIN LLOYD

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

8 DIRECT EXAMINATION

9 BY MS. McMAHAN:

10 Q. Would you state your name for the record please.

11 A. James Dustin Lloyd.

12 Q. Did you file this PCR application?

13 A. Yes, ma'am.

14 Q. Who represented you in your original charge?

15 A. Mr. Mauldin.

16 Q. And one of your allegations is that he rushed you
17 through to a guilty plea. Could you explain that for the
18 Court please?

19 A. Well, you know, I was only in jail for, you know,
20 less than a month, you know, and -- You know what I'm saying?
21 -- when we were talking about it it all just happened so fast,
22 you know, I really didn't have time to think about it, you
23 know, what I was, you know, what I was doing, you know, and at
24 the end of the day, you know, I'm really innocent to start
25 with so, you know, and I really didn't think about that, you

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 know. He said the Solicitor wasn't really asking for no time.
2 It was first time I had ever been on probation my whole life,
3 you know. I thought, you know, the way they explained it to
4 me I was gonna get more probation, you know. I was gonna be
5 able to go home to my family, you know, so me, you know, not
6 thinking about it I just said, well, I'll, just, you know,
7 they dropped all these other charges, you know, for this
8 guilty plea so, you know, if I had thought about it a little
9 bit more even though I wasn't guilty, you know, I put in a
10 guilty plea just, you know, to try to get home to my family
11 and it just didn't work out like that so...

12 Q. Okay. Let's back up a little bit. How many times
13 did you meet with Mr. Mauldin?

14 A. Once in the county.

15 Q. Did you meet with anybody else from the Public
16 Defender's Office?

17 A. No, ma'am.

18 Q. What did you and Mr. Mauldin talk about?

19 A. Uhm, just like I said, that, you know, he said that,
20 you know, that I could get this time but he told me that the
21 Solicitors wasn't asking for no time. They wasn't pushing for
22 no time, you know, so...

23 Q. So did he explain to you, when you said he was
24 talking about time, was he explaining to you what you could
25 get on that adulterant charge and all that?

1 A. Yeah. It was mentioned. But like I said, he said
2 nobody was asking for any time so, you know.

3 Q. So you were on probation for what at the time?

4 A. Burglary third out of Calhoun County.

5 Q. And had been transferred to Lexington County?

6 A. Yeah. I had it transferred from Calhoun to
7 Lexington, yes, ma'am, because that was my home town.

8 Q. Okay. And so the adulterant stems from a visit to
9 the probation office; is that correct?

10 A. Yes, ma'am.

11 Q. And then the drug charges were after probation
12 showed up at your neighbor's house?

13 A. Yeah. They showed up at my neighbor's house to
14 serve a warrant on somebody that was staying in a house beside
15 me and I guess when they got there, they knew that, you know,
16 from my address that I was staying next door so they come over
17 to my house and, you know, and it all stemmed from there. You
18 know what I mean? Like none of the - none of the - everything
19 they were trying to charge me with none of it was, you know,
20 found at my house. You know what I'm saying? The
21 manufacturing things and the vehicle, none of it was found at
22 my house but they were still trying to charge me with it.
23 Like I said, I didn't even -- It all happened so fast I didn't
24 even really have time to think -- You know what I'm saying? --
25 this is what's going on. This is, you know...

1 Q. So let's back up just a little bit. Who came to
2 your house? Was it the probation agents or was it the county
3 deputies?

4 A. Probation.

5 Q. So probation agents came to your house?

6 A. Yes, ma'am.

7 Q. Did they say why they were there?

8 A. Well, they called -- I was asleep in the house
9 because I had worked the night before so I was asleep and they
10 knocked on the door and I didn't answer it because I was
11 sleeping. They called my mother and told her that they were
12 there to do a home visit which was a lie. You know what I'm
13 saying? She's already said she'll come on the stand and
14 testify that that was a lie. You know what I'm saying? They
15 lied to her right out the gate.

16 MS. OPPENHEIMER: Objection, Your Honor. Hearsay.

17 THE COURT: All right. Sustained.

18 MS. McMAHAN: Yes.

19 BY THE WITNESS:

20 A. And they wanted her to unlock the door because I
21 wouldn't answer it because I was asleep so she come and unlock
22 the door for them and they come in the house.

23 BY MS. McMAHAN:

24 Q. So when they came in the house, you were still
25 asleep?

1 A. Yes, ma'am. I was still in bed.

2 Q. Did they wake you up?

3 A. Yes.

4 Q. So what, did they find anything in your house?

5 A. The only thing they found was some pills that
6 belonged to a girl that was staying with me. They charged her
7 with those. They didn't charge me with them. I guess some
8 oxycodone. And they charged, like I said, they charged her
9 with those and then they said they found some Baggies, zip
10 lock Baggies in a box and a few other things so they charged
11 me with two distributions and then in my neighbor's vehicle
12 they found I guess a bottle and it was on his property and he
13 already had a history of these crimes and they didn't charge
14 him with that. For some reason they charged me with it.

15 Q. Did you talk to Mr. Mauldin about all that?

16 A. No. Like I said, I mean, I didn't really, not
17 really because like I'm saying everything happened so fast.
18 You know what I'm saying? I really didn't --

19 Q. Okay. So you said you were in the detention center
20 for about a month and you met with him one time. So what was
21 the reason why you wanted to go ahead and go to court and get
22 this over with?

23 A. Because -- You know what I'm saying? -- I was
24 trying to get home to my family. You know what I mean?

25 Q. So you pled because you thought that day you would

1 walk out and go home to your family?

2 A. And be on probation. Because I've never been in
3 trouble in my life. You know what I'm saying? What I was on
4 probation for was the first time I was ever on probation my
5 whole life. You know what I'm saying? Other than a few minor
6 traffic tickets I have never -- You know what I'm saying? --
7 really been in trouble. You know what I'm saying? So, you
8 know, the way I figured it is even though I'm not guilty --
9 You know what I'm saying? -- I put in a guilty plea. You
10 know what I mean? And it's not -- They wasn't asking for no
11 time is what I was told. You know what I'm saying? So I
12 figured, you know, a man that's never really been in trouble
13 his whole life. I done seen many people -- You know what I'm
14 saying? -- keep getting in trouble, getting in trouble,
15 getting in trouble, getting in trouble -- You know what I'm
16 saying? -- and they keep getting their probation reinstated
17 every time. You know what I'm saying? So I figured I've
18 never really been in trouble. You know what I'm saying?

19 Q. Did Mr. Mauldin tell you that you would probably be
20 going home that day or did he tell you that you could go to
21 jail?

22 A. I mean, he said that -- He told me that they wasn't
23 asking for no time. That's what he said to me. He said
24 nobody is asking for no time, you know. The Solicitor is not
25 asking for no time. You know what I'm saying? You never been

1 in trouble before. You know what I mean? That's what his
2 words were to me.

3 Q. Okay. So you had an issue where you didn't go over
4 the discovery of the drug cases and stuff with your attorney.
5 Tell us about that.

6 A. Uhm, I mean, I never -- I mean, I -- there was --
7 You know what I'm saying? He --

8 Q. So you never saw the evidence or anything about the
9 drug charges?

10 A. No. I never knew what kind of evidence they had on
11 me. You know what I'm saying? Because it was never -- You
12 know what I'm saying? -- laid out for me. You know what I'm
13 saying? This is exactly what they got. You know what I'm
14 saying? If I had known exactly what happened. Like I'm
15 saying, if I had known exactly that this stuff was found in
16 this vehicle, not on my property. You know what I'm saying?

17 Q. Yeah. Did you see any drug tests? Like any tests
18 that said, hey, this is meth or anything like that?

19 A. No. I never took a drug test -- You talking about
20 for probation?

21 Q. No. No. Not for you. Did you ever see any pieces
22 of paper where the drugs that they seized where they tested
23 them?

24 A. Oh, well, they never seized no drugs. You know what
25 I'm saying? They never, like I'm saying, they, the only drugs

1 they seized was some pills that they charged my girlfriend
2 with. So there was never no drugs found in the house at all
3 so I don't see how they can even charge me with two
4 distributions to start with when the only drugs found in the
5 house was three pain pills -- You know what I'm saying? --
6 that I wasn't even charged with.

7 Q. So Mr. Mauldin never sat and explained all that to
8 you?

9 A. No, ma'am.

10 Q. Okay. Anything else you want to tell the Court
11 today about your case?

12 A. Uhm, no, ma'am. Not really, other than -- You know
13 what I'm saying? -- that I should have never pled guilty to
14 start with because I'm not guilty. You know what I mean?

15 Q. Okay. Okay. So Ms. Oppenheimer is gonna ask you
16 some questions now.

17 A. Yes, ma'am.

18 THE COURT: Cross examination.

19 CROSS EXAMINATION

20 BY MS. OPPENHEIMER:

21 Q. Do you recall your plea proceeding?

22 A. Uhm, you talking about the court date?

23 Q. Yes.

24 A. Vaguely. Like I said, it all happened so fast.

25 Q. And do you recall Judge Knie going over the

1 potential sentences with you?

2 A. Uhm, vaguely. Yes, ma'am.

3 Q. And she told you what each specific sentence for
4 these charges would be, correct?

5 A. Yes, ma'am.

6 Q. And you told her that you had no questions about the
7 charges or the potential punishment, correct?

8 A. Yes, ma'am.

9 Q. So you were fully aware that you were facing seven
10 and a half years?

11 A. Yes, ma'am.

12 Q. And you also told Judge Knie that you were
13 completely satisfied with Mr. Mauldin, correct?

14 A. Yes, ma'am. I guess so.

15 Q. And you told Judge Knie that you were pleading
16 freely and voluntarily and knowingly, correct?

17 A. Yes, ma'am.

18 Q. And you also admitted that you willfully violated
19 your probation?

20 A. Yes, ma'am. Yes, ma'am. I did do that but that's
21 the only thing I'm guilty of is trying to defeat the drug
22 test. You know what I'm saying? I can admit that on the
23 stand. Like I'm saying, that's the only thing I'm guilty of
24 is trying to defeat the drug test because I was afraid of
25 going to jail for failing the drug test. But other than that

1 like I said that's the only thing I am guilty of, ma'am.

2 Q. Do you recall the State going over the facts at your
3 plea?

4 A. Uhm, what do you mean the facts?

5 Q. Well, the State gave a recitation of the facts to
6 Judge Knie, correct?

7 A. Uhm, I guess so. I don't -- I don't --

8 Q. Well, would looking at that transcript refresh your
9 memory?

10 A. Yes, ma'am.

11 MS. OPPENHEIMER: Your Honor, may I approach the
12 witness?

13 THE COURT: You may.

14 BY MS. OPPENHEIMER:

15 Q. Look at pages 8 through 9.

16 A. Yes. See, one of the things, this is back -- [REDACTED]
17 Palmer Court is not even my address.

18 Q. Just read the facts.

19 A. But, yes, ma'am. Yes, ma'am.

20 Q. And on page 9 you agreed with those facts,
21 correct?

22 A. Yeah. But not knowing what I was agreeing to. Yes,
23 ma'am.

24 Q. Well, they were specifically laid out for you right
25 then and there and you had the opportunity to agree or

1 disagree, correct?

2 A. Yes, ma'am.

3 Q. And you ultimately agreed?

4 A. Yes, ma'am. Like I said, not being an attorney or
5 having any knowledge of any of that, yes, ma'am, I did, not
6 know really what I was agreeing to. Yes, ma'am.

7 Q. Do you remember Judge Knie going over each of your
8 rights at trial with you?

9 A. Uhm, I don't remember it but I guess she did if it's
10 on that paper. Yes, ma'am.

11 Q. And you told her that you understood each of those
12 rights?

13 A. Yes, ma'am. There again, not -- You know what I'm
14 saying? -- not really knowing what because it wasn't -- You
15 know what I'm saying? Everything wasn't actually broken down
16 to me and explained to me where I could understand what I was
17 agreeing to. That's the whole thing. Nobody really actually
18 sat down and said, okay, I'm gonna break it down for you where
19 you can understand what you're agreeing to. You know what I'm
20 saying? The only thing that I really thought that I was
21 agreeing to was that I was gonna be -- You know what I'm
22 saying? -- that I was, even though I'm not guilty, if I put
23 in, if I put in a guilty plea of this, then that nobody is
24 asking really for any time that I could go home. Yes, ma'am.

25 Q. Well, you were aware that you could proceed to trial

1 on these charges and try and prove your innocence, correct?

2 A. The way it was explained to me -- Yeah. I know this
3 now. But at the time the way it was explained to me I really
4 didn't, I really didn't think I had a choice. No, ma'am. At
5 the time I didn't but I understand. Now I understand that I
6 have, I had time to do some research and everything. Yes,
7 ma'am. I understand that now. Yes.

8 MS. OPPENHEIMER: Your Honor, we would just point
9 out that Judge Knie goes over each of his rights at trial
10 on page 5 of the transcript.

11 THE COURT: I'll review the transcript before making
12 a decision.

13 MS. OPPENHEIMER: Yes, Your Honor.

14 BY MS. OPPENHEIMER:

15 Q. And so you also told Judge Knie that understanding
16 your rights that you still wanted to plead guilty, correct?

17 A. Yes, ma'am.

18 MS. OPPENHEIMER: I have no further questions, Your
19 Honor.

20 THE COURT: All right. Any redirect?

21 MS. McMAHAN: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. McMAHAN:

24 Q. Did Mr. Mauldin sit down and tell you what all your
25 constitutional rights were?

1 A. No, ma'am.

2 Q. Did he explain to you that if you objected to the
3 facts that the Solicitor stated, that you could tell the Court
4 that?

5 A. Explain again.

6 Q. Did Mr. Mauldin tell you that if you had an issue
7 with the way the facts the Solicitor stated them, that you
8 could object to them? Did he tell you that?

9 A. No. I was not aware of that.

10 Q. And would you have gone in and pled guilty that day
11 if you thought you were gonna end up in SCDC?

12 A. No, ma'am.

13 Q. Anything else you want the Court to know?

14 A. No, ma'am.

15 MS. McMAHAN: All right. Nothing further from the
16 applicant, Your Honor.

17 THE COURT: Thank you. Step down.

18 MS. McMAHAN: The applicant rests.

19 THE COURT: All right. State, be glad to hear from
20 you.

21 MS. OPPENHEIMER: The State calls David Mauldin.

22 Thereupon,

23 DAVID MAULDIN

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

25 DIRECT EXAMINATION

1 BY MS. OPPENHEIMER:

2 Q. Good morning, Mr. Mauldin. How are you doing?

3 A. I'm doing fine. Good morning to you.

4 Q. How long have you been practicing law?

5 A. Since 1997.

6 Q. Where are you employed?

7 A. I'm with the Lexington County Public Defender's
8 Office.

9 Q. How long have you been there?

10 A. Since the end of 2008. I took a period of time off
11 in 2012 but since 2008.

12 Q. Is it fair to say that most of your practice has
13 been criminal law?

14 A. Since spring of 1999. Yes.

15 Q. Were you appointed in this case?

16 A. Yes. Our office was appointed, it was appointed and
17 he ended up with a screening and our office officially handled
18 the case near the end of August, August 31 of '17.

19 Q. How many times did you meet with Mr. Lloyd prior to
20 his guilty plea?

21 A. Well, he had an appearance on October 13th of '17
22 when he was still out of jail. Uhm, they had made a plea
23 offer then. He had signed for a come back on November 9th.
24 We were not able to get an appointment with him because he was
25 re-incarcerated by his bondsman near the beginning of November

1 and I went to see him in the jail on November 6th for the
2 first time, uhm, where we had our initial meeting and went
3 over discovery and then he wanted to plea. A plea date was
4 scheduled. The docket was full. He wasn't transported. I
5 met with him again on November 29th to let him know about the
6 new court date and then I met with him again before the plea
7 to go over the paperwork.

8 Q. All right. When you reviewed the discovery with the
9 applicant, what evidence did the State have against him?

10 A. Uhm, they had gone to the house to serve a probation
11 warrant. They found some pills in the bedroom. Based on the
12 pills they got a search warrant for the rest of the house. In
13 the bedroom they found some meth amphetamine and in a truck
14 outside they found a meth lab and around the wooded area near
15 the house they had found 11 used acid generators and also had
16 found some pseudoephedrine in a potato chip bag somewhere and
17 some other items used in the manufacturing of meth on and
18 around the residence.

19 Q. And just to be clear, was that Mr. Lloyd's home?

20 A. He had never said that he wasn't staying there. I
21 think he said on the stand that he was there sleeping. I
22 think he and Candace Bass were staying there together and on
23 the report it said after he was taken to jail, they had
24 Mirandized him and he admitted that the items in the house and
25 around the residence were his. I gave him a copy of the

1 discovery for both this drug case and -- It's not adulterant.
2 He brought a whizzinator, the thing to the probation office to
3 defeat the drug test. It's a device to defeat the drug test.

4 THE COURT: A whizzinator?

5 BY THE WITNESS:

6 A. Yes, sir. W-h-i-z. He was originally charged with
7 PWID or possession with intent to distribute meth,
8 manufacturing meth and possession of a schedule two controlled
9 substance. There were also weapons found in the house. He
10 was also charged with possession of a weapon during a violent
11 crime. He has a prior possession of controlled substance that
12 he pled to in March of '17 so technically these would have
13 been second offenses for the drug offenses.

14 BY MS. OPPENHEIMER:

15 Q. Did you review each charge with him?

16 A. Yes, ma'am. The charges in the felony is a second
17 offense that would carry five to 30 for the PWID and the
18 manufacturing of meth. The possession of a weapon during a
19 violent crime carries five years flat day for day. Oxycodone
20 is a narcotic so it's possession of a schedule two narcotic.
21 For a first offense it's zero to two like heroin. With a
22 second offense it's zero to five. And the whizzinator charge
23 was zero to three and he was on probation for that burglary
24 third. Had been through the court system before. Had five
25 years suspended on two years probation.

1 Q. Did you ever promise him that he would be going home
2 on probation?

3 A. I told him that the State was not taking a position
4 regarding sentencing; that we would ask the judge for
5 continued probation and perhaps drug counseling and that kind
6 of thing, but when people are on probation and they have new
7 crimes, I practically always tell them it's not a good thing
8 that you're on probation. The judge may give you a little
9 piece of time depending on the case. Obviously a violent
10 crime or something like that. But generally if it's a drug
11 addiction or drug related I tell them that they could get
12 anywhere between like a year or two years but it's in the
13 judge's discretion and they could sentence them to anything up
14 to what the maximum for the crime is.

15 Q. Did he seem to understand your conversations with
16 him?

17 A. Yes, ma'am.

18 Q. Did he ever deny that the drugs found were his?

19 A. No. I reviewed the discovery with him. I reviewed
20 the plea offer which they were dismissing the PWID and
21 reducing the manufacturing meth to a conspiracy to manufacture
22 meth which is half of the substantive offense. That's what
23 the seven and a half is. I went through the discovery with
24 him. I went through the plea offer. He said he wanted to do
25 the plea. He never said that he wanted to go to trial or

1 explore any issues. He said that he knew that he had violated
2 his probation by taking the whizzinator to the office and he
3 wanted to get everything over with and schedule a plea date
4 first for November and then it got rescheduled for December.
5 When I met with him the second time on November 29th after he
6 didn't go in November, he never said I don't want to plea. I
7 need to take some more time. And before the plea he never
8 said anything about I don't want to do the plea. I need more
9 time. There was nothing like that.

10 Q. So this was gonna be a plea from the outset?

11 A. As far as I knew. And after sentencing, his major
12 complaint was that he had to do prison time and probation. He
13 thought that he should have to do either one or the other but
14 not both.

15 Q. And did you ever force him to plead guilty or rush
16 him to plead guilty?

17 A. No, ma'am.

18 MS. OPPENHEIMER: I have no further questions, Your
19 Honor.

20 THE COURT: All right. Cross examination.

21 CROSS EXAMINATION

22 BY MS. McMAHAN:

23 Q. Uhm, my apologies. I was trying to take notes and
24 talking at the same time so I might ask some repetitive
25 questions.

1 A. All right.

2 Q. You said you tried to contact the defendant I guess
3 sometime between the first appearance and the second
4 appearance?

5 A. Well, I was gonna have a meeting with him before the
6 second appearance but he ended up being put in jail before I
7 could bring him to the office and review everything.

8 Q. So you were gonna try to schedule a meeting with
9 him?

10 A. Yes. Yes.

11 Q. Then the bondsman went off the bond before then?

12 A. Yes.

13 Q. Did you have any indication why the bondsman went
14 off the bond?

15 A. Something to do, he was incarcerated. He said it
16 was for an unpaid traffic ticket or something like that.

17 Q. So the reason why he was back in the detention
18 center was because of an unpaid traffic ticket?

19 A. I never really investigated it tell you the truth.
20 He was put back in by the bondsman and there was like some
21 reckless driving on his docket sheet. He said it was because
22 he hadn't paid a ticket.

23 Q. Did you ever talk to him about how that prior
24 magistrate level offense would affect those pending charges
25 that you represented him on?

1 A. Yes, ma'am. Well, it wasn't magistrate. It was in
2 transfer court.

3 Q. That's what I meant.

4 A. Okay.

5 Q. What was the actual discovery that you guys had on
6 him?

7 A. I think what I gave him was a 42 page packet
8 regarding the drug case and let's see, there was a shorter
9 packet regarding the whizzinator case.

10 Q. Did he ever deny the whizzinator?

11 A. No. He did not.

12 Q. Then the drugs, when you talked to him about that,
13 did he say they belonged to anybody else or they were at his
14 neighbor's house or anything like that?

15 A. The best I can tell is that he said there were a lot
16 of people in and out, everybody used meth and there was a meth
17 cook there and he would buy pseudo every once in a while for
18 meth or he gave the guy a place to stay to make meth and he
19 would use meth.

20 Q. Did any of those other people get charged?

21 A. As far as I know Candace Bass was the only other
22 individual or as far as I can remember.

23 Q. And did you ever have a discussion with him about
24 challenging that Mirandized statement that he gave?

25 A. I don't believe so. He never denied making it or

1 anything like that.

2 Q. What did that statement say?

3 A. It was a, it just said that he admitted the items in
4 the house and around the house were his and that it was made
5 in front of, hold on, Investigator Edmondson and Agent
6 Dubowski.

7 Q. Did he ever say he was with them for a long period
8 of time or anything like that before he gave that statement?

9 A. No. It just says -- I'll read it, if you want me
10 to.

11 Q. Okay.

12 A. It says, I was able to talk to James a few hours
13 later while he was at Lexington County Detention Center.
14 After reading James' Miranda Rights, I asked James about the
15 items found inside the residence and he advised me everything
16 found in and around the house belonged to him. He also
17 admitted that he knew agents were at his door knocking but
18 refused to come to the door when told to do so.

19 Q. By agents, did he mean the probation agents or we
20 don't know?

21 A. That's just what it says.

22 Q. Okay. Did you discuss all this with the defendant
23 about the statements and what he was looking at?

24 A. Yes, ma'am. I went over the report with him and
25 everything and then went over the offer and then plea or

1 trial.

2 Q. Okay. And then you said earlier that typically you
3 tell people who are on probation that they might get a piece
4 of time?

5 A. Yes, ma'am.

6 Q. Do you have a, what is a piece of time exactly?

7 A. About a year or two.

8 Q. Okay. And was there ever any discussion with him
9 about being in a trial situation, what would happen at trial
10 or anything like that?

11 A. I just told him he had a right to a trial, right to
12 question witnesses, right to put up a defense, a right to
13 remain silent, a right to make legal challenges of the
14 evidence.

15 Q. Do you believe there would have been a defense to
16 this case had it gone to trial?

17 A. You can always put a defense in any case if it goes
18 to trial. Whether or not it's successful is a thing for the
19 jury to decide.

20 Q. Did he ever indicate to you that he wanted to go to
21 trial?

22 A. No.

23 Q. Do you remember him telling you that he would buy
24 sudafed for these people or is that something that was sort of
25 implied during the conversation?

1 A. It was probably implied during the conversation.

2 MS. McMAHAN: Nothing further, Your Honor.

3 THE COURT: All right. Anything on redirect?

4 MS. OPPENHEIMER: Very briefly Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. OPPENHEIMER:

7 Q. So even though you told Mr. Lloyd that because he
8 was already on probation he might get one to two years, was he
9 fully aware that he was facing seven and a half years on this
10 charge?

11 A. Seven and a half on this, zero to three on the
12 whizzinator and zero to five on the probation violation.

13 MS. OPPENHEIMER: No further questions, Your
14 Honor.

15 THE COURT: Step down. Anything further from the
16 State?

17 MS. OPPENHEIMER: Nothing further, Your Honor.

18 THE COURT: Any additional evidence from the
19 applicant?

20 MS. McMAHAN: None, Your Honor.

21 THE COURT: All right. Let me, before I rule on
22 this, let me review the transcript in light of the issues
23 that were raised and I'll let the attorneys know by
24 e-mail.

25 MS. OPPENHEIMER: Thank you, Your Honor.

1 THE COURT: I'll be glad also -- I'm sorry. Any
2 final comments?

3 MS. McMAHAN: I don't have any final comments other
4 than, Your Honor, based on just what Mr. Lloyd stated on
5 the stand which contradicts a lot of what was presented
6 earlier today.

7 THE COURT: Thank you. All right.

8 MS. OPPENHEIMER: Your Honor, we would ask that
9 Mr. Mauldin be released from his subpoena.

10 THE COURT: All right. Since this hearing is over,
11 he's welcome to go.

12 THE COURT: Good luck to you.

13 MR. LLOYD: Thank you, sir.

14 WHEREUPON, THE HEARING WAS CONCLUDED.
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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

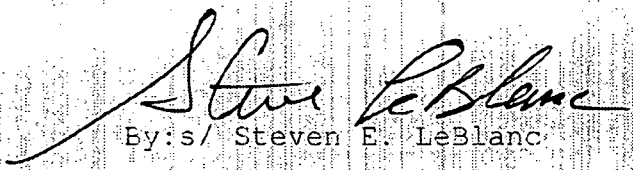
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 1st day of August, 2018.

11 I FURTHER CERTIFY that the forgoing 28 pages
12 constitute a true and accurate record of said proceedings.

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

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 9th day of February, 2019.

17
18 
19 By: s/ Steven E. LeBlanc

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

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

ORIGINALSTATE OF SOUTH CAROLINA
COUNTY OF LEXINGTONIN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

James D. Lloyd, #374726,

Case No. 2018-CP-32-00358

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
2018 OCT 29 AM 8:45
SOUTH CAROLINA
COURT OF COMMON PLEAS
LEXINGTON

This matter comes before the Court by way of an application for post-conviction relief filed January 31, 2018, by James D. Lloyd (Applicant). The State (Respondent) made its Return, Partial Motion to Dismiss, and Motion for a More Definite Statement on April 24, 2018, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel. Thereafter, on July 16, 2018, Applicant, through his counsel, filed an amendment to the application for post-conviction relief. An evidentiary hearing into the matter was convened on August 1, 2018, at the Lexington County Courthouse before the Honorable Perry H. Gravely. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County

Clerk of Court. During its September 2017 term, the Lexington County Grand Jury indicted Applicant for possession of an adulterant to defeat a drug test (2017-GS-32-03083) and possession with intent to distribute (PWID) methamphetamine (2017-GS-32-03087). Assistant Public Defender David M. Mauldin, of the Lexington County Public Defender's Office, represented Applicant on this charge. Assistant Solicitor Casey Rankin Smith, of the Eleventh Circuit Solicitor's Office, prosecuted the case. On December 5, 2017, Applicant appeared before the Honorable Grace G. Knie and pled guilty as indicted to possession of an adulterant to defeat a drug test. Applicant also waived presentment to the Grand Jury for one count of conspiracy to manufacture methamphetamine (2017-GS-32-03087) and pled guilty to that offense. The PWID charge was dismissed. Judge Knie accepted both pleas and sentenced Applicant to a term of imprisonment of three years, provided upon the service of two years, the balance would be suspended to two years' probation for possession of an adulterant to defeat a drug test and seven-and-a-half years, provided upon the service of two years, the balance would be suspended to two years' probation for conspiracy to manufacture methamphetamine. The sentences were to be served concurrently. Applicant did not appeal his plea or sentence.

CURRENT APPLICATION

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

1. Strickland -vs- Washington;
 - a. Ineffective counseling/Lawyer should of [sic] caught it.
2. Lockhart -vs- State; [and]
 - a. Newly discovered evidence.
3. Lomax -vs- State.
 - a. Wrong charges for which I'm held.



In his amendment to the application for post-conviction relief, filed by counsel, Applicant raises the following additional grounds:

1. Ineffective Assistance of Counsel:
 - a. Rushed the Applicant through to a guilty plea. Applicant was only in jail for about three weeks and saw [Counsel] once prior to guilty plea;
 - b. Told the Applicant that the Solicitor wasn't looking for any more time, Applicant took that to mean that he would be returning to probation and not going to SCDC; [and]
 - c. Did not go over Discovery with the Applicant. Did not address how Applicant could be charged for drugs that were not found on his property but on his neighbor's property.

At the evidentiary hearing, Applicant proceeded forward on the allegations raised in his amendment to the application for post-conviction relief.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Assistant Public Defender Mauldin (Counsel). This Court also had before it a copy of Applicant's plea transcript, the records of the Lexington County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was in jail for less than a month before he pled guilty. He explained the plea happened so fast, he did not have time to think about it. He further testified he is innocent, and he is not guilty. He testified he admitted he willfully violated his probation, but that is the only thing of which he is guilty. He explained he would not have pled guilty because he is not guilty. Applicant also testified he was afraid of going to jail for failing his drug test. He further testified he told the plea court he was pleading freely, voluntarily, and knowingly. He elaborated, however, at the time, he did not feel as though he had a choice.

Applicant guessed the plea court reviewed his rights at trial with him. He testified he informed the plea court he understood each of his rights. He further testified he told the plea court understanding those right, he still wanted to plead guilty. He explained he had no knowledge of the process at the time and did not know what was going on. He further explained no one sat down and explained the process to him. He also testified Counsel did not explain his constitutional rights with him.

Applicant also testified Counsel told him the State was not asking for Applicant to serve any time and was not pushing for time. He explained based on this, he thought he would be going home to his family. He further explained he thought he would plead guilty in order to go home. Applicant testified Counsel explained the potential sentence to him, but assured him the State was not asking for time. He further testified he was simply trying to get home, and he had never been in trouble before. He elaborated he would not have pled guilty if he had known he would be serving time in prison.

Applicant testified he recalled the plea court reviewing the potential sentences for each charge with him. He further testified he was aware he was facing seven-and-a-half years. He elaborated he told the plea court he had no questions about the punishment he faced. He also testified he informed the plea court he was satisfied with Counsel.

He testified when he was arrested for these new charges, he was on probation for third-degree burglary, which was transferred to Lexington County. He also testified his probation agent arrived at his neighbor's house and found drugs, but they were not found at his house. He testified the agent also found a bottle in his neighbor's car. He elaborated, however, his probation agent came to his house for a home visit while he was asleep. He further elaborated the agent knocked on his door, but he did not answer. He testified when he woke up, the agent



came into his house and found pills and baggies. Applicant further testified he did not discuss this version of events with Counsel. He testified he agreed with the facts as presented by the State at his plea, and he was given the opportunity to disagree with those facts.

Applicant further testified he did not see the evidence the State had against him; therefore, he did not know what the State had. He elaborated the evidence was never laid out for him. He further elaborated there were not drug tests, and law enforcement did not seize any drugs. He also testified law enforcement only seized some pills, with which his girlfriend was charged. He testified drugs were not found in his house.

Following Applicant's testimony, Applicant rested; and the State presented the testimony of Counsel. Counsel testified he has been practicing law since 1997 and has been practicing criminal law since 1999. He further testified he is currently employed with the Lexington County Public Defender's Office and has been since 2008.

Counsel testified he was appointed to represent Applicant on August 31, 2017. He testified Applicant was scheduled for an appearance on October 13, 2017, at which point Applicant was out on bond. He testified, however, the bondsman revoked Applicant's bond due to an unpaid parking ticket. He further testified at that October appearance, the State made a plea offer. He testified Applicant was incarcerated again in November, and they had their initial meeting on November 6, 2017. He explained this meeting was prior to Applicant's second court appearance and was held at the jail. He further testified at the initial meeting they reviewed the discovery, and Applicant indicated he wanted to plead guilty. He testified they also discussed the elements of each of the charges, as well as potential sentences. He further testified he provided Applicant with a copy of the discovery. Counsel also testified on November 29, 2017, Applicant was again scheduled to appear in court.

Counsel testified Applicant was on probation for third-degree burglary. He also testified Applicant never denied using a "whizzinator" to defeat a drug test while on probation. Counsel further testified Applicant's probation agent served a search warrant at Applicant's house. He explained a lot of people were in and out of that home, cooking methamphetamine. He further explained Applicant used the methamphetamine made. He testified in executing that search warrant, the agent found pills, methamphetamine, used acid generators, pseudoephedrine, and a truck outside of the home that contained a meth lab. He further testified Applicant never indicated he was not staying at that home, and Applicant admitted the items found in the house were his. Counsel testified Applicant also never denied the drugs were his. He also testified Applicant's girlfriend was charged in connection with the items found at the home.

He also testified he and Applicant did not discuss challenging the statement Applicant made to law enforcement, because Applicant never denied making the statement. He further explained Applicant never denied ownership of the items found in the house. Counsel also testified he and Applicant did review the incident report, the plea offer, and the advantages and disadvantages of a plea or of a trial.

Counsel testified he informed Applicant the State was not taking a position on sentencing, and he would ask for probation. He further testified he tells all of his clients they may get some prison time, and it is within the judge's discretion. Counsel testified he explained to Applicant he might have to serve some time, but estimated it would be approximately one to two years. Counsel testified Applicant understood this. He further testified Applicant was aware of the range of sentences he was facing on each charge. He testified Applicant's major complaint was regarding prison time or probation.



He also testified he reviewed the plea offer with Applicant, and Applicant indicated he wanted to plead. He testified he reviewed Applicant's rights at trial with him. He explained Applicant never indicated he wanted to proceed to trial. Indeed, Applicant never stated he did not want to plead guilty. Counsel further explained this was going to be a plea from the outset. He testified he neither forced nor rushed Applicant to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant's allegations are two-fold: (1) ineffective assistance of counsel for informing Applicant he would not have to serve any amount of time in prison and for failing to review the discovery with Applicant and (2) involuntary guilty plea, in that Counsel rushed Applicant to plead guilty. On these claims, this Court finds Applicant has wholly failed to meet his burden.

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant 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." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged promise to Applicant regarding his sentence

Applicant contends Counsel was ineffective for assuring Applicant the State was not seeking "any more time." Specifically, Applicant argues in this assurance, Counsel informed Applicant he would not be required to serve any prison time.

PH

This Court finds Applicant has failed to establish any deficiency on the part of Counsel. Applicant testified Counsel informed him the State was neither asking for nor pushing for Applicant to serve any prison time. Applicant elaborated because of this, he believed he would be going home after pleading guilty. On the other hand, Counsel testified he reviewed the potential sentences with Applicant, specifically reviewing with Applicant he faced up to seven-and-a-half years. Counsel further testified Applicant was fully aware of the potential sentences he faced. Additionally, Counsel testified though he told Applicant he believed he would have to serve one to two years in prison, he explicitly informed Applicant sentencing was within the plea court's discretion. This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Accordingly, this Court finds Applicant has failed to prove Counsel was deficient.

Similarly, this Court finds Applicant has ~~wholly~~ failed to establish any prejudice as a result of this alleged deficiency. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. *State v. Franklin*, 267 S.C. 240, 226 S.E.2d 896 (1976); *Clark v. State*, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, the applicant must prove the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. *Clark*, 259 S.C. 378, 192 S.E.2d 209; *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979).

Here, Applicant pled guilty to conspiracy to manufacture methamphetamine and possession of an adulterant to defeat a drug test. Upon conviction of first offense conspiracy to manufacture methamphetamine, the defendant "must be sentenced to a term of imprisonment of not more than fifteen years." S.C. Code Ann. § 44-53-375(B)(1). For this offense, Applicant

was sentenced to a term of imprisonment of seven-and-a-half years, provided upon the service of two years, the balance would be suspended to two years' probation. The sentence Applicant received was well within the sentencing range prescribed. Additionally, a person convicted of first offense possession of an adulterant to defeat a drug test must be "imprisoned not more than three years." S.C. Code Ann. § 16-13-470(B)(1). For this offense, Applicant was sentenced to a term of imprisonment of three years, provided upon the service of two years, the balance would be suspended to two years' probation. This sentence was well within the statutory limits. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to review discovery with Applicant

Applicant further contends Counsel was ineffective for failing to review the discovery with him. Specifically, Applicant alleges Counsel was ineffective for failing to "address how Applicant could be charged for drugs that were not found on his property but on his neighbor's property." Applicant testified he never reviewed the discovery with Counsel and did not know what evidence the State had against him. He further testified the drugs were not found at his house, but rather at his neighbor's house. Counsel, however, testified he reviewed the discovery materials with Applicant. He further testified the drugs were found in Applicant's home, and Applicant neither denied staying at the home at the time nor denied ownership of the drugs. This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Based on the foregoing, this Court finds Applicant has wholly failed to establish Counsel was deficient. Additionally, because the drugs were indeed found on Applicant's property, any conversation with Applicant regarding his culpability for drugs found on his neighbor's property, would be unnecessary. This Court, therefore, finds

PH

Applicant has failed to establish any resulting prejudice from this alleged deficiency. This allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant further alleges his guilty plea was not voluntarily made. Specifically, Applicant alleges he was rushed into a plea by Counsel. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntarily made. This Court further finds Applicant's plea was entered into freely and voluntarily. The record before this Court reflects the plea court

thoroughly reviewed all of Applicant's constitutional rights with him, including his right to a jury trial. Tr. 5. Applicant indicated he understood his constitutional rights and, understanding those rights, still wanted to enter a guilty plea. Tr. 5. Applicant further indicated no one had promised him anything, threatened him, or coerced him in order to get him to plead guilty. Tr. 7. Additionally, Applicant indicated he was entering these guilty pleas freely, knowingly, and voluntarily. Tr. 8.

Applicant testified he had no time to think about whether or not he wanted to plead guilty and felt he had no other choice but to plead guilty. On the other hand, Counsel testified he reviewed all discovery materials with Applicant and reviewed all of the elements which the State would be required to prove at trial, the potential punishments, and his constitutional rights with Applicant. As aforementioned, despite Applicant's contention he believed he would be going home after his guilty plea, Counsel made Applicant thoroughly aware of the amount of time he was facing with respect to each charge. Counsel further testified after his discussions with Applicant, Applicant decided to plead guilty. Indeed, Applicant indicated from the outset he wished to plead guilty and never indicated he want to proceed to trial. Furthermore, Counsel testified he did not rush Applicant to plead guilty. This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. Consequently, this allegation must be denied and dismissed with prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State.

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


 PERRY H. GRAVELY
 Presiding Judge
 Eleventh Judicial Circuit

Pickens, South Carolina

WITNESSES

Probation, Parole and Pardon Lexington

Reginald S Garvin Jr

Law Enforcement Case #:

CNR

ARREST WARRANT NUMBER

2017A3210200846

ACTION OF GRAND JURY

TRUE BILL

Christie Nicol-Morris
Foreperson of Grand Jury
Date: 9/12/17

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3203083

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

THE STATE

vs.

James Dustin Lloyd

CDR #: 2667

Indictment for

Possession of Adulterant to Defeat Drug
Test

§ 16-13-0470(A4)

S.R. Hubbard III, SOLICITOR

A TRUE COPY

John Carter
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR

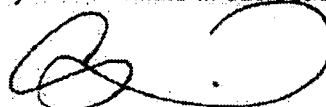
Possession of Adulterant to Defeat Drug Test

§ 16-13-0470(A4)

At a Court of General Sessions, convened on September 2017, the Grand Jurors of Lexington County present upon their oath:

That **James Dustin Lloyd** did in Lexington County, South Carolina on or about May 24, 2017, unlawfully possess adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding a drug or alcohol screening test, to wit: Defendant was in possession of a clear plastic pouch filled with liquid contents that was connected to a prosthetic penis and was concealed on his person in order to defeat or defraud a drug test, in violation of Section 16-13-470 (A)(4) Code of Law for State of South Carolina (1976) as amended.

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



ASSISTANT SOLICITOR

0-3 +/CR 0-SK

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.James Dustin Lloyd

AKA:

Race: Sex: M Age: DOB: SS#: Address: City, State, Zip: Gaston, SC 29053DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Urine / Possess adulterants intended to defeat drug or alcohol test - 1st offensein violation of § 16-13-0470(A4) of the S.C. Code of Laws, bearing CDR Code # 2667☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The 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.

ATTEST:

Carly Pa
Solicitor78439
SC Bar#
Defendant
Attorney for Defendant14174
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/Years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of 2 days/months/Years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for 2

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. 35 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 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u></u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u></u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u></u>
Proviso 61.6 (Public Def/Probation)	\$500	\$ <u></u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u></u>
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$ <u></u>
§ 56-5-2942(I) (Vehicle Assessment)	\$40/cu	\$ <u></u>
3% to County (if paid in installments)	\$	\$ <u></u>

A TRUE COPY

Clerk of Court / Deputy Clerk

Court Reporter

Lexington C.C.P., G.S. & P.O.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3203083A/W#: 2017A3210200846Date of Offense: 5/24/2017S.C. Code §: 16-13-0470(A4)CDR Code #: 2667

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-13-0470(A4) of the S.C. Code of Laws, bearing CDR Code # 2667☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The 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.

ATTEST:

Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/Years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of 2 days/months/Years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for 2

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. 35 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 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u></u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u></u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u></u>
Proviso 61.6 (Public Def/Probation)	\$500	\$ <u></u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u></u>
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$ <u></u>
§ 56-5-2942(I) (Vehicle Assessment)	\$40/cu	\$ <u></u>
3% to County (if paid in installments)	\$	\$ <u></u>

☐ Appointed PD or appointed other counsel, §Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

12/5/17

WITNESSES

Lexington County Sheriffs Department

Douglas H Edmonson II

Law Enforcement Case #: 17014568

CNR

ARREST WARRANT NUMBER

2017A3210201253

ACTION OF GRAND JURY

TRUE BILL

Christie Noel Morris

Foreperson of Grand Jury

Date: 9/12/17

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS3203087

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

THE STATE

vs.

James Dustin Lloyd

CDR #: 3198

Indictment for

PWID Methamphetamine

§ 44-53-0375 (B) (1)

S.R. Hubbard III, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

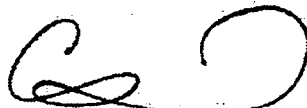
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
PWID Methamphetamine
§ 44-53-0375 (B) (1)

At a Court of General Sessions, convened on September 2017, the Grand Jurors of Lexington County present upon their oath:

That in Lexington County, South Carolina, on or about July 26, 2017, the Defendant, James Dustin Lloyd, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Methamphetamine; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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



ASSISTANT SOLICITOR

0-7.5 +102 \$0-12.5k

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

James Dustin Lloyd

AKA:

Race: Sex: M Age: 35

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Gaston, SC 29053

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Itazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy to Manufacture Methamphetamine

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3203087

A/W#: 2017A3210201253

Date of Offense: 7/26/2017

S.C. Code §: 44-53-0375 (B) (1)

CDR Code #: 3198

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0420 of the S.C. Code of Laws, bearing CDR Code # 0027

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(SSC w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. SDC (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 78939

Defendant

Attorney for Defendant

SC Bar# 14174

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 7.5 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 2 days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 2

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 17-32-87
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. 37 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 16-25-65 (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	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def./Probation)	\$500	\$ 300
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$

3% to County (if paid in installments)

TOTAL \$ 775

Clerk of Court: [Signature]

Judge: [Signature]

SCCA 217 (07/2016)

_____ 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 \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☒ Appointed PD or appointed other counsel.

§ Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]

Judge Code: 2760

Sentence Date: 12/15/17