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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

ANTWAN YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002015

APPENDIX

LANELLE CANTEY DURANT
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South Carolina Commission on Indigent
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ATTORNEY FOR PETITIONER

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State of South Carolina)	Court of General Sessions
)	Ninth Judicial Circuit
County of Charleston)	Case No. 2017-GS-10-03624
)	Case No. 2017-GS-10-03625
)	
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
)	
Antwan Young,)	
)	
Defendant.)	
)	

August 24, 2017
Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis, Judge

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

Daniel Poulos, Esquire
Attorney for the Plaintiff

Adam Mlynarczyk, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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EXHIBITSNO.DESCRIPTIONID.EV.

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption
or change in thought

ellipses . . . trailing off

[ph] phonetically written

[sic] written as said

1 AUGUST 24, 2017

2 (WHEREUPON, the proceedings began at 2:39 p.m.)

3 MR. POULOS: The State calls Antwan Young.

4 THE COURT: For those that want to wait, that's fine.

5 Judge Couch, I think, is also doing pleas. Also, I think

6 y'all know that we're going to -- Judge Couch is hearing the

7 bonds and I'm going to do pleas tomorrow. So that's where we

8 are.

9 MR. MLYNARCZYK: Good afternoon, Judge.

10 THE COURT: Good afternoon, Mr. Mlynarczyk. How are

11 you, sir?

12 MR. MLYNARCZYK: Doing well. Thank you, Judge.

13 THE COURT: All right. You are Antwan Young?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Young, you stand with your lawyer. I

16 have several indictments that charge you -- charge you with

17 -- and he's explained these crimes to you, sir? Your

18 charges?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Indictment 2017-3625 charges you with

21 trafficking cocaine. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And your lawyer has explained to you it's a

24 second offense? So that's -- what is it? Is that five to

25 25? Minimum of 5?

1 MR. MLYNARCZYK: Minimum of 5, yeah.

2 THE COURT: And 25 is the maximum with a second offense;
3 is that correct, sir?

4 MR. POULOS: I believe it's 30, Your Honor.

5 THE COURT: Or 30?

6 MR. MLYNARCZYK: 30. Yes, Your Honor.

7 THE COURT: Okay. Five to 30. Do you understand that,
8 sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And apparently, you have negotiated a
11 sentence through your lawyer of 15 years?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And that's what you're asking me to accept;
14 is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Understanding that -- that if I
17 accept the negotiated sentence, as your lawyer has explained
18 to you, my options are either to accept it or reject it. Do
19 you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: That I would impose a sentence of 15 years,
22 give you credit for any time that you've served. How do you
23 plead? Guilty or not guilty?

24 THE DEFENDANT: I plead guilty, sir.

25 THE COURT: And Indictment 2017-3624 charges you with

1 distribution of heroin, third, and that carries a potential
2 sentence normally of 10 to 30 years, but you've negotiated a
3 sentence of 15 years to run concurrently with the previous
4 one; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand that if I accept that, I
7 would impose a 15-year sentence and give you credit for time
8 served. How do you plead?

9 THE DEFENDANT: I plead guilty.

10 THE COURT: Are you satisfied with your lawyer, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Solicitor, other than the negotiated
13 sentence of 15 years, any other agreements?

14 MR. POULOS: No, Your Honor.

15 THE COURT: Mr. Mlynarczyk, is that your understanding,
16 sir?

17 MR. MLYNARCZYK: It is my understanding, Judge.

18 THE COURT: And have you had the opportunity to
19 investigate the matter fully on your client's behalf, Mr.
20 Mlynarczyk?

21 MR. MLYNARCZYK: I have, Judge.

22 THE COURT: And shared the results with him?

23 MR. MLYNARCZYK: I have, Judge.

24 THE COURT: After discussing it with you, he indicated
25 his desire to possibly enter a guilty plea and requested that

1 you negotiate the best arrangement you could for him?

2 MR. MLYNARCZYK: Yes, Judge.

3 THE COURT: And now the record reflects the results of
4 your efforts in that regard?

5 MR. MLYNARCZYK: It does, Your Honor.

6 THE COURT: Do you believe the negotiated sentence to be
7 in your client's best interest?

8 MR. MLYNARCZYK: I do, Your Honor.

9 THE COURT: And based on your investigation, do you
10 concur with his decision to enter the guilty pleas?

11 MR. MLYNARCZYK: I concur.

12 THE COURT: Is that true, Mr. Young?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Then you understand and realize, sir, if I
15 accept your plea, you won't have a jury trial. You won't
16 confront the witnesses against you. You're giving up the
17 right to remain silent in each of these cases?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Nobody has threatened you in any way to get
20 you to plead guilty, sir?

21 THE DEFENDANT: No, sir.

22 THE COURT: Other than the promises which are contained
23 in the negotiated sentence, have any other promises been made
24 to you, sir?

25 THE DEFENDANT: No, sir.

1 THE COURT: Solicitor, tell me the facts, please, sir.

2 MR. POULOS: Yes, Your Honor. This case is part of a
3 two-year operation conducted by ATF and local agencies.

4 On December 16th, 2014, in the area of [REDACTED] Surprise
5 Street, North Charleston, in Charleston County, the defendant
6 distributed 3.08 grams of heroin for \$700 to an undercover
7 ATF agent. It was recorded on camera.

8 And on January 7th, 2015, in the area of 4620 Dorchester
9 Road, North Charleston, the defendant distributed trafficking
10 weight of 13.64 grams of cocaine, again to an undercover
11 agent.

12 His record includes a 2009 distribution of cocaine,
13 false report, 2006 possession of cocaine, 2003 possession of
14 cocaine, 2001 distribution of cocaine and proximity cocaine,
15 1999 possession of crack, possession of cocaine, possession
16 of marijuana, as well as some earlier offenses, Your Honor.

17 THE COURT: Okay. Are those facts correct, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Your lawyer has also explained and you are
20 aware that each of these are a serious offense?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you understand the term and the
23 significance of that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In fact, I heard a proximity, which is also

1 a serious offense. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, of course, you're setting up yourself
4 and you understand what that means if you -- when you get
5 out, the possibility of a life without parole if you were to
6 violate it again?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. You also understand that this is a
9 non-parolable offense?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: It means that, as your lawyer probably
12 explained to you, that you will serve 85 percent of the 15-
13 year sentence that I impose and, once you've satisfied that
14 85 percent, you still would be required to complete a two-
15 year community supervision. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And that's basically probation for two
18 years. The only difference in the probation though would be
19 a judge could return you up to a year at a time for the
20 balance of your remaining period of time. Do you understand
21 that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is it still your desire that I accept your
24 plea and impose the negotiated sentence, sir? Sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I find there is sufficient factual basis for
2 the plea. I find that Mr. Young has had the benefit of
3 competent counsel with whom he's indicated he's totally
4 satisfied.

5 I'll accept the plea as being freely, voluntarily,
6 knowingly, and intelligently made and entered, and I'll now
7 be happy to hear from you as to why I should accept the 15-
8 year sentence.

9 MR. MLYNARCZYK: Thank you, Judge. Mr. Young is 41
10 years old, and we've -- we've discussed this case a lot.
11 There's been a lot of talk about everything in discovery. We
12 went over that.

13 And he had some recent family issues I think we
14 addressed with Your Honor last week in regard to his son had
15 surgery and he had come out of it and he is in rehabilitation
16 now, which kind of led to some lengthy discussions on what
17 this plea meant for him and his time to be away.

18 But we did take into consideration the alternatives and
19 risks. We talked about it in depth and even -- even with
20 this -- with his history -- and it had been the end of 2014
21 when this incident happened. From that point until the time
22 he was incarcerated in February of 2017, he had remained out
23 of trouble, but, you know, things -- things catch up with
24 you. He understands that.

25 He even sent a letter to the solicitor taking

1 responsibility, and I would ask that Your Honor take those
2 things in consideration and accept the plea.

3 THE COURT: Okay. Is there anything you wish to add,
4 Mr. Young?

5 THE DEFENDANT: No, sir.

6 THE COURT: You're not under the influence of any drugs
7 or any medication here today, sir?

8 THE DEFENDANT: No, sir.

9 THE COURT: And you've had sufficient time to think
10 about the negotiated sentence?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And it's your decision that I accept this?
13 That's what you want, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. How much time has he served?

16 MR. MLYNARCZYK: He was arrested in February of 2017.

17 THE COURT: Okay.

18 MR. MLYNARCZYK: So he would get credit since then. I
19 believe it was February 22nd.

20 THE COURT: February 22nd?

21 MR. MLYNARCZYK: February 22nd.

22 SENTENCE

23 THE COURT: Okay. The sentence of the Court is that you
24 be committed to the Department of Corrections on Indictments
25 2017-3624 and 3625 for 15 years. I give you credit. They're

1 concurrent. I give you credit for time served on each of
2 those since February 22nd, 2017.

3 Good luck to you, sir.

4 THE DEFENDANT: Thank you, sir.

5 MR. MLYNARCZYK: Thank you, Judge.

6 THE COURT: Thank you, Mr. Mlynarczyk.

7 (WHEREUPON, the proceedings ended at 2:47 p.m.)

8

9 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)

2) Certificate

3 County of Florence)

4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 12, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Charleston County, South Carolina, on
13 the 24th day of August, 2017.

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

16

17

Krystal Smith

18

Court Reporter

19

20 Florence, South Carolina

21 January 30, 2018

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF)

Full name and prison number (if any) of Applicant)

ANTWAN YOUNG # 297595)
v.)

State of South Carolina)

2017-CP-10-6171

IN THE COURT OF COMMON PLEAS

FILED
2017 DEC -4 PM 1:12
CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LIEBER CORR. INST., RIDGEBVILLE, S.C. 29472
2. Name and location of Court which imposed sentence CHARLESTON COUNTY COURTHOUSE
100 BROAD STREET, SUITE 106 CHARLESTON, S.C. 29401-2258
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-10-03624
 - (b) 2017-GS-10-03625
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUGUST 24, 2017
 - (b) FIFTEEN (15) YEARS / ACTIVE

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____ *NONE*
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____ *NONE*
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____ *NONE*
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____ *NONE*
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) *I VERBALLY REQUEST TO COUNSEL TO APPEAL ON 8-24-17,*
 - (b) *BUT I SEE THAT COUNSEL IGNORED MY APPEAL REQUEST.*
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) ILLEGAL SENTENCE
- (c) GUILTY PLEA WASN'T GIVEN FREELY

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

- (a) FAILURE TO CHALLENGE THE STATES SO-CALLED EVIDENCE.
- (b) FAILURE TO GIVE ME COPY OF THE PLEA OFFER PURSUANT TO ST. V. DAVIE
- (c) *SEE THE FULL CHALLENGES ON THE AMENDMENT THAT FOLLOWS THIS APPLICATION.

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

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

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

NONE

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

i. _____

ii. _____

iii. _____

iv. _____

NONE

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

NONE

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

NONE

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

i. _____

ii. _____

iii. _____

iv. _____

NONE

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) COUNSEL IGNORED MY VERBAL APPEAL ON 8-24-17

(b) THIS WILL BE MY RE-DRESS

(c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

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

REVERSED, OVERTURN, AND/OR VACATED.

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

NO

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

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

Andrew Young

SWORN to and subscribed before me this 28th
day of NOVEMBER, 2017.

[Signature] (L.S.)
Notary Public

My Commission Expires: 6-20-26

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

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

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

Antwan Young
Applicant

SWORN or affirmed to and subscribed before me this
28th day of NOVEMBER, 2017.

Linda K. B.
Notary Public

My Commission Expires: 6-28-26

MR. ANTWAN D. YOUNG # 297395
LIEBER CORR. INST. WB-240
POST OFFICE Box 205
RIDGEBVILLE, S.C. 29472

NOVEMBER 30, 2017

CHARLESTON COUNTY CLERK OF COURT
ATTN: MS. JULIE J. ARMSTRONG
100 BROAD ST., STE. 106
CHARLESTON, S. CAROLINA 29401

DEAR MS. ARMSTRONG;

MAY YOU PLEASE BE SO KIND BY CLOCK-STAMP AND FILE THIS
PCR APPLICATION AND FORWARD ME A COPY OF THE FORM FOR
MY FILES.

RESPECTFULLY SUBMITTED,

P.S. PLEASE DISREGARD THE
ADDRESS ON THE OUTSIDE
OF THIS ENVELOP

s/ Antwan Young

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Antwan Young, #297595,
Applicant,

v.
State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2017-CP-10-6171

RETURN

Respondent ("the State"), making its Return to the application for post-conviction relief ("PCR") filed December 4, 2017 by Antwan Young ("Applicant") would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the June 2017 term of the Charleston County Grand Jury for distribution of heroin- 3rd offense (2017-GS-10-03624) and trafficking in cocaine (2017-GS-10-3625). On August 24, 2017, before the Honorable R. Markley Dennis, Applicant pleaded guilty as indicted to both offenses. Pursuant to negotiations, Judge Dennis sentenced Applicant to imprisonment for a term of fifteen years for each offense. The sentences were to run concurrent, and Applicant was to be given credit for time served. Applicant did not appeal his plea or sentences.

II.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel."
 - a. "Failure to challenge the State's so-called evidence."

2. "Illegal sentence."¹
 - a. "Failure to give me copy of the plea offer pursuant to St.v. Davie."
3. "Involuntary guilty plea."
 - a. "Guilty plea wasn't given freely"

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegations of ineffective assistance of trial 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, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove 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

¹ Respondent interprets this as a claim of ineffective assistance of counsel.

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). 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. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the State requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also asserts his plea was involuntary. Applicant has failed to state with any specificity the specific facts giving rise to this allegation. Additionally, this allegation is not supported by any other additional information in the application. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v.

Lockhart, 474 U.S. 52, 56 (1985). Further, “[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant’s lawyer withstand retrospective examination in a post-conviction hearing.” McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, “whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel’s advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information

conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

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

V.

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 that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Additionally, Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the

evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

VII.

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

VIII.

WHEREFORE, the State requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel and involuntary guilty plea.

Respectfully submitted,

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February 6th, 2018

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Antwan Young v State
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1 PROCEEDINGS

2 THE COURT: This is Antwan Young versus the State of
3 South Carolina, 2017-CP-10-6171. It's before the Court
4 on an application for post-conviction relief, which was
5 filed on December 4 of 2017. I have a return in the file
6 but it's unfiled. Do you know what date y'all return was
7 filed?

8 MS. OPPENHEIMER: Your Honor, we submitted it on
9 February 6, 2018 -- I can pull it up on the public index
10 to see what date it was filed.

11 THE COURT: Oh, it was filed February 8th of 2018;
12 I'm sorry. I was looking at the packet you sent me. It
13 was before the Court on the offense of distribution of
14 heroin third 2017-GS-10-3624 and trafficking in cocaine,
15 2017-GS-10-3625. On August 24th of 2017 he entered a
16 guilty plea before Judge Dennis and he was sentenced to
17 15 years for each offense concurrent given credit for
18 time served. Is the State ready to proceed?

19 MS. OPPENHEIMER: We are, Your Honor.

20 THE COURT: Is the defense ready to proceed? Are
21 you ready to proceed, Mr. Murphy?

22 MR. MURPHY: Yes, Your Honor.

23 THE COURT: Does your client still want to proceed
24 with the -- or is he asking you about...

25 MR. MURPHY: I was just talking about some facts.

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1 And this is kind of one of those funny cases, Judge.
2 This was a negotiated plea for 15 years. The Court
3 granted him his request however the charges that were
4 reduced he faced significantly more time.

5 THE COURT: That's what I was going to ask you is
6 does he really want to proceed.

7 MR. MURPHY: I have recommended to him to withdraw
8 his plea. He indicated he wanted to go forward. I would
9 like the Court to question him to see ---

10 THE COURT: --- sir, do you understand that a PCR
11 does not allow the Court to resentence you?

12 MR. YOUNG: Yes, ma'am.

13 THE COURT: It just allows you to start from
14 scratch.

15 MR. YOUNG: Yes, ma'am.

16 THE COURT: Basically your case just starts over.

17 MR. YOUNG: Yes, ma'am.

18 THE COURT: And do you understand that all the
19 charges the State dismissed or reduced they just come
20 back as if it never happened?

21 MR. YOUNG: Yes, ma'am.

22 THE COURT: And you really want to give yourself
23 that kind of exposure?

24 MR. YOUNG: Yes, ma'am.

25 THE COURT: Okay. Let's proceed.

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1 MR. MURPHY: Your Honor, we would call Mr. Adam
2 Mlynarczyk first.

3 THE COURT: Mr. Mlynarczyk, if you would come stand
4 to be sworn.

5 THE COURT: Was he LWOP eligible?

6 MR. MURPHY: Yes, Your Honor.

7 THE COURT: You certain you want to do that, sir?
8 Do you understand that life in South Carolina means life
9 until you die; it does not mean you ever get out. I just
10 need to make sure that you're clear about that.

11 MR. YOUNG: Yes, ma'am.

12 THE COURT: Okay. Let's proceed.

13 [Whereupon, Mr. Mlynarczyk comes forward]

14 [Whereupon, the witness is duly sworn by the Clerk
15 of Court]

16 CLERK OF COURT: Just state your first and last name
17 and spell your last name for the record.

18 THE WITNESS: Adam Mlynarczyk, M-L-Y-N-A-R-C-Z-Y-K.

19 THE COURT: Who's going to question...

20 MR. MURPHY: I will.

21 THE COURT: Well, usually the way this goes is...

22 MR. MURPHY: I wanted to just lay a foundation,
23 Your Honor, and then give the Court some frame of
24 reference so when there is testifying from the defendant
25 on ---

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1 THE COURT: --- I've already read the file. I
2 guess what frame of reference do you need to give me?
3 MS. OPPENHEIMER: Your Honor, normally because it is
4 the applicant's burden we allow the applicant to call his
5 case first and then if the State has it anything...
6 THE COURT: Okay. That's brand new. However,
7 y'all want to do it is fine with me.
8 MR. MURPHY: Thank you, Your Honor.
9
10 ADAM MLYNARCZYK,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. MURPHY:
15 Q. Mr. Mlynarczyk, you remember representing Mr. Young?
16 A. I do.
17 Q. And can you briefly give us just the skeleton sketch
18 of what happened or what he was charged with?
19 A. Yes, I was appointed as conflict counsel on this
20 case in March of 2017. It was a distribution of heroin
21 third and trafficking of cocaine third.
22 Q. And when you got appointed to represent Mr. Young
23 did you -- I assume ---
24 THE COURT: --- I'm sorry; I hate to interrupt you.
25 [Off the record momentarily]

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1 THE COURT: You can continue.

2 Q. [Mr. Murphy] Once you're appointed counsel what's
3 your standard procedure? What did you do in regards to
4 Mr. Young?

5 A. So once we get the appointment we usually get notice
6 ahead of time of getting the order so we prepare our file
7 for the initial filings. But we really don't make any
8 contact; I don't make any contact until I actually get
9 the signed order just to make sure that it's part of the
10 record.

11 Once I get that we file our motions, our Rule 5, our
12 Brady, our Edwards. We also -- I set up immediately a
13 meeting with the client, which I did, with Mr. Young and
14 I went down and met him at Leeds.

15 And then normally the first meeting because I have
16 no discovery is usually my introductory meeting with the
17 client where I go over the way that I like to handle the
18 case, what to expect, discuss whether there had been or
19 had not been a preliminary hearing yet.

20 This case was interesting without having any of the
21 discovery yet because the charges stemmed from 2014 and
22 2015 but the arrest wasn't made until 2017. So I did
23 talk to him a little bit about that. Then after the
24 initial meeting you know I explain what my role is who I
25 am. I am a private attorney but I'm his public defender.

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1 And one of the biggest things that I get across to him
2 the most important thing is not to talk to anybody, that
3 the phone lines are recorded and not secured, to talk to
4 only me and make sure he has my address and my contact
5 information and that is usually about a 30 minute meeting
6 for that.

7 Q. And I assume you eventually got discovery in this
8 case?

9 A. I did.

10 Q. And did you go over that discovery with Mr. Young?

11 A. I did. Initially when I got the case that was in
12 March, we had our preliminary hearing requested in March
13 and we had that in April. I got the discovery in May and
14 it was kind of I had very focused conversations with Mr.
15 Young.

16 At first it was I want my prelim, my preliminary, my
17 prelim, my prelim, my prelim. He wouldn't kind of talk
18 with me about much else. We did that. We had a plan
19 going forward for that. And then I gave him a copy of
20 the discovery on May 18th.

21 And I don't like to leave discovery with them at the
22 jail. I just think it's very unsecured. It's not good
23 for them. He insisted. I brought it with me to go over
24 but he insisted so I did give it to him and made him sign
25 a receipt letter for that.

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1 Q. How many times did you meet with him prior to his
2 preliminary hearing?

3 A. Twice I think before his prelim.

4 Q. And do you recall approximately how long those
5 meetings were?

6 A. Thirty minutes.

7 Q. And then did you actually have a preliminary
8 hearing?

9 A. I did. During the preliminary hearing -- initially
10 he had a 600,000 dollar bond. And his focus was I wasn't
11 to get out, I want a bond, I want a bond.

12 So one of the strategies that I use in prelims is if
13 we can get an exchange for a waiver of bond, a good
14 reduction in the bond, which we did, I think this bond --
15 I talked to the officers and got the information that I
16 needed. Then I think it went from 600,000 to 175,000 I
17 think if that was appropriate.

18 Q. And was he able to make the reduced bond during the
19 course of your representation?

20 A. He was not. I talked to his family and him a few
21 times about it and even put them in contact with a couple
22 of bondsmen that I know to see if they could work with
23 him or not. I didn't give them any details or anything
24 but he did not make bond.

25 Q. And there was some mention before you took the stand

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1 about Mr. Young being LWOP eligible.

2 A. That's correct.

3 Q. Was that the case?

4 A. That's correct.

5 Q. And tell the Court what was his prior record or why
6 was he LWOP eligible?

7 A. So there were -- his record was extensive but as far
8 as this goes there were stemming all the way back to 1993
9 there was a distribution of cocaine in 2000, possession
10 with intent to distribute in 2000, 2008 a PWID, and 2009
11 a PWID of cocaine.

12 And when I went through his record, and there were
13 all the other charges besides that, but when I went
14 through his rap sheet myself looking for the convictions
15 it showed that he qualified.

16 Q. And was that LWOP a point of negotiations between
17 you and the prosecution?

18 A. It was.

19 Q. And did you tell Mr. Young that he was LWOP
20 eligible?

21 A. I did. The two main focuses for us there was
22 whether the -- if they got him convicted that was an
23 option, that was explained to him and I was told by Ms.
24 Linder that it was going to be exercised. But there was
25 also a 25 -- the minimum on the cocaine was 25 years; 25

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1 to 30. So we were still looking at a substantial amount
2 of time even if they didn't institute the LWOP. But we
3 did discuss it at length. And you have to understand too
4 we had a very difficult time communicating when it came
5 to -- after the discovery was given to him.

6 And it seemed like after we achieved each goal that
7 he wanted to achieve he had a very difficult time
8 communicating with me. For the first two or three
9 meetings I had with him about the plea they ended in him
10 walking out of the room not talking to me.

11 So my third meeting with him was to try to clarify
12 representation. I was like look, you either need to
13 discuss this with me or fire me or find another attorney
14 because I can't help you if we don't talk about it.

15 I ended up filing a motion for clarification of
16 representation which Judge Dennis heard and at the same
17 time for a bond reduction I believe and he said to
18 continue. So Mr. Young at that time said yes, we'll
19 continue.

20 Q. And when you say continue you would continue as his
21 attorney?

22 A. Correct.

23 Q. And after that point did you have any problem with
24 communication with Mr. Young?

25 A. The plea was -- it was a difficult -- look, whenever

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1 you're trying to tell someone to take 15 years in jail
2 it's a difficult conversation and I felt for him. We
3 talked a lot about that and we knew there was going to be
4 tension between the conversations.

5 But I thought facing the facts, the eligibility of
6 LWOP, the 25 year minimum I thought the plea was a very
7 good offer. It started out much higher than that. I
8 went back and forth with Stephanie Linder and I tried to
9 strenuously get him to accept it.

10 Q. Now I want to make sure there actually was not a
11 notice of LWOP filed.

12 A. There was not.

13 Q. That was just something that was discussed.

14 A. Yes.

15 Q. Okay. And was that fact clear to Mr. Young during
16 the course of your communications with him?

17 A. Very clear.

18 Q. Now you ended up eventually -- did it ever get close
19 to the trial docket or how did the plea come about?

20 A. This was a part of a -- Mr. Young was a very small
21 part in a very big operation. I think this was an
22 investigation between the federal law enforcement and
23 state law enforcement that went on for about two and a
24 half years when I was investigating the case. And this
25 was one of the last arrests. Obviously, they didn't want

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1 to make -- they made all the arrests at once. So when I
2 got the -- I think Stephanie was trying to resolve a lot
3 of the matter. And once I did not get a trial notice;
4 I'd only gotten appointed the case in March and I think
5 we were pleading -- we had the plea in August.

6 But it wasn't so much the trial date looming as it
7 was the deadline on the offer. I had a very short time
8 to respond to the offer for the plea ---

9 Q. --- and what was the offer at that point?

10 A. The offer at that point, the first written offer was
11 18 years on reducing the distribution of heroin to a
12 second and leaving the heroin at a third and it was 18
13 years is what they were offering.

14 That was when we were having our difficult time
15 communicating. We were approaching the deadline and we
16 were about to miss it. I convinced Ms. Linder to give me
17 an extension whereby we clarified representation and then
18 we ended up getting a plea.

19 Q. And when you say getting the plea you're talking
20 about the 15 year plea.

21 A. That's correct.

22 Q. Now let's talk about the negotiated plea. How did
23 that come about?

24 A. There was first an offer made like I said the first
25 written offer was 18 years dropping the heroin to the

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1 third -- to the second. And then we had numerous, I
2 think I had an email chain of 28 emails and about five or
3 six phone calls with Stephanie to try to get it resolved.
4 And we eventually agreed on 15.

5 Q. Now, did you discuss this negotiated plea with Mr.
6 Young?

7 A. I did. I couldn't -- I mean I knew that he wasn't
8 -- when I got the 18 I knew he wasn't going to take it
9 and we talked about it. I went and talked with him about
10 it and that's when we started having our breakdown.

11 The way I approach it is look, I want to sort of
12 gauge what I think my client may be willing to do before
13 I go back and say -- I'm not going to go back to her and
14 say he'll take 15 and then she offers 15 and he doesn't
15 take 15.

16 So in that conversation, the multiple conversations
17 we had I tried to gauge and explain to him where I
18 thought it would play out, the best I could do and that
19 point he could make the decision if he wanted to try it
20 or plea.

21 Q. And did he understand how a negotiated plea works or
22 did you explain that to him?

23 A. I did.

24 Q. And that only left the Judge with two options; to
25 either accept or reject the plea.

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1 A. Correct.

2 Q. Now in the charges against him there were multiple
3 drug buys?

4 A. Yes. This was an ongoing long operation and I think
5 that with Mr. Young -- and one of the difficult parts of
6 this was that the undercover buyer, the confidential
7 informant, there was one confidential informant and then
8 there was another undercover ATF agent that was present
9 at all the buys.

10 And there were actually six or seven transactions
11 with Mr. Young. Luckily, due to the circumstances of
12 five of them they only pursued two of the charges. But
13 there was more exposure there as well.

14 Q. All right. And the reason why -- let me ask you
15 this. Of those seven charges five of them did not
16 involve drugs, is that correct?

17 A. They did involve drugs. They were going back to
18 like November 13th, December 2nd, June 10th there were
19 small amounts of heroin in those sales, I think three or
20 four of them, but they field tested inconclusive.

21 And then when the Department of Homeland Security
22 did their analysis they came back as not containing a
23 controlled substance so the State didn't even pursue
24 those.

25 Q. And did you discuss those facts with Mr. Young?

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1 A. I did.

2 Q. Now in getting him to agree to plead guilty did you
3 discuss or did you indicate that the Solicitor would be
4 pursuing life without parole if he did not plead guilty?

5 A. I told him it was a possibility, a strong
6 possibility.

7 Q. Let me ask you this. You represented him for
8 approximately how long before -- between the Court
9 appointment and the guilty plea?

10 A. I was appointed in March so five months.

11 Q. And during that time what investigation did you do
12 into his case trying to find -- in order to defend him?

13 A. Well, we got the Rule 5 and Rule 6 sometime in
14 April, the end of April. We went through -- there was
15 204 pages of written discovery and then there were I
16 think six C.D.'s of video.

17 So before the preliminary hearing we watched all the
18 videos, I did personally watch all the videos of all the
19 buys; even ones that were not a part of the case. I
20 talked to the officers that were involved at the prelim
21 and I talked to the officers further that were involved.

22 I met with Mr. Young to discuss what I, what we had
23 discovered. I talked to one of the officers about the
24 other parts of the investigation and why it took two
25 years to get him arrested. And I think that was about

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1 it.

2 Q. And you mentioned the purchases were done by
3 confidential informants?

4 A. Yes. Each purchase, each transaction -- one of the
5 transactions he went so far as to set up a fake gun sale
6 between the informants and another agent to kind of build
7 creditability with Mr. Young in front of one of the
8 places that they did transactions with Mr. Young.

9 So out of all these transactions there was always
10 confidential informant plus an undercover ATF agent,
11 Schroder [phonetic] was his name. It was the same two
12 people each transaction.

13 Q. And was there -- at any time did Mr. Young ask you
14 to do something that you refused to do or...

15 A. No. The conversations, the three or so
16 conversations we had about whether to try the case or to
17 plea they were -- they got emotional and they got -- it
18 was harsh.

19 It was tough. The way I looked at it at that point
20 is I was trying to save his life and I thought that this
21 was the best way to do it.

22 Q. And in terms of trial did it ever get to the point
23 where you were trying to gear up for trial or was you
24 able to get a plea before that?

25 A. No. I got a plea before that.

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1 MR. MURPHY: One moment, Your Honor.
2 [Whereupon, Mr. Murphy confers with his client]
3 MR. MURPHY: That's all I have, Your Honor.
4 THE COURT: Any questions of the witness?
5 MS. OPPENHEIMER: Yes, Your Honor. May it please
6 the Court?
7 THE COURT: Yes ma'am, you may proceed.
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1 CROSS-EXAMINATION

2 BY MS. OPPENHEIMER:

3 Q. I kind of want to go back to your investigation.

4 You said you filed Brady and Rule 5 motions?

5 A. I did.

6 Q. And you reviewed the results of that with Mr. Young?

7 A. I did.

8 Q. Do you recall when?

9 A. Yes. I think we received the big portion of our
10 Rule 5 in May. And I delivered them to the jail when I
11 also talked to him on May 18th.

12 And then I had another meeting with him in July to
13 talk to him about those. And also prior to our bond
14 reconsideration hearing.

15 Q. And in your own independent investigation did you
16 review those results with Mr. Young?

17 A. I did.

18 Q. And what evidence did the State have against Mr.
19 Young?

20 A. So initially the evidence was extremely strong in my
21 evaluation because on each of these six transactions they
22 had video and audio.

23 The very first transaction that wasn't even listed
24 which was back in October of 2014 was audio only and the
25 CI only. So that was -- but all six transactions after

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1 that were all audio and video. And when looking at those
2 types of things what I typically look for especially when
3 there is a CI or an agent I look at everything leading up
4 to it and after it; obviously we have to.

5 So in this particular situation they had a very good
6 record of the money that was used. They had a very good
7 record of searching the CI before and after. The ATF
8 agent accompanied the CI with all the transactions and
9 then of course afterwards researching the CI, documenting
10 the money that was transferred and submitting the audio
11 and visual to evidence; so all of this and then of course
12 the drugs as well.

13 That was all on its face without cross-examining at
14 trial looked pretty strong. One of the more difficult
15 things about this case is when Mr. Young and I were going
16 through talking about a plea or talking about trial and
17 we had a contentious relationship.

18 Mr. Young sent a letter directly to the Solicitor.
19 And again this is one of the things that I tried to
20 stress with him not to do. And the letter was now
21 evidence and the letter expressed responsibility and
22 could have been used as a statement against him basically
23 saying yes I'm admitting that I did these charges but
24 here please be lenient on my because of X, Y, and Z. And
25 that made things even more difficult at that point.

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1 Q. Okay. So this was not only a State investigation
2 but also a federal investigation?

3 A. A federal investigation, yes.

4 Q. Now did Mr. Young ever give you any potential
5 witnesses or leads to investigate?

6 A. No.

7 Q. And prior to the plea did you discuss the elements
8 of the charges that the State would be required to prove
9 at trial?

10 A. Yes.

11 Q. And did you discuss potential sentences?

12 A. Yes. I even gave him a printout. When we got the
13 18 year offer when I went to talk to him about it I
14 wanted him to know exactly when his first eligible date
15 would be for parole.

16 So I brought the printout of the calculation in
17 regard to that and then again when I got it reduced to 15
18 so he would know exactly when he would be eligible for
19 parole.

20 Q. And you gave ---

21 A. --- so he had all the information.

22 Q. I'm sorry, what?

23 A. Just so he would have all the information to make a
24 decision.

25 Q. Okay. And you made it very clear to him that LWOP

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1 was possible?

2 A. Yes, I did.

3 Q. Did you discuss any potential defenses had you
4 proceeded to trial?

5 A. Yes. I told him that it was going to be really
6 difficult. You know in these types of situations
7 typically you're looking for, what I look for, and I
8 don't what other attorneys do but chain of evidence,
9 custody issues. Of course with our Rule 6 filing we
10 would have had each officer.

11 But it was all well documented. I mean it would
12 have been a crap shoot at trial to try to find something
13 especially -- and the difficult part about it too is that
14 we're not just talking about one transaction; we're
15 talking about six and two which resulted in positive
16 drugs. So it was overwhelming. It would have been a
17 very, very, very difficult trial and a lot of luck would
18 have been involved.

19 Q. Now did Mr. Young -- was he aware of the
20 consequences of the plea?

21 A. Yes.

22 Q. And did you inform him of his constitutional rights
23 prior to the plea?

24 A. I did.

25 Q. And did he ever indicate to you that he didn't

Antwan Young v State
Post-Conviction Relief-Adam Mlynarczyk-Cross-Examination by Ms. Oppenheimer
July 23, 2018

1 understand anything?

2 A. No.

3 Q. Did he ever indicate to you that he wanted to go to
4 trial?

5 A. Oh yes, we talked about it. We talked about it a
6 number of times. Like I said there were probably three
7 or four meetings that I strongly tried to convince him
8 otherwise especially going through all the evidence I
9 did.

10 But ultimately I think he agreed with me that the
11 risk of not only the minimum 25 but the possible life
12 without parole versus the 12 and half first eligible or
13 12 and half or 13, I can't remember what it was, eligible
14 parole date was a good risk management.

15 Q. And ultimately was it his decision to plead guilty?

16 A. It was.

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

19 THE COURT: Any redirect?

20 MR. MURPHY: Nothing, Your Honor.

21 THE COURT: You may step down Mr. Mlynarczyk.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24

25

Antwan Young v State
Post-Conviction Relief-Antwan Young-Direct Examination by Mr. Murphy
July 23, 2018

1 MR. MURPHY: We would call Mr. Young to the stand.

2 THE COURT: He can testify at counsel table. Sir,
3 stand and raise your right hand for me to be sworn.

4 [Whereupon, Mr. Young stands]

5 [Whereupon, the witness is duly sworn by the Court]

6 THE COURT: Sir, state your full name for the
7 record.

8 THE WITNESS: Antwan Young.

9 THE COURT: You can take your seat. I just need
10 you to speak loudly and clearly.

11 [Whereupon, Mr. Young is seated]

12 - - - - -

13 ANTWAN YOUNG,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MURPHY:

18 Q. Mr. Young, you remember Mr. Mlynarczyk representing
19 you?

20 A. Yes, sir.

21 Q. And you understand we're here today to talk about
22 errors that Mr. Mlynarczyk committed during the course of
23 your representation, correct?

24 A. Yes, sir.

25 Q. Now, first thing I want to talk about is meetings

Antwan Young v State
Post-Conviction Relief-Antwan Young-Direct Examination by Mr. Murphy
July 23, 2018

1 with Mr. Mlynarczyk. Do you recall how many meetings you
2 had with him?

3 A. It wasn't much, it wasn't that much meetings.

4 Q. In terms of the number of meetings how many times
5 did you meet with him?

6 A. Something like three.

7 Q. About three? And do you recall how long those
8 meetings lasted?

9 A. Not very long. Probably for about 20 or 30 minutes
10 probably.

11 Q. And let's talk about the first meeting. Do you
12 recall what the first meeting was about?

13 A. He was telling me he's my lawyer and he will be
14 representing me on the case and telling me what the
15 charges was -- and what I might ---

16 THE COURT REPORTER: --- I'm sorry sir; I'm having
17 a little difficulty ---

18 THE COURT: --- yes sir, I need you to hold your
19 head up and I need you to speak loudly for me and speak
20 toward the court reporter not Mr. Murphy.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Thank you.

23 Q. [Mr. Murphy] And did you remember talking about a
24 potential sentence or exposure you had as a result of
25 these charges?

Antwan Young v State
Post-Conviction Relief-Antwan Young-Direct Examination by Mr. Murphy
July 23, 2018

- 1 A. Yes, sir.
- 2 Q. And what was that exposure?
- 3 A. He told me that they willing to drop the -- I plea
4 to distribution third and they'd drop the trafficking and
5 I get plead to 18 years.
- 6 Q. All right. So you were looking at an 18 year
7 sentence at the initial meeting?
- 8 A. Yes, sir.
- 9 Q. All right. And how did you leave that meeting? Or
10 how did he leave that meeting?
- 11 A. We just -- I told him right then I really didn't
12 want to take the 18 years.
- 13 Q. And you had a second follow-up meeting.
- 14 A. Yes, sir.
- 15 Q. What happened at that follow-up meeting?
- 16 A. He told me take the 15 years and plead to
17 distribution third and trafficking second.
- 18 Q. All right. And did that sound like a better deal to
19 you?
- 20 A. At the time, yes. And then at the end of the plea
21 it wasn't.
- 22 Q. All right. And if you can tell the Court -- well,
23 let me ask you this. You said you had a third meeting.
24 And what happened at that third meeting?
- 25 A. He just tell me about the 15 years --

Antwan Young v State
Post-Conviction Relief-Antwan Young-Direct Examination by Mr. Murphy
July 23, 2018

- 1 Q. I'm sorry; you talked again about 15 years?
- 2 A. Yes.
- 3 Q. And was that before you pled guilty?
- 4 A. Yes, sir.
- 5 Q. Did you talk about a negotiated plea versus an open
6 plea?
- 7 A. I want to say yes, it was a negotiated plea.
- 8 Q. Did you know what a negotiated plea was?
- 9 A. At that time not exactly.
- 10 Q. And do you know why you were pleading to a
11 negotiated plea?
- 12 A. He told me that's the best plea, that's the best
13 plea for me; 15.
- 14 Q. Now you indicated that you said that the 18 years or
15 the 15 years sounded like a better deal than the 18 years
16 but it turns out that wasn't the case.
- 17 A. Yes, sir.
- 18 Q. Can you explain to the Court what you meant?
- 19 A. So me with the 18 years, pleading to the 18 years, I
20 would have been eligible for parole, going up for parole.
21 But if you take the 15 years now I'm not eligible for
22 parole, just 85 percent.
- 23 Q. All right. So under the deal you got the 15 year
24 deal you have to serve 85 percent before you're parole
25 eligible?

Antwan Young v State
Post-Conviction Relief-Antwan Young-Direct Examination by Mr. Murphy
July 23, 2018

- 1 A. My parole date is two days after I max out.
- 2 Q. Now you also said if you plead to the 18 year deal
3 how would your parole date have changed?
- 4 A. Because I would have been 85 percent but I still
5 would have been eligible for parole, for that parole --
6 but me pleading to the trafficking second that's 85
7 percent; that's not parole eligible.
- 8 Q. And did you discuss any parole eligibility issues
9 with your attorney?
- 10 A. No, sir.
- 11 Q. Now you also indicated that you wrote a letter to
12 the Solicitor, to Ms. Linder, do you recall that?
- 13 A. Yes, sir.
- 14 Q. And what was the purpose of that letter you sent?
- 15 A. I wrote a letter because I felt like Mr. Mlynarczyk
16 wasn't representing me to his full attention. That's why
17 I wrote the letter to the Solicitor on my behalf because
18 if nobody don't care about me I care about myself.
19 That's why I wrote the letter.
- 20 Q. And did you have problems communicating with Mr.
21 Mlynarczyk during the course of representation?
- 22 A. Every now and then we would have a little
23 conversations or offers and I walk out. We was doing
24 this.
- 25 Q. What about phone calls? Were you able to call Mr.

Antwan Young v State
Post-Conviction Relief-Antwan Young-Direct Examination by Mr. Murphy
July 23, 2018

1 Mlynarczyk or send him letters?

2 A. I believe I might have sent him a letter or
3 something but I ain't used to calling like that. My
4 family used to call him or he would call my family.

5 Q. Do you know did Mr. Mlynarczyk send you letters that
6 you recall?

7 A. [Nods affirmatively]

8 THE COURT REPORTER: Is that yes?

9 A. Yes, sir. Yes, ma'am.

10 THE COURT: Sir, I need you to answer audibly. If
11 you nod your head the court reporter can't take that
12 down. You may continue.

13 MR. MURPHY: Thank you, Your Honor..

14 THE COURT: You're welcome.

15 Q. [Mr. Murphy] Let me ask you. Were you threatened
16 with LWOP as a consequence if you didn't plead guilty?

17 A. Yes, sir.

18 Q. How many times did you discuss an LWOP sentence?

19 A. We discussed that every time he come. He discussed
20 that just about the second time he came to see me.

21 Q. Did you want to plead guilty or did you want to go
22 to trial?

23 A. I didn't want to plead guilty.

24 Q. You did not?

25 A. No. For one I only was lock up -- I got lock up

Antwan Young v State
Post-Conviction Relief-Antwan Young-Direct Examination by Mr. Murphy
July 23, 2018

1 February 22, 2017. I was in Court by August. I feel
2 like he wasn't representing me. This case was going on
3 for three years, two and half years, three years. So in
4 five -- four months you done did a full investigation on
5 the case and you put up really no defense for me when I
6 went to Court.

7 I do got a drug problem. I had a drug problem all
8 my life but I had no defense like that. I was accepted
9 into a program, a drug program, they turned that down.

10 Q. Was there anything that Mr. Mlynarczyk should have
11 done that you believe could have helped your case?

12 A. I believe he could have represented me better than
13 he did. At least speak up for me a little; speak up more
14 than he did. To me it's like he just wanted to get a
15 conviction and he go on about his life.

16 Q. And other than speaking up for you better
17 specifically is there anything that he didn't do that you
18 wanted him to do or?

19 A. I just I wanted him to represent me better than he
20 did. Like I said I feel he didn't represent me to the
21 full potential.

22 MR. MURPHY: That's all I have, Your Honor.

23 THE COURT: Any questions for the witness?

24 MS. OPPENHEIMER: Briefly, Your Honor.

25 THE COURT: You may proceed.

Antwan Young v State
Post-Conviction Relief-Antwan Young-Cross-Examination by Ms. Oppenheimer
July 23, 2018

1 CROSS-EXAMINATION

2 BY MS. OPPENHEIMER:

3 Q. Do you recall reviewing the discovery with Mr.
4 Mlynarczyk?

5 A. Yes, ma'am.

6 Q. And so you reviewed everything he got for this case?

7 A. Yes, ma'am.

8 Q. And did you ever give him any potential leads or
9 witnesses?

10 A. No, ma'am.

11 Q. So he really didn't have anything else to
12 investigate besides what the State provided, right?

13 A. Yes, ma'am.

14 Q. And do you recall your plea proceedings?

15 A. I mean I remember the day I went to Court.

16 Q. And you told Judge Dennis that you were satisfied
17 with Mr. Mlynarczyk, correct?

18 A. Yes, ma'am.

19 Q. And Judge Dennis told you that trafficking cocaine
20 second carries between five and 30 years, right?

21 A. Yes, ma'am.

22 Q. And you told him you understood that.

23 A. Yes, ma'am.

24 Q. And you understood that your offenses were non-
25 paroleable, correct?

Antwan Young v State
Post-Conviction Relief-Antwan Young-Cross-Examination by Ms. Oppenheimer
July 23, 2018

- 1 A. I didn't know trafficking second was non-paroleable.
2 I didn't know I was going to plead to trafficking second.
3 I thought I was just going to plead to trafficking for
4 the first time; that's my first trafficking charge.
- 5 Q. Well, Judge Dennis went over that with you, correct?
6 A. What's that?
7 Q. He went over trafficking with you, correct; that it
8 was a third offense ---
9 A. --- yes, he tell me ---
10 Q. --- or a second offense; excuse me. And he told you
11 that those charges were not parole eligible, correct?
12 A. Yes, ma'am --
- 13 THE COURT REPORTER: I didn't hear the last part of
14 your answer.
15 THE COURT: Sir, please repeat your answer ---
16 A. --- I said at that time, yes ma'am.
- 17 Q. [Ms. Oppenheimer] And Judge Dennis also informed you
18 of the 85 percent rule and the two year community
19 supervision program, correct?
20 A. Yes, ma'am.
21 Q. So you were aware of all that at your plea, right?
22 A. Yes, ma'am.
23 Q. And was it your decision to plead guilty?
24 A. Yes, ma'am.
25 Q. And you told Judge Dennis that it was your decision

Antwan Young v State
Post-Conviction Relief-Antwan Young-Cross-Examination by Ms. Oppenheimer
July 23, 2018

1 to plea?

2 A. I mean my decision with my lawyer telling me what to
3 do.

4 Q. And you also told Judge Dennis that no one had
5 forced you or promised you anything in order to get you
6 to plead guilty, correct?

7 A. Yes, ma'am. But that's all part of the way he I
8 guess they do that every time. Any time I ever went to
9 Court they go through that and they say that and ask me
10 if anybody promise you anything.

11 Q. Well, you were under oath at that time, correct?

12 A. Yes, ma'am.

13 Q. So you were answering truthfully.

14 A. Yes, ma'am.

15 Q. Did you want a trial?

16 A. Ma'am?

17 Q. Did you want a trial?

18 A. I mean I'd rather take it now.

19 Q. So you want it right now but then you didn't.

20 A. I mean like I said Mr. Mlynarczyk I been lock up for
21 five months. Like I said I just don't feel he
22 represented me to his full potential.

23 Q. Okay. Do you remember Judge Dennis going over each
24 of your rights at trial?

25 A. Yes, ma'am.

Antwan Young v State
Post-Conviction Relief-Antwan Young-Cross-Examination by Ms. Oppenheimer
July 23, 2018

1 Q. Okay. And you understood you were waiving those
2 rights by pleading guilty, correct?

3 A. Yes, ma'am.

4 MS. OPPENHEIMER: I have no further questions, Your
5 Honor.

6 THE COURT: Any redirect?

7 MR. MURPHY: Nothing, Your Honor.

8 THE COURT: Any further witnesses from the
9 applicant.

10 MR. MURPHY: Nothing. We would rest, Your Honor.

11 THE COURT: Anything from the State?

12 MS. OPPENHEIMER: No witnesses, Your Honor.

13 THE COURT: Give me one moment.

14 [Whereupon, the court reviews documents]

15 THE COURT: Any argument on behalf of the
16 applicant?

17 MR. MURPHY: Nothing, Your Honor.

18 THE COURT: Any argument from the State?

19 MS. OPPENHEIMER: Briefly, Your Honor.

20

21

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Antwan Young v State
Post-Conviction Relief-Closing Argument-Remarks by Ms. Oppenheimer
July 23, 2018

1 CLOSING ARGUMENT

2 MS. OPPENHEIMER: Your Honor, it's very clear from
3 the record that Judge Dennis informed Mr. Young of all of
4 his rights at trial and the potential sentences with Mr.
5 Young prior to his plea. Mr. Mlynarczyk's testimony was
6 very clear that he reviewed all of the discovery, that he
7 reviewed any potential defenses. He informed Mr. Young
8 that it would be very difficult to overcome these charges
9 at trial.

10 They did have a discussion. Ultimately it was Mr.
11 Young's decision to plead guilty and Mr. Mlynarczyk did
12 agree with that decision based on his investigation. Mr.
13 Young also did not give him any independent leads or
14 witnesses to investigate so Mr. Mlynarczyk did what he
15 could with what the State provided.

16 Your Honor, the plea is a solid admission of guilt.
17 And there is no indication that he would have proceeded
18 to trial whatsoever at the time. He says he wants one
19 now but at the time he was fully aware of all of his
20 rights and he thought that a 15 year deal was better than
21 LWOP. So we would ask you to deny his application for
22 post-conviction relief.

23 THE COURT: Would you like to respond?

24 MR. MURPHY: Nothing, Your Honor.

25

Antwan Young v State
Post-Conviction Relief-Ruling by the Court
July 23, 2018

1 RULING BY THE COURT

2 I've considered the testimony of Mr. Mlynarczyk as well
3 as the applicant. The Court finds the testimony of Mr.
4 Mlynarczyk credible regarding facts and circumstances of his
5 representation of the defendant -- of the applicant.

6 In addition what the Court finds most compelling is the
7 transcript, which is in my estimation dispositive of the
8 contemporaneous events which took place on the date of the
9 guilty plea which was August 24th of 2017. And I've not
10 heard anything from the applicant that would rise to the
11 level of ineffective assistance of counsel.

12 I've heard broad strokes and assertions which are just
13 unsupported by the record, which amounts to in a lay
14 person's terminology, buyer's remorse. But it does not rise
15 to the level of ineffective assistance of counsel pursuant
16 to Strickland or Butler. The applicant has failed to prove
17 that Mr. Mlynarczyk fell below prevailing professional --
18 reasonable professional norms.

19 And he has not proven by a preponderance of the
20 evidence that he would have refused to have entered the plea
21 and would have instead insisted on going to trial. And as
22 regards to the record, that being the plea transcript, it is
23 very clear to the Court that Judge Dennis explained to him
24 at that time the nature of the offense as well as his
25 exposure. That is at page 4 lines 16 through 19 and page 4

Antwan Young v State
Post-Conviction Relief-Ruling by the Court
July 23, 2018

1 lines 19 through 22 and page 5 line 25, and page 6 lines 1
2 through 9. The range of penalty was very clearly explained
3 to him at page 4 lines 23 through 25 and page 5 lines 1
4 through 9.

5 He was clearly made aware that it was a negotiated plea
6 so even if I believed he didn't understand it it was
7 clarified for him at the time of the plea and he
8 acknowledged his understanding of what that meant, what the
9 nature of a negotiated plea was, and what the Court's
10 options were. And that's at page 5 lines 10 through 24,
11 page 9 lines 23 through 25, and page 5 lines 21 through 24.

12 The attorney was likewise questioned or queried
13 regarding those issues at page 6, lines 10 through 11 that
14 there were no other deals and that he fully investigated the
15 matter and that his client in fact had inquired of him to
16 work out the best deal for him. And likewise the defendant
17 acknowledged that at page 6 lines 10 through 11 page 6 lines
18 12 through 25 and page 7 lines 1 through 11, and page 7 line
19 13 that he waived his right to a jury trial knowingly and
20 voluntarily at page 7 lines 14 through 18 that he was not
21 subject to any threats or promises at page 7 line 19 through
22 21, and page 7 lines 20 through 25. That he understood and
23 allocuted to the facts at page 8 lines 1 through 18, that he
24 understood that it was a serious offense and what the
25 ramifications of that classification were. At page 8 lines

Antwan Young v State
Post-Conviction Relief-Ruling by the Court
July 23, 2018

1 19 through 24, page 8 line 25, and page 9 lines 1 through 7
2 that he clearly understood it was a non-paroleable offense
3 at page 9 lines 8 through 10. That it was an 85 percent
4 offense page 9 lines 11 through 22.

5 The Court qualified the plea on page 10 lines 1 through
6 8. And then following Mr. Mlynarczyk gave extensive
7 mitigation to the Court that which was echoed in his
8 testimony today at page 10 lines 9 through 25 and page 11
9 lines 1 through 2.

10 Mr. Young was also given the opportunity to share
11 anything with the Court and he certainly could have said he
12 didn't want to plead that he wanted a trial or otherwise and
13 he indicated there was nothing further he needed to share
14 with the Court at page 11 lines 3 through 5. He also
15 acknowledged to the Court that he was not under the
16 influence of any drugs or alcohol, drugs or medication at
17 page 11 lines 6 through 9.

18 And most dispositive is that he had sufficient time to
19 think about the negotiated plea and its consequences at page
20 11 lines 9 through 9 and that it was in fact his decision at
21 page 11 lines 12 through 14. As such the Court finds that
22 the applicant has failed to meet his burden of proof and the
23 application is denied. The State will have...

24 [Whereupon, Mr. Young becomes agitated]

25 THE COURT: Sir, I need you not to speak while the

Antwan Young v State
Post-Conviction Relief-Ruling by the Court
July 23, 2018

1 Court is ruling ---

2 MR. YOUNG: --- y'all can get me out of here.

3 THE COURT: That the Attorney General will provide the
4 Court with a proposed order within 15 days of today.

5 [Whereupon, Mr. Young becomes more agitated]

6 THE COURT: You need to -- sir, if you use profanity
7 you will be in direct contempt of this Court.

8 MR. YOUNG: You can get me out of here. I don't want
9 to hear no more of what you got to say. Get me out of here
10 so I ---

11 THE COURT: --- and please provide that to the Court
12 in word format at djefferson --

13 [Whereupon, Mr. Young stands]

14 THE COURT: No sir, have a seat -- at djeffersonsc
15 [sic] in word format. Please provide a copy of that to Mr.
16 Murphy in the event that he wants to make any changes to the
17 order. Thank you very much.

18 MS. OPPENHEIMER: Yes, Your Honor.

19 THE COURT: You can take him back to Columbia. Thank
20 you.

21 MS. OPPENHEIMER: Yes, Your Honor. Can I clarify one
22 point?

23 THE COURT: Sure.

24 MS. OPPENHEIMER: You want the ---

25 THE COURT: --- and the record should reflect that the

Antwan Young v State
Post-Conviction Relief-Ruling by the Court
July 23, 2018

1 applicant was belligerent, and vocal, and profane and
2 demanded that he be removed from the courtroom. So any
3 portion of these proceedings that he is not privy to is of
4 his own design. Yes, ma'am?

5 MS. OPPENHEIMER: Your Honor, would you like that
6 order via email or hard copy?

7 THE COURT: Email. I never sign anything the way it's
8 submitted to me. So send it to me by email and copy Mr.
9 Murphy on that. And once I've completed the order we will
10 -- once it is filed we will send a copy to everybody.

11 MS. OPPENHEIMER: Yes, Your Honor. Thank you.

12 THE COURT: You're welcome.

13 MR. MURPHY: Thank you, Judge.

14 THE COURT: You're welcome, Mr. Murphy. Have a good
15 day.

16 *****END OF TRANSCRIPT OF RECORD*****
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Antwan Young v State
Certificate of the Court Reporter
July 23, 2018

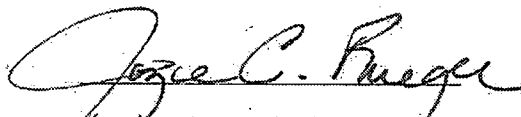
C E R T I F I C A T E

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I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina on the 23rd day of July, 2018.

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

December 27, 2018



Joyce C. Rueger, CVR-M

Court Reporter

C
AG
AT
BS
SDC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Antwan Young #297595,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-10-6171

ORDER OF DISMISSAL

FILED
2018 OCT 19 AM 10:33
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

Honorable Deadra L. Jefferson
Christopher L. Murphy, Esquire
Kelly Oppenheimer, Esquire
Adam Mlynarczyk, Esquire
July 23, 2018
Joyce C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 4, 2017 by Antwan Young (Applicant). The Respondent made its Return on or about February 6, 2018. An evidentiary hearing into the matter was convened on July 23, 2018 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Christopher L. Murphy, Esquire. Kelly Oppenheimer, Esquire, of the South Carolina Attorney General's Office was present on behalf of the State of South Carolina. Applicant's plea counsel, Adam Mlynarczyk was also present. Testimony was taken from Adam Mlynarczyk and the Applicant at the hearing. This Court was also presented with the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return at the

10/14
[Signature]

hearing. After a review of the record and all evidence presented, this Court finds that Applicant has failed to meet his burden of proof and denies the application with prejudice.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the June 2017 term of the Charleston County Grand Jury for: (1) Distribution of Heroin - Third Offense¹ (2017-GS-10-03624) and (2) Trafficking Cocaine, more than 10 grams but less than twenty-eight grams - Second Offense² (2017-GS-10-03625). Applicant pled guilty as indicted to both charges on August 24, 2017. The Honorable R. Markley Dennis sentenced the Applicant to fifteen years, concurrent, on each charge pursuant to a negotiated plea. Applicant did not appeal his plea or sentence.

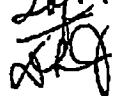
ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Failure to challenge the State's so-called evidence
 - b. Failure to give Applicant a copy of the plea offer
2. Illegal sentence; and
3. Involuntary guilty plea.

¹ Distribution of Heroin is a serious felony punishable by a term of imprisonment for not less than fifteen (15) years, nor more than thirty (30) years or a fine not more than fifty thousand dollars (\$50,000.00) or both. See S.C. CODE ANN. § 44-53-370(b)(1) (2005).

² Trafficking in Cocaine - Second Offense is a serious felony punishable by a term of imprisonment for not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars. S.C. CODE ANN. § 44-53-375(a)(1)(C) (2005).

2017


At the evidentiary hearing, Applicant proceeded forward on the above allegations, originally raised in his application for post-conviction relief. All other allegations are hereby deemed to have been abandoned.

SUMMARY OF THE TESTIMONY AT THE EVIDENTIARY HEARING

The Applicant first presented the testimony of plea counsel, Adam Mlynarczyk. Mr. Mlynarczyk testified that he was appointed as conflict counsel to represent Applicant by Judge Dennis in March of 2017. He testified that he did not contact the Applicant until he received the signed order of his appointment, but prepared the file and filed Brady and Rule 5, SCRCrimP, motions in the interim. Counsel further testified that he first met Applicant for an introductory meeting, during which time he reviewed the circumstances surrounding Applicant's arrest and charges with the Applicant.

Counsel later received the discovery materials in April of 2017. The discovery in this case consisted of 204 pages of written discovery and six videos of drug transactions involving the Applicant. Counsel investigated the discovery materials by contacting the law enforcement agents involved in the drug transactions. He also reviewed the discovery materials with Applicant and provided Applicant with a copy of the discovery on May 18, 2017. Counsel testified that Applicant never asked him to do any additional investigation nor did he provide him with any leads or witnesses to investigate.

Counsel further testified that he discussed whether to plea or go to trial with the Applicant. During these conversations, he advised the Applicant that the evidence against him was strong since there was video and audio of the controlled buys with the Applicant. Counsel also discussed the potential ramifications of a letter Applicant wrote to the Solicitor, in which he expressed

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responsibility for the crimes, at trial. He further explained to Applicant that it would be difficult to defend the case at trial, but that he would try to attack the chain of custody and the transactions.

Counsel also discussed the elements of the charged offenses, potential defenses, and possible punishments with the Applicant. Specifically, Counsel advised the Applicant that he was eligible for life without the possibility of parole ("LWOP") due to his extensive criminal record.³ Counsel testified that he explained Applicant's LWOP eligibility to him and explained that the State would likely seek life without parole if the case proceeded to trial. He testified that they discussed potential sentences at length, but that the State never filed LWOP-notice.

In light of this overwhelming evidence against the Applicant, Counsel testified that he entered into plea negotiations with the State. The State initially offered the Applicant eighteen years upon pleading guilty to Distribution of Heroin – Second Offense (a reduced charge) and Trafficking in Cocaine – Third Offense. However, after extensive negotiation, the State and Defense agreed upon a negotiated sentence of fifteen years. Counsel testified that he communicated the plea offer to the Applicant, explained the nature of negotiated pleas, informed him of the consequences of the plea, and advised him of his constitutional rights. He further explained to Applicant that the offer was not parole eligible, and that he would, thus, be required to serve eighty-five percent of his sentence. Counsel advised Applicant that the offer was the best case scenario, but left the decision of whether to accept or reject the offer to the Applicant. Applicant ultimately decided to plead guilty pursuant to the negotiated plea.

³ Applicant's criminal record includes convictions for Possession of Crack, Possession of Cocaine, and Possession of Marijuana in 1999, convictions for Distribution of Cocaine and Proximity of Cocaine in 2001, a conviction for Possession of Cocaine in 2003, a conviction for Possession of Cocaine in 2006, and convictions for Distribution of Cocaine and False Report in 2009.

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Following counsel's testimony, the Applicant testified on his own behalf. The Applicant testified that Adam Mlynarczyk represented him at the guilty plea. Applicant testified that he met with Mr. Mlynarczyk approximately three times prior to the plea for about twenty to thirty minutes. Applicant recalled that he discussed the charges and potential sentences with counsel during the first meeting. Applicant testified that counsel informed of the plea offer of eighteen years at this initial meeting as well. He recalled that counsel informed him he would have to serve eighty-five percent of the sentence, but that he would be eligible for parole every year. However, Applicant did not wish to accept this offer, and informed counsel of the same at this meeting.

Applicant then testified that Counsel presented him with another plea offer at their second meeting. This offer was for fifteen years imprisonment upon pleading guilty to Distribution of Heroin - Third Offense and Trafficking in Cocaine - Second Offense. Applicant testified that this offer sounded like a better deal than the first offer, but at the end of the day, it was not.

Applicant further testified that he met with counsel a third time right before the guilty plea, and that they again discussed the terms of the negotiated plea. Applicant recalled that Counsel told him that his best option was to plead. Applicant also testified that Counsel again advised him of the possibility of LWOP if the case proceeded to trial. Applicant stated that he did not want to plead guilty, but ultimately decided to plea based on Counsel's advice and his belief that Counsel was not prepared for trial. He stated that he wished that Counsel could have spoken up more at the plea, but did not specify what he would have liked plea counsel to convey to the Court.

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 and arguments presented at the Post-Conviction Relief hearing. This Court has further

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had the opportunity to observe each witness who testified at the hearing, closely pass upon his or her credibility, and weigh his or her testimony accordingly. Upon doing so, the Court finds counsel's testimony to be credible whereas Applicant's testimony is not. The Court has detailed its relevant findings of facts and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (1985), below.

I. Ineffective Assistance of Counsel

The Applicant seeks relief from his conviction on the basis that he received ineffective assistance of counsel at his criminal trial in violation of the Sixth Amendment. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984). 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 the trial cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686, 104 S. Ct. at 2064; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

In evaluating allegations of ineffective assistance of counsel, the reviewing court must apply a two-pronged test. Strickland, 466 U.S. 668, 104 S. Ct. at 2064. 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, 104 S. Ct. at 2064). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal

Case 14


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, 104 S. Ct. at 2064). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Once the Applicant has established deficient performance by counsel, he must then establish that counsel's performance 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." Id. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). After careful review based on the above standard, this Court finds that the 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.

A. Failure to Challenge the Evidence

Applicant first alleges that Counsel was ineffective for failing to challenge the State's evidence against the Applicant. However, "a guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses." State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (citing State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985)). Indeed, a defendant admits all of the elements of the offense charged and waives all defenses, except for the sufficiency of the indictment, by pleading guilty. Id. This case is no exception. At the plea, Applicant allocuted to the facts of the case presented by the State. (Transcript of Plea at 8:19-21, State v. Antwan Young, August 24, 2017). Moreover, Applicant indicated to the plea court that

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he understood he would be waiving his right to a jury trial, to confront witnesses, and to remain silent by pleading guilty. (Id. at 7:14-17). Given Applicant's solemn admission of guilt at the plea and understanding waiver of his rights, this Court finds that Applicant has failed to establish Counsel was deficient for failing to challenge the State's evidence.

Applicant has also failed to establish any resulting prejudice from this alleged deficiency. While it is true that counsel should conduct a reasonable investigation into potential defenses, our courts do not "impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." Tucker v. Ozmint, 350 F.3d 433, 442 (4th Cir. 2003) (quoting Green v. French, 143 F.3d 865, 892 (4th Cir. 1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Failure to conduct an independent investigation is not ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Here, Counsel credibly testified that the Applicant did not provide him with any independent leads or witnesses to investigate during their meetings. Counsel nevertheless conducted an independent investigation of the case by speaking with the law enforcement officers involved in the drug transactions. Counsel then shared his investigative efforts and the results with the Applicant and the plea court. (Transcript of Plea at 6:18-23, State v. Antwan Young, August 24, 2017). Furthermore, after sharing those results with the Applicant, Applicant indicated his

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desire to enter a guilty plea and requested that Counsel negotiate on his behalf. Id. at 624 -72. Accordingly, this Court finds that Applicant has wholly failed to meet his burden, and this allegation is hereby denied and dismissed with prejudice.

B. Failure to Convey Plea Offer

Applicant further alleges that Counsel was ineffective for failing to convey a plea offer. In order to prevail on a claim that counsel was ineffective for failing to convey a plea offer, the applicant must show: (1) that counsel's failure to communicate the State's initial plea offer constituted deficient performance; and (2) that the applicant was prejudiced by the deficient performance. Davie v. State, 381 S.C. 601, 675 S.E. 416 (2009). In other words, the Applicant must prove that there was a reasonable probability he would have accepted the original plea offer, but for counsel's deficient performance. Id.

The Applicant in this case has wholly failed to establish that there was an offer from the State that was not communicated to him by counsel. Both the Applicant and Counsel testified at the evidentiary hearing that there were two plea offers: the initial offer of eighteen years, and the negotiated offer of fifteen years. Applicant further testified that he was fully aware of the eighteen year offer, since Counsel communicated it to him, but that he did not want to take that offer. Likewise, plea counsel testified that he had extensive conversations with the Applicant regarding the plea offer, and that he entered into plea negotiations with the State on the Applicant's behalf. In light of the foregoing, this Court finds that Applicant has failed to establish deficiency by plea counsel or prejudice as a result. Accordingly, this allegation is denied and dismissed with prejudice.

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II. Alleged Illegal Sentence

Applicant further contends that the sentence imposed is illegal. 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). Thus in order to obtain relief pursuant to this allegation, the Applicant must prove that 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 v. State, 259 S.C. 378, 192 S.E.2d 209 (1972); State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

The Applicant in this case was charged with Distribution of Heroin - Third Offense and Trafficking Cocaine, greater than ten grams but less than twenty-eight grams - Second Offense. The first charge - Distribution of Heroin, Third Offense, carries a term of imprisonment of "not less than ten years nor more than thirty years, or [a fine of] not more than fifty thousand dollars, or both." S.C. Code Ann. § 44-53-370(b)(1). Applicant was sentenced to a term of imprisonment of fifteen years for this offense - a penalty which clearly falls within the penalty range set forth by the statute. The second charge - Trafficking Cocaine, greater than ten grams but less than twenty-eight grams, Second Offense carries "a term of imprisonment of not less than five years nor more than twenty years, no part of which may be suspended nor probation granted, and a fine of fifteen thousand dollars." S.C. Code Ann. § 44-53-370(e)(1)(a). Applicant also received a sentence of fifteen years on this offense, which was well within the penalty range proscribed by statute.

Furthermore, at his plea hearing, the Applicant indicated that he understood the trafficking charge carried between five and thirty years. (Transcript of Plea at 4:20 - 5:9, State v. Antwan

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Young, August 24, 2017). Applicant further indicated that he understood he negotiated a fifteen year sentence for this charge. (Id. at 5:10-12). Applicant was likewise aware of the penalty range on Distribution of Heroin. (Id. at 5:25 - 6:5). Applicant further understood that he was pleading guilty to a negotiated fifteen year sentence on the distribution charge, to run concurrently with the trafficking charge. (Id. at 6:2-5). In light of the foregoing, this allegation is denied and dismissed with prejudice.

III. Involuntary Guilty Plea

Lastly, Applicant alleges that his guilty plea was not 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. See Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). The voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from the record made at the time of the guilty plea, and also from the record of the PCR hearing. Id. In order to make a finding that the guilty plea was knowing and voluntary, 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, 242, 89 S. Ct. 1709, 1712 (1969). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the Applicant; as a result, 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)). Thus, 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));

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Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). Additionally, when a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

The Court finds this allegation to be without merit. Plea counsel credibly testified that he conferred with the Applicant prior to his guilty plea and adequately advised him of his constitutional rights, range of penalty, the nature of a negotiated plea, and the consequences of his guilty plea. Applicant himself testified that he was advised of these rights by counsel and that it was ultimately his decision to plead guilty. Moreover, the record reflects that the Applicant desired to plead guilty to the charged offenses and that the Applicant entered his plea freely, voluntarily, knowingly, and intelligently. (Transcript of Plea at 9:23 - 10:8, State v. Antwan Young, August 24, 2017). The Applicant told the Court that he was not under the influence of drugs or medication at the time of the plea (Id. at 11: 6-8). Further, the record reflects the Applicant's complete allocution to the facts as presented by the State and his guilt. (Id. at 8:1-18). The Applicant told the Court he wished to plead guilty to Distribution of Heroin - Third Offense and Trafficking Cocaine - Third Offense and informed the Court he understood the penalty range for each of these offenses. (Id. at 5:21 - 6:9). The Applicant also acknowledged that he was aware that these particular offenses are "strike" offenses and classified as serious, and that as a result, he is ineligible for parole (due to the trafficking offense) and must serve eighty-five percent (85%) of his sentence. (Id. at 8:19 - 9:22). The Applicant was advised of and waived his right to a jury trial and accompanying constitutional rights, such as the right to confront witnesses and the right to remain silent. (Id. at 7:14 - 18). The Applicant also told the Court that he discussed the negotiated plea

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with his lawyer and had sufficient time to think about it. (Id. at 11: 9-11). The Applicant further stated that he was satisfied with his attorney's services. (Id. at 6: 10 -11). Finally, the Applicant testified that it was his decision to enter into the negotiated plea with the State. (Id. at 11: 12-14).

In light of the foregoing, this Court finds that Applicant has failed to meet his burden of proof in establishing that the plea was involuntary. The 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, knowingly, and intelligently made. Additionally, the Applicant was represented by competent counsel at the plea. Plea Counsel conducted a proper investigation, adequately conferred with the Applicant, and provided thorough representation. Plea counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977). Accordingly, this allegation must be denied and dismissed with prejudice.

CONCLUSION

This Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require the Court to grant his application. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. The Application is therefore denied and dismissed with prejudice.

The Court advises the Applicant that he must file and serve a notice of appeal within thirty days from the receipt of this Order if he wants to secure the appropriate appellate review. See Rule 203, SCACR. The Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief; however, post-conviction relief counsel must serve and file a

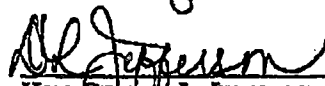
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[Signature]

Notice of Appeal on the Applicant's behalf pursuant to Rule 71.1(g), SCRPC. See Austin v. State, 305 S.C. 453 (1991). The Applicant is hereby directed to South Carolina Appellate Court Rule 243 for the 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 24th day of August, 2018.



HON. DEANDRA L. JEFFERSON
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

Holt
AKY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

ANTWAN YOUNG, #297595

Applicant,

v.

STATE OF SOUTH CAROLINA,

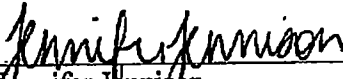
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:


Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

This 26th day of October, 2018.



Jennifer Jennison
Legal Assistant for Respondent

SWORN to before me this 26th day of October, 2018.



Notary Public for South Carolina.
My Commission Expires: 5/20/2025

SBL/0327079
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2017-002965

ARREST WARRANT NUMBER

2017A1010900105

DATE OF ARREST

02/22/2017

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date:

JUN 12 2017

VERDICT

DOCKET NO. 2017-GS-10-03624

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JUNE TERM 2017

THE STATE

VS.

ANTWAN DAMON YOUNG

B/M DOB [REDACTED]

Indictment for

DISTRIBUTION HEROIN

SC Code: § 44-53-0370(b)(1)

CDR Code: 0183

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

Distribution of Heroin

The defendant, Antwan Damon Young, did on or about December 16, 2014, in Charleston County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Heroin, a schedule I controlled substance narcotic. All in violation of 44-53-0370(b)(1) 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.



STEPHANIE B. LINDER
ASSISTANT SOLICITOR

SBL/0327079
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2017-002965

ARREST WARRANT NUMBER

2017A1010900106

DATE OF ARREST

02/22/2017

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date:

JUN 12 2017

VERDICT

DOCKET NO. 2017-GS-10-03625

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JUNE TERM 2017

THE STATE

VS.

ANTWAN DAMON YOUNG
B/M DOB [REDACTED]

Indictment for

TRAFFICKING IN COCAINE

SC Code: § 44-53-0370(e)(2)(a)1

CDR Code: 0278

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

Trafficking in cocaine

The defendant, Antwan Damon Young, did on or about January 7, 2015, in Charleston County, South Carolina, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more of Cocaine or any mixtures containing cocaine, as provided in 44-53-

210(b)(4). All in violation of 44-53-0370(e)(2)(a)1 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.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON
STATE VS.

INDICTMENT/CASE#: 2017-GS-10-03624
A/W: 2017A1010900105
Date of Offense: 12/16/2014
S.C. Code #: 44-53-0370(b)(1)
CDR Code #: 01B3

ANTWAN DAMON YOUNG

AKA: Antwan Wright, Antwan Dallon Young
Race: Black/African American Sex: M
DOB: [REDACTED] SS#: [REDACTED]
Address: Fishburne Street
City, State, Zip: Charleston, SC 29403
DL# [REDACTED] SID# SC00894871

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Distribution Heroin-3rd
In violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 01B5

CONVICTED OF or PLEADS

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 Prosecution to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Stephanie B. Linder 72656
Stephanie B. Linder, Assistant Solicitor SC Bar #

Antwan Young
Defendant

[Signature] 69878
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 1.5 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 _____ days/months/years and or payment
of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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. Feb 22, 2017
 The Defendant is to be placed on 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: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§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/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(I) (Vehicle Assessment) \$40/ca \$ _____

3% to County (if paid in installments) \$ \$ 8.25

TOTAL \$ 283.25

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,
§47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: KESYAL Smith

Presiding Judge: [Signature]
Judge Code: 2000
Sentence Date: 8-24-17

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.

ANTWAN DAMON YOUNG

AKA: Antwan Wright, Antwan Deion Young

Race: Black/African American Sex: M

DOB: [REDACTED] SS#: [REDACTED]

Address: Fishburne Street

City, State, Zip: Charleston, SC 29403

DL# [REDACTED] SID# SC00894871

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Traff Cocaine 10g but <28g-2nd

In violation of § 44-53-0370(e)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0387

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC, w/minor 1st or Lewd Act) §17-25-45

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

ATTEST:
Stephanie B. Linder 72656
Stephanie B. Linder, Assistant Solicitor SC Bar #

[Signature] 15 YRS
Defendant

[Signature] 69878
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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. Feb 22, 2017

The Defendant is to be placed on 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 _____ days/hours Public Service/ Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Finc:		\$ _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§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/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	\$ <u>8.25</u>
TOTAL		\$ <u>283.25</u>

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, §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: Kristal Smith

Presiding Judge: [Signature]
Judge Code: 2060
Sentence Date: 8-24-17

ARREST WARRANT

2017A1010900105

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

THE STATE
against

Antwan Young

Address: Fishburne Street

Charleston, SC 29403-

Phone: SSN:

Sex: M Race: B Height: 6 Weight: 150

DL State: DL #:

DOB: Agency ORI #: SC0100000

Prosecuting Agency: Charleston County Sheriff

Prosecuting Officer: Andrew Miller - 0180

Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),
LSD, and Sched. II (Cocaine)- 1st offense

Offense Code: 0183

Code/Ordinance Sec: 44-53-0370(B)(1)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Antwan Young
1-22-17

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Personally appeared before me the affiant Andrew Miller who

being duly sworn deposes and says that defendant Antwan Young
did within this county and state on or about 12/16/2014 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Charleston)
In the following particulars:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Affiant's Address 3691 Leeds Avenue

North Charleston, SC 29405-

Affiant's Telephone (843)202-1700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/16/2014 defendant Antwan Young

did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 2/21/2017

Signature of Issuing Judge Ellen S. Steinberg (L.S.)

Signature of Issuing Judge
Ellen Soffar Steinberg

Judge Code: 728D

Judge's Address 1720 Sam Rittenberg Blvd, Unit 11

Charleston, SC 29417-

Judge's Telephone (843)-76-6-65 x 31

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

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ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCGA 618

AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT
OCA# 2017-002965
Det. Andy Miller

Personally appeared before me, a magistrate of this County, one, Detective Andy Miller, who, first being duly sworn, deposes and says that:

ANTWAN YOUNG

Did within this County and State on the 16th day of December 2014, did violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
DISTRIBUTION OF HEROIN
VIOLATION OF SECTION
44-53-370

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on December 16, 2014, while in the vicinity of a residence located at [redacted] Surprise Street in the City of North Charleston, County of Charleston, State of South Carolina, the defendant, Antwan YOUNG, did commit the offense of Distribution of Heroin, in violation of section 44-53-370 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully distribute approximately 3.08 grams of a brown powder substance, which tested positive as heroin by the Department of Homeland Security, U.S. Customs and Border Protection Laboratories and Scientific Services lab in Savannah, GA.

~~Facts to establish the aforesaid are that a confidential informant (CI) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) was driven to the area of [redacted] Surprise Street, in the City of North Charleston by an undercover agent (UC) with ATF. Upon the CI arriving at a predetermined location, he/she was met by the defendant Antwan YOUNG. The CI gave the defendant \$700 in prerecorded ATF buy funds in exchange for approximately 3.08 grams of brown powder substance, which field tested presumptive for heroin. The transaction was audio and video recorded.~~

This is based on an investigation by ATF and witnesses to be named in court on a later date. All against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 21 day of February
2017.

Allen S. Steinberg
Signature of Judge

[Signature]
(AFFIANT)

Address: 3691 Leeds Ave
North Charleston, SC 29405
Phone: (843) 743-2300

ARREST WARRANT

2017A1010900106

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

THE STATE
against

Antwan Young

Address: **█████ Fishburne Street**
Charleston, SC 29403-

Phone: ██████████ SSN: ██████████
Sex: M Race: B Height: 6 Weight: 150
DL State: _____ DL #: _____

DOB: ██████████ Agency ORI #: SC0100000

Prosecuting Agency: Charleston County Sheriff

Prosecuting Officer: Andrew Miller - 0180

Offense: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

Offense Code: 0278

Code/Ordinance Sec: 44-53-0370(e)(2)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Antwan Young on 2-12-17

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Personally appeared before me the affiant Andrew Miller who

being duly sworn deposes and says that defendant Antwan Young

did within this county and state on or about 1/7/2015

State of South Carolina (or ordinance of County/ Municipality of Charleston)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Affiant's Address 3691 Leeds Avenue
North Charleston, SC 29405-

Affiant's Telephone (843)202-1700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/7/2015 defendant Antwan Young

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me

on 2/21/2017

Signature of Issuing Judge
Ellen S. Steinberg (L.S.)

Ellen Soffar Steinberg

Judge Code: 7280

Judge's Address 1720 Sam Rittenberg Blvd, Unit 11
Charleston, SC 29417-

Judge's Telephone (843)-76-6-65 x 31

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

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03

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2009
POCA 516

AFFIDAVIT

BAIL set by

Judge Bligen
on 2-22-17
Type and Amount: \$ 500,000-50
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



BY MW
SHERIFF JAMES STRONG
CLERK OF COURT

2017 FEB 27 PM 2:58

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT
OCA# 2017-002965
Det. Andy Miller

Personally appeared before me, a magistrate of this County, one, Detective Andy Miller, who, first being duly sworn, deposes and says that:

Antwan YOUNG

Did within this County and State on the 7th day of January 2015, did violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
TRAFFICKING COCAINE
VIOLATION OF SECTION
44-53-370 (e)(2)(a)

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on January 7, 2015, while at the International Lounge, located at 4620 Dorchester Road in the City of North Charleston, County of Charleston, State of South Carolina, the defendant, **Antwan YOUNG**, did commit the offense of Trafficking Cocaine, in violation of section 44-53-370 (e)(2)(a) of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully distribute approximately 13.64 grams of a white powder substance, which tested positive as cocaine by the Department of Homeland Security, U.S. Customs and Border Protection Laboratories and Scientific Services lab in Savannah, GA.

~~Facts to establish the aforesaid are that an undercover agent (UC) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and an ATF confidential informant (CI) conducted an undercover purchase of a quantity of cocaine from YOUNG in the area of 4620 Dorchester Road in the City of North Charleston. The ATF UC agent gave the defendant a quantity pre-recorded ATF buy funds in exchange for 13.64 grams of white powder substance, which field tested presumptive for containing cocaine. The transaction was audio and video recorded.~~

This is based on an investigation by ATF and witnesses to be named in court on a later date. All against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 21 day of February
2017.
Ellen S. Steimberg
Signature of Judge

[Signature]
(AFFIANT)
Address: 3691 Leeds Ave
North Charleston, SC 29406
Phone: (843) 743-7200