

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lexington County

S.C. SUPREME COURT

Honorable Walton J. McLeod, IV, Circuit Court Judge

DEMETRIUS SUMMERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002183

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

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

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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INDICTMENTS74

1 State of South Carolina)
 2 County of Lexington)
 3)
 4 State of South Carolina,)
 5 Plaintiff,)
 6 vs.)
 7 Demetris Terrell Summers,)
 8 Defendant.)
 _____)

In the Court
 Of General Sessions
 Indictment No.: 2016-GS-32-01404
 2016-GS-32-01405
 2061-GS-32-01406

Transcript of Record

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April 4, 2017

Lexington, South Carolina

BEFORE:

The Honorable Jocelyn Newman, Judge

APPEARANCES:

Gill Bell, Assistant State Solicitor
 Attorney for the State

Todd Rutherford, Esquire
 Attorney for the Defendant

ALSO PRESENT:

Demetris Terrell Summers

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EXHIBITS

NO.	DESCRIPTION	ID	EVDS.
	NONE		

DEMETRIS TERRELL SUMMERS - GUILTY PLEA

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1

GUILTY PLEA

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Thereupon, the following proceedings were had,

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THE CLERK: 2016-GS-32-1404. State versus Demetris Summers. Indicted for trafficking crack, 10 to 28 grams, second offense. He is pleading as charged.

2016-GS-32-1405. State versus Demetris Summers. Indicted for manufacturing crack cocaine second offense. He is pleading as charged.

2016-GS-32-1406. State versus Demetris Summers. Indicted for distribution of crack cocaine second offense. He is pleading as charged. All indictments have been true billed. He is represented by Mr. Rutherford.

Thereupon,

DEMETRIS SUMMERS

after having been first duly sworn, testified as follows,

THE COURT: Mr. Rutherford, you represent Mr. Summers?

MR. RUTHERFORD: I do, Your Honor.

THE COURT: Have you explained to him the charges against him, the possible punishment and his constitutional rights?

MR. RUTHERFORD: I have, Your Honor.

THE COURT: To these charges does he tell you he wants to plead guilty or not guilty?

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P.O. Box 184, Lexington, South Carolina 29071

DEMETRIS TERRELL SUMMERS - GUILTY PLEA

1 MR. RUTHERFORD: Guilty, Your Honor.

2 THE COURT: Do you agree with his decision to plead
3 guilty?

4 MR. RUTHERFORD: I do, Your Honor.

5 THE COURT: Do you believe if required to do so the
6 State could prove him guilty of all three offenses beyond
7 a reasonable doubt?

8 MR. RUTHERFORD: I do, Your Honor.

9 THE COURT: Mr. Summers, are you currently under the
10 influence of alcohol or drugs?

11 MR. SUMMERS: No, ma'am.

12 THE COURT: Do you take any medications?

13 MR. SUMMERS: Ambien.

14 THE COURT: Did you take it today?

15 MR. SUMMERS: No, ma'am.

16 THE COURT: The fact that you didn't take it today,
17 does that affect your ability to understand what you are
18 doing?

19 MR. SUMMERS: No, ma'am.

20 THE COURT: All right. How old are you, sir?

21 MR. SUMMERS: 33.

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

23 MR. SUMMERS: Sophomore year in college.

24 THE COURT: What kind of work do you do?

25 MR. SUMMERS: Right now I'm doing underground cable

DEMETRIS TERRELL SUMMERS - GUILTY PLEA

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1 for Partner Communications through Spectrum.

2 THE COURT: Right. Okay. And you're here to plead
3 guilty today to distribution of crack second offense,
4 trafficking crack second offense and manufacturing crack
5 second offense; is that correct?

6 MR. SUMMERS: Yes, ma'am.

7 THE COURT: All right. Solicitor let me hear the
8 facts.

9 MR. BELL: Thank you, Your Honor. Beginning in
10 August of 2015 law enforcement with the Sheriff's
11 Department had been working other low level dope cases.
12 In working those lower cases they kept hearing a name pop
13 up which was Mr. Summers ultimately. They ended up
14 signing up confidential informants and began sending them
15 to make buys from Mr. Summers. They made three
16 controlled buys which were recorded via audio and video
17 surveillance. The first purchase was conducted August
18 31st, 2015, Your Honor, and the last was conducted
19 September 7th of 2015. In all of those videos, Your
20 Honor, Mr. Summers is the one passing off the crack
21 cocaine in exchange for money. On one of those videos,
22 Your Honor, Mr. Summers is actually in the process of
23 cooking crack while the CI is there to buy crack which is
24 what the manufacturing crack cocaine indictment stems
25 from. Your Honor, following those series of controlled

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1 buys they did sign out a search warrant for Mr. Summers'
2 residence. On September 18th of 2015 they executed that
3 search warrant.

4 The inside of the house was a myriad of drug
5 paraphernalia. There was Tupperware where you could see
6 that the crack cocaine was being cooked. There was
7 finished product of both cocaine and crack cocaine both
8 amounting to trafficking weight. Your Honor, there was
9 various firearms to include AR15's, pistols, ammunition,
10 et cetera. There was a quantity of marijuana found. It
11 should also be noted, Your Honor, that there were four
12 children residing at that residence where that crack,
13 where those firearms were and where at least two of those
14 prior distributions had taken place.

15 Your Honor, there's approximately ten other warrants
16 with this case that are being dismissed pursuant to this
17 plea. I would point out to Your Honor law enforcement
18 has been up here on multiple prior occasions for this
19 plea. For whatever reason, scheduling issues, it didn't
20 go through. They couldn't make it today due to an
21 ongoing investigation but they are interested in this
22 case. I do have additional comments on sentencing and
23 background when appropriate.

24 THE COURT: All right. Mr. Summers, is what the
25 Solicitor told me true about these three offenses?

1 MR. SUMMERS: Yes, ma'am.

2 THE COURT: To the charge of distribution of crack
3 cocaine second offense do you plead guilty or not
4 guilty?

5 MR. SUMMERS: Guilty.

6 THE COURT: To the charge of manufacturing crack
7 cocaine second offense do you plead guilty or not
8 guilty?

9 MR. SUMMERS: Guilty.

10 THE COURT: To the charge of trafficking crack
11 cocaine 10 to 28 grams second offense do you plead guilty
12 or not guilty?

13 MR. SUMMERS: Guilty.

14 THE COURT: Are you guilty of all three of those
15 offenses?

16 MR. SUMMERS: Yes, ma'am.

17 THE COURT: Has anyone promised you anything,
18 threatened you or coerced you or mistreated you in
19 any way to force you to plead guilty?

20 MR. SUMMERS: No, ma'am.

21 THE COURT: Are you pleading guilty of your own free
22 will and accord?

23 MR. SUMMERS: Yes, ma'am.

24 THE COURT: Is it your decision to plead guilty?

25 MR. SUMMERS: Yes, ma'am.

1 THE COURT: Are you pleading guilty because you are
2 guilty of each of these offenses?

3 MR. SUMMERS: Yes, ma'am.

4 THE COURT: When you plead guilty, you give up
5 certain very important constitutional rights. You give
6 up the right to remain silent. You also give up the
7 right to have a jury trial. At that jury trial you could
8 confront and cross examine the State's witnesses against
9 you. You could also present witnesses on your own
10 behalf. You could testify on your own behalf if you
11 chose to but no one could force you to and the jury could
12 not hold it against you that you chose not to. Also, the
13 State would be required to prove that you're guilty of
14 each of these offences beyond a reasonable doubt. Do you
15 understand all of that?

16 MR. SUMMERS: Yes, ma'am.

17 THE COURT: By pleading guilty here today you give
18 up those constitutional rights. Do you understand?

19 MR. SUMMERS: Yes, ma'am.

20 THE COURT: Do you want a jury trial on any of these
21 or do you want me to accept your guilty pleas today?

22 MR. SUMMERS: Accept guilty.

23 THE COURT: Okay. Are you satisfied with your
24 attorney?

25 MR. SUMMERS: Yes, ma'am.

DEMETRIS TERRELL SUMMERS - GUILTY PLEA

9

1 THE COURT: Has he done everything you have asked
2 him to do?

3 MR. SUMMERS: Yes, ma'am.

4 THE COURT: Have you had enough time to talk to
5 him?

6 MR. SUMMERS: Yes, ma'am.

7 THE COURT: Have you understood your talks with
8 him?

9 MR. SUMMERS: Yes, ma'am.

10 THE COURT: Do you need anymore time to talk to
11 him?

12 MR. SUMMERS: No, ma'am.

13 THE COURT: Do you have any complaints about him
14 whatsoever?

15 MR. SUMMERS: No, ma'am.

16 THE COURT: Solicitor, on the manufacturing and the
17 distribution you have five to 30 years. It is not zero
18 to 30?

19 MR. BELL: Your Honor, it's five to 30, however, the
20 five on the second offense is suspendable. On the
21 trafficking it is a mandatory minimum, Your Honor.

22 THE COURT: Okay. Maybe my information is
23 incorrect. All right. Mr. Summers, you understand that
24 each of these charges carries a penalty of no less than
25 five and no more than 30 years in prison. Do you

1 understand that?

2 MR. SUMMERS: Yes, ma'am.

3 THE COURT: And a fine. Let's see. The charge of
4 trafficking carries a mandatory fine of \$50,000.00 and
5 the others are fines up to \$50,000.00. Do you understand
6 that?

7 MR. SUMMERS: Yes, ma'am.

8 THE COURT: Also, on the charge of trafficking crack
9 second offense the minimum sentence of five years may not
10 be suspended. Do you understand that?

11 MR. SUMMERS: Yes, ma'am.

12 THE COURT: Okay. So you understand that today I
13 could sentence you to a maximum of 90 years in prison.
14 Do you understand that?

15 MR. SUMMERS: I do now.

16 THE COURT: Each of them carries a maximum penalty
17 of 30 years and I could run those sentences consecutive
18 to one another. Do you understand that?

19 MR. SUMMERS: Yes, ma'am.

20 THE COURT: Okay. And I could fine you up to
21 \$150,000.00. Do you understand that?

22 MR. SUMMERS: Yes, ma'am.

23 THE COURT: The minimum sentence you will receive
24 today is five years. Do you understand that?

25 MR. SUMMERS: Yes, ma'am.

DEMETRIS TERRELL SUMMERS - GUILTY PLEA

11

1 THE COURT: And a fine of \$50,000.00. Do you
2 understand that?

3 MR. SUMMERS: Yes, ma'am.

4 THE COURT: Okay. Knowing all of that do you still
5 want to plead guilty?

6 MR. SUMMERS: Yes, ma'am.

7 THE COURT: Okay. Also, these are drug offenses. I
8 know you have been charged with second offenses here but
9 if you were ever convicted of another drug offense in the
10 future, the possible punishment would be more severe. Do
11 you understand that?

12 MR. SUMMERS: Yes, ma'am.

13 THE COURT: Knowing that do you still want to plead
14 guilty?

15 MR. SUMMERS: Yes, ma'am.

16 THE COURT: Also, each of these three offenses is a
17 serious offense. Under South Carolina law serious
18 offenses are what we call the three strikes law so once
19 you are convicted of three serious offenses, you are
20 subject in a subsequent conviction to serving life
21 without parole. Do you understand that?

22 MR. SUMMERS: Yes, ma'am.

23 THE COURT: Knowing that do you still want to plead
24 guilty?

25 MR. SUMMERS: Yes, ma'am.

1 THE COURT: Have you understood all of my
2 questions?

3 MR. SUMMERS: Yes, ma'am.

4 THE COURT: Have you been honest in your answers to
5 me?

6 MR. SUMMERS: Yes, ma'am.

7 THE COURT: Do you have any questions about what you
8 are doing here today?

9 MR. SUMMERS: No, ma'am.

10 THE COURT: Okay. I find there is a substantial
11 factual basis for Mr. Summers' plea; that he's made the
12 plea freely and voluntarily, knowingly and intelligently
13 with the advice of competent counsel with whom he says he
14 is satisfied and I will accept his plea. What else does
15 the State have?

16 MR. BELL: Your Honor, prior record is a 2013 simple
17 possession of marijuana. 2015 possession of cocaine and
18 unlawful carrying of a pistol.

19 Your Honor, I have been prosecuting narcotics a
20 little over four years now. I know I have uttered it out
21 of my own mouth. I know the bench utters it. I know
22 even defense counsel utters it. They're tired of law
23 enforcement always going after these sort of \$20.00
24 street corner dope dealers and dropping warrants on
25 everybody that's slinging a little bit of crack. This is

DEMETRIS TERRELL SUMMERS - GUILTY PLEA

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1 not that case, Your Honor. This is a man who has had
2 opportunities and options in his life and he chose to
3 return to Lexington County and cook crack and sell it.

4 Mr. Summers had a successful high school career
5 here. He went to college. Played for the Gamecocks.
6 Made his way up to the practice squad in the NFL for a
7 year. Went up to Canada. Played for the Canadian
8 Football League. All that didn't pan out, but that's no
9 excuse to come back here and think that it's now okay to
10 sell drugs and have a bunch of guns in your house.

11 Your Honor, I think a minimum sentence in this case
12 sends the wrong message. It sends the wrong message to
13 law enforcement who put a ton of work into trying to work
14 their way up the chain instead of just hitting John Doe
15 on the corner. They tried to find where the crack was
16 being cooked and where it was making its way to the
17 street and they did an excellent job in this case and I
18 commend them on that.

19 Your Honor, the community, we have a drug epidemic
20 here in Lexington County and it is something that has to
21 be combated. I think a minimum sentence is a case like
22 this would send the wrong message. And then finally it
23 sends the wrong message to other drug dealers out there
24 that you can have an operation like this. You can have
25 the cocaine. You can cook it into crack and you can sell

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1 it and you're just going to get the minimum. Your Honor,
2 I think that sends the wrong message. I respectfully ask
3 that you sentence him to something higher than the
4 minimum.

5 THE COURT: Thank you, sir. Mr. Rutherford.

6 MR. RUTHERFORD: Your Honor, my client is 33 years
7 old. He has four children ages 16, 11, 6 and 2. He
8 attends St. Paul Baptist Church. And as Your Honor was
9 told by my client, he does currently work for Partners
10 Communication Services and I have a letter here from
11 Charles Hockenberry who is the operational manager and
12 Sherman Jenkins the project manager which I have shown to
13 the Solicitor and which I'll pass up to the Court at this
14 time (proffering.)

15 THE COURT: Yes, sir.

16 MR. RUTHERFORD: In addition, Your Honor, from a
17 childhood friend of his and a friend of mine as well and
18 a friend of many out there Kendall Corley also submitted
19 a letter. That's the male Kendall Corley. Not the
20 Solicitor Kendall Corley. Your Honor, I also have a
21 letter from LRADAC which is dated July 15th, 2016 which
22 goes into a little bit of detail about how Mr. Summers
23 sought treatment from LRADAC on his own volition, how he
24 received that treatment and how he was doing well in that
25 treatment as well. Your Honor, just again we would like

DEMETRIS TERRELL SUMMERS - GUILTY PLEA

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1 to thank the Solicitor's Office for allowing us to get to
2 this point. We understand his point of contention,
3 however, we see nothing in this case that separates it
4 from any other garden variety drug case.

5 The fact that there were guns found in the home
6 because it's Lexington County just like Richland County
7 most people have guns in their home. He didn't point it
8 at anybody. He didn't threaten anybody with it.

9 He had a storied football career and that football
10 career took him through Lexington High School, took him
11 to USC under Coach Holtz and then his sophomore year he
12 left and made the practice squad in an NFL team, went to
13 Canada and he pulled his hamstring and at that point
14 decided he was done with it. At that point he had no
15 other choice but to come back to Lexington County. So he
16 chose to because that's where he's from and that's what
17 he knew but at that point that's all that he had
18 available to him because he could not any longer choose
19 the vocation for which his body had allowed him to do.
20 He received a sophomore education from USC but that was
21 it. He was unable to go back and finish it, and looking
22 for a way to feed his four kids, and looking for a way to
23 do the same thing that most people do when they get into
24 the drug business which is it's an economic route they
25 believe that they can do in order to better themselves.

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1 It was a bad choice. He realizes that now. That's why
2 he went to LRADAC.

3 You can see from the letters from his boss he does
4 well. They were about to give him a crew at what is a
5 Spectrum subcontractor, his own crew but they didn't
6 because of these charges.

7 Your Honor, if this was a probation eligible
8 sentence, we would ask for it but Mr. Summers understands
9 and we have had this conversation multiple times, the
10 fact that he has turned his life around now it's too
11 late. He must face the punishment. But we do not
12 believe that any other sentence other than the minimum
13 would be appropriate in this case. We would also ask for
14 a finding that he is indigent. He cannot pay a
15 \$50,000.00 fine even though it is mandated by the Court
16 and especially after he serves, if Your Honor is kind
17 enough to give him the minimum, what would be an 85
18 percent sentence of five years, he certainly would not be
19 able to take care of four kids and pay a \$50,000.00 fine.

20 Respectfully, Your Honor, we would request the
21 minimum five in this case and a finding of indigence so
22 that he is not being hassled about paying the \$50,000.00
23 fine.

24 THE COURT: Are you appointed or retained,
25 Mr. Rutherford?

DEMETRIS TERRELL SUMMERS - GUILTY PLEA

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1 MR. RUTHERFORD: Retained, Your Honor. And, Your
2 Honor, if I could briefly, I apologies for forgetting.
3 There are a number of people that came in support of him.
4 If I could ask them to please stand. Thank you all for
5 coming.

6 THE COURT: Mr. Summers, what do you want to tell
7 me?

8 MR. SUMMERS: Uhm, I have been through a lot as you
9 can see. Uhm, I'm not a bad person. Not a bad guy.
10 Just got caught up in the wrong situation trying to help
11 my family. I understand the consequences and everything
12 but I know I'm better than that. You know, I made a
13 mistake. I don't need to put it on nobody else but, uhm,
14 I just - I wish I could try and do something else but I
15 listened to you and I heard that five years is there. I
16 wish I could be here to support my kids and help my
17 fiancee as much as I can. Just the hardest thing is
18 telling them that daddy might be gone for a while. When
19 I talk to her, she was like she can't believe that I'm
20 leaving her with four kids but I know I made a bad
21 decision and I have got to own up to it.

22 THE COURT: Anything else, Mr. Rutherford?

23 MR. RUTHERFORD: Nothing, Your Honor.

24 THE COURT: All right. On the charge of
25 manufacturing crack second offense and distribution of

1 crack second offense the sentence is eight years. On the
2 charge of trafficking crack second offense the sentence
3 is eight years and a fine of \$50,000.00. All sentences
4 to run concurrent. As to the indigency, Mr. Rutherford,
5 I'm not going to make that finding at this point,
6 however, if in the next ten days you provide me with some
7 affidavit or evidence of his inability to pay, I will
8 reconsider that at that time.

9 MR. RUTHERFORD: Okay. Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. BELL: Thank you, Judge.

12 WHEREUPON, THE HEARING WAS CONCLUDED.
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CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)
(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of General Sessions in and for the State of South Carolina on the 14th day of April, 2017.

I FURTHER CERTIFY that the forgoing 18 pages constitute a true and accurate record of said proceedings.

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

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 28th day of November, 2017.

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)


3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 14th day of April, 2017.

11 I FURTHER CERTIFY that the forgoing 18 pages
12 constitute a true and accurate record of said proceedings.

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

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 28th day of November, 2017.

17
18
19 
20 _____
21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
23 State of South Carolina.
24
25

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

FORM 5

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of Lexington 2017 OCT 2 AM 9:09

Demetrius Summers

Full name and prison number (if any) of Applicant

LISA COMER
CLERK OF COURT
LEXINGTON, SC

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2017CP3203595

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 Goodman Correctional Institution
4556 Broad River Rd. Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Lexington County
Judicial Center, 205 East Main St Lexington S.C. 29072
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) 2016CS3201404
 - (b) 2016CS3201405

A TRUE COPY

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

(c) 2016 GS 3201406

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

(a) _____

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) A plea of guilty

(b) _____

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(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) _____
- (c) _____

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

- (a) Counsel was ineffective where he failed to do pretrial investigation
- (b) Applicant reserves the right to amend to conform to the evidence
- (c) _____

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? _____

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

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

A TRUE COPY

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

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

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. _____

A TRUE COPY

Chloe Carter

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

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) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? YES NO TRIAL
- (c) your sentencing? yes
- (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. Attorney Todd Rutherford
2113 Parks St. Columbia, SC 29201
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. ARRAIGNMENT AND PLEA
 - ii. sentencing
 - iii. _____

A TRUE COPY

[Signature]

Lex. Co. C.C.O.R., G.S. & F.C.

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

To vacate the Conviction, or Any other Relief
this Court deems Just, or Proper

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

NO

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, Demetris Summers, 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.

[Signature]

SWORN to and subscribed before me this 13th
day of September, 2017

[Signature] (L.S.)
Notary Public

My Commission Expires: 8/30/2021



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

I, Demetrius Summers, 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.

Demetrius Summers
Applicant

SWORN or affirmed to and subscribed before me this
13th day of September, 2017.

Richard K. Kuehlberg
Notary Public

My Commission Expires: 8/30/2026

A TRUE COPY

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

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
)
 Demetrius Terrell Summers. # 372191,)
)
 Applicant,)
)
 v.)
)
 The State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2017-CP-32-03595

RETURN

Respondent hereby makes a Return to the Post-Conviction Relief (PCR) Application filed on October 2, 2017. Respondent would show this Court that:

I. PROCEDURAL HISTORY

Demetrius Terrell Summers. # 372191 (Applicant), is presently confined in the Goodman Correctional Institution, of the South Carolina Department of Corrections (SCDC), as the result of his Lexington County convictions and sentence. The Lexington County Grand Jury indicted him in May 2016 for trafficking in crack cocaine (10 grams – 28 grams) (2016-GS-32-01404), manufacturing crack cocaine (2016-GS-32-01405), and distribution of crack cocaine (2016-GS-32-01406). James Todd Rutherford, Esquire, represented him on these charges.

On April 14, 2017, Applicant pled guilty, without negotiation of sentence, to trafficking in crack cocaine between 10 grams and 28 grams, second offense; manufacturing crack cocaine, second offense; and distribution of crack cocaine, second offense, before the Jocelyn Newman.¹ Judge Newman sentenced him to eight years and a \$50,000.00 fine for second offense

¹ Respondent has ordered a copy of the guilty plea transcript, but it has not yet received it. A copy of that transcript will be served upon opposing counsel, upon receipt, and a copy will be provided to the Court before any evidentiary hearing in the case.

trafficking; and she imposed concurrent sentences of eight years imprisonment for both the manufacturing crack cocaine and distribution of crack cocaine charges.

Applicant did not pursue a direct appeal from his convictions or sentence. On October 12, 2017, Ashley A. McMahan, Esquire, was appointed to represent him.

Respondent incorporates the following documents by reference, which were attached to the original Return or otherwise provided to opposing counsel:

1. Applicant's SCDC records; and
2. The Lexington County Clerk of Court's records relating to Applicant's convictions and sentence.

III.

Applicant raises the following claims in his Application:

- 11(a). Ineffective Assistance of Counsel. Counsel was ineffective when he failed to do pretrial investigation.
- (b). Applicant reserves the right to amend to conform to the evidence.

IV.

Ineffective Assistance of Counsel.

The Supreme Court has held that *Strickland's* two-pronged test "applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 370 (1985). In order to prevail, a PCR Applicant must first establish " 'that counsel's representation fell below an objective standard of reasonableness.' " *Lafler v. Cooper*, 566 U.S. 156, 162-63, 132 S.Ct. 1376, 1384 (2012) (quoting *Hill*, 474 U.S. at 57, 106 S.Ct. 366). *See also Hill*, 474 U.S. at 56, 106 S.Ct. at 369 ("Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the

plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases' "); *Strickland*, 466 U.S. at 687-88, 104 S.Ct. at 2064.

"A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " *Id.*, 104 S.Ct. 2052 (citation omitted).

Even if Applicant can establish deficient performance, he would still have to show prejudice from counsel's performance. To establish *Strickland* prejudice in the context of guilty pleas, an inmate must prove "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial" *Hill*, 474 U.S. at 52, 106 S.Ct. 366. *See also Lafler*, 132 S.Ct. at 1384 (" 'a defendant must show the outcome of the plea process would have been different with competent advice' ") (citing *Missouri v. Frye*, 132 S.Ct. 1399 (2012)).

Further, the United States Supreme Court stated in *Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621 (1977), that:

... [T]he representations of the defendant, his lawyer, and the prosecutor at such a hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.

Blackledge, 431 U.S. at 73-74, 97 S.Ct. at 1629. *See also Christian v. Ballard*, 792 F.3d 427, 444 (4th Cir. 2015).

Ground One

Applicant's first claim is that plea counsel was ineffective because counsel "failed to do pretrial investigation." The Court in *Strickland* gave the following explanation of the deference reviewing courts owe to counsel's strategic judgments in terms of the adequacy of the investigations supporting those judgments:

[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, *counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. 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.*

Strickland, 466 U.S. at 690-91, 104 S.Ct. at 2066. (Emphasis added). Furthermore,

[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions, just as it may be critical to a proper assessment of counsel's other litigation decisions.

Strickland, 466 U.S. at 691, 104 S.Ct. at 2066. *See also Wiggins*, 539 U.S. at 521-22, 123 S.Ct. at 2535-36.

While Respondent anticipates that Applicant will not be able to meet his burden of proof under *Strickland* and *Hill*, Respondent does not yet have a copy of the plea transcript. Accordingly, this claim of ineffective assistance of counsel raises questions of fact that cannot be conclusively refuted by the record at this point in time. Therefore, Respondent requests an evidentiary hearing to fully resolve this claim. *Sharper v. State*, 279 S.C. 264, 266, 305 S.E.2d 247, 248-49 (1983).

Ground Two

Applicant's second allegation is that "Applicant reserves the right to amend to conform to the evidence." Respondent submits that this allegation fails to state a claim for relief.

III.

Each and every allegation contained within the Application not already expressly admitted, qualified or explained is hereby denied.

CONCLUSION

WHEREFORE, having made its Return, Respondent asks the Court to conduct an evidentiary hearing on Applicant's Ground One, in order to determine whether Applicant's plea counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY JANE BROWN
Senior Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

ATTORNEYS FOR RESPONDENT

By: 

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-6305

December 4, 2017.

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	FOR THE 11 th JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	Case No.: 2017-CP-32-03595
Demetrius T. Summers, #372191,)	
)	
Applicant,)	AMENDED POST-CONVICTION
)	RELIEF APPLICATION
v.)	
)	
State of South Carolina.)	
_____)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on October 2, 2017 to add the following:

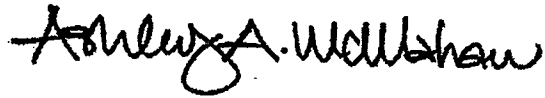
Ineffective Assistance of Counsel as to J. Todd Rutherford, Esquire:

1. Counsel informed applicant prior to the plea that he was getting the benefit of a recommendation of a five year sentence from the solicitor. However, counsel informed applicant just prior to the plea hearing that he was going to argue for five years and that there was not a recommendation by the solicitor for a five year plea offer. Applicant was not aware it was a straight up plea until the plea hearing started.
2. Counsel failed to explain to applicant the range of time he was exposed to for each charge.
3. Never showed the applicant the underlying video related to his case.
4. Failed to address the solicitor's prejudices towards the applicant

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been

specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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

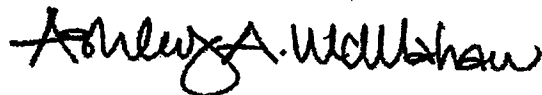
July 15, 2018

CERTIFICATE OF SERVICE

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

Kelly Oppenheimer
Assistant Attorney General
koppenheimer@scag.gov

This 16th Day of July, 2018.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

-----x

DEMETRIS TERRELL SUMMERS,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

-----x

Transcript of Record
2017-CP-32-03595

November 7, 2018

B E F O R E :

The Honorable Walton J. McLeod, IV, Judge.

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

Ashley McMahan, Esq.
Attorney for the Applicant

Kelly Oppenheimer, Esq.
Attorney for the State

Court Reporter: Bethanie Creppon

Transcribed by: Bobbi Fisher, RPR

I N D E X

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WITNESS

PAGE

DEMETRIS TERRELL SUMMERS

Direct by Ms. McMahan
Cross by Ms. Oppenheimer
Redirect by Ms. McMahan

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10
14

TODD RUTHERFORD

Direct by Ms. Oppenheimer
Cross by Ms. McMahan

15
21

P R O C E E D I N G S

1
2 MS. OPPENHEIMER: May it please the Court, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. OPPENHEIMER: This is Demetris Summers versus the
5 State of South Carolina, Docket No. 2017-CP-32-03595. During
6 its May 2016 term, the Lexington County grand jury indicted
7 Applicant for trafficking crack, 10 to 28 grams; manufacturing
8 crack cocaine; and second offense, distribution of crack
9 cocaine. Representative James Todd Rutherford represented him
10 on these charges.

11 On April 4th, 2017, Applicant appeared before the
12 Honorable Jocelyn Newman and pled guilty as indicted to all
13 charges. Judge Newman sentenced Applicant to a term of
14 imprisonment for eight years for each charge. The sentences
15 were to run concurrently. Applicant did not appeal his plea
16 or his sentences.

17 On October 2nd, 2017, Applicant filed an application for
18 post-conviction relief, alleging ineffective assistance of
19 counsel for failing to investigate.

20 On December 4th, 2017, Respondent made its return,
21 requesting an evidentiary hearing be held. Thereafter, on
22 July 16th, 2018, through his counsel, Applicant amended his
23 application to include allegations that counsel was
24 ineffective for failing to inform Applicant he was entering a
25 straight-up plea; for informing Applicant, the State would be

1 recommending five years; for failing to inform Applicant of
2 the potential punishment; for failing to show Applicant the
3 underlying video; and failing to address the Solicitor's
4 prejudices towards Applicant.

5 He is present today and is represented by Ashley McMahan.

6 THE COURT: All right.

7 MS. McMAHAN: Your Honor, the Applicant calls
8 Mr. Summers.

9 THE COURT: Have you explained to your client,
10 Mr. Summers, the risks of if --

11 MS. McMAHAN: Yes, Your Honor, I have.

12 THE COURT: -- of PCR and the relief granted may result
13 in him being resentenced again but to a different amount of
14 time this time?

15 MS. McMAHAN: Yes, Your Honor.

16 THE COURT: You understand that, Mr. Summers?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay.

19 MR. McMAHAN: The applicant can call Mr. Summers.

20 DEMETRIUS SUMMERS

21 being first duly sworn, testified as follows:

22 THE APPLICANT: Yes, ma'am.

23 DIRECT EXAMINATION

24 BY MS. McMAHAN:

25 Q Would you state your full name for the record, please.

1 A Demetris Terrell Summers.

2 Q And Mr. Summers, did you file this PCR application?

3 A Yes, ma'am.

4 Q Okay. And so, in your application, you allege a couple
5 of things. Who is your attorney that represented you?

6 A Todd Rutherford.

7 Q How many times did you say you met with Mr. Rutherford?

8 A I'm going to say probably somewhere about six to eight
9 times. Something like that.

10 Q And were you in the detention center or were you out on
11 bond?

12 A I was out on bond.

13 Q Okay. Do you remember any of those conversations you had
14 with him?

15 A Most of the time when we talked, I was asking him what I
16 was facing and, you know, what was the situation, and he was
17 just telling me five years. I asked him what was the max, and
18 he said we're just focusing on the five years.

19 Q Did he talk about what the evidence was against you?

20 A Yes, ma'am. He was telling me I was going for
21 manufacturing, distribution, and trafficking crack cocaine,
22 second offense.

23 Q What was your prior conviction for?

24 A Possession of a controlled substance.

25 Q What was the controlled substance?

1 **A** Crack cocaine.

2 **Q** Okay. And did he explain to you why that would have been
3 a second offense?

4 **A** Yeah. He was saying that the possession of a controlled
5 substance would enhance it to make it a second offense.

6 **Q** Okay. How long before you got charged with these charges
7 did you get that conviction for the crack cocaine?

8 **A** I want to say probably about six months to a year.
9 Something like that.

10 **Q** So you -- so sometime in, what, like late 2015, is that
11 when you got that first conviction?

12 **A** Yes, ma'am.

13 **Q** Okay.

14 **A** I'm thinking it is.

15 **Q** Okay. So you are talking about the five-year sentence
16 that we -- you know, that you amended your application to in
17 Part 1. Can you go into a little bit more detail on that for
18 the Court?

19 **A** Well, I was just -- I was asking them what I was facing,
20 and he kept telling me five years. When I asked what was the
21 max, he said he was focusing on the five years. I never heard
22 anything about nothing over five years or under five years.

23 He told me that it was guaranteed that I was going to prison.

24 **Q** Okay. So he said it was guaranteed that you were going
25 to prison, but you thought -- how long did you think you were

1 going for?

2 A I was thinking it was five years, because that's what he
3 was telling me.

4 Q Okay. So when you guys are getting ready to go to court,
5 what made you decide that you were going to plead guilty?

6 A Whenever he showed me the papers -- well, when he was
7 telling me five years, that's when I was thinking it was going
8 to be five years, but once he brought the paper in to sign it,
9 he was like, "Sign here, this is what you're facing." And
10 before I even read it, I signed it. Then I looked at the top
11 and seen that it said five to 30.

12 And I was like, "What does this five to 30 mean?"

13 And he said, "Well, if you don't take this plea, you'll
14 be looking at 45 years."

15 Q And what did he explain to you that plea was?

16 A The trafficking, manufacturing, and distribution, second.

17 Q Okay. So when you were signing the paperwork and he
18 said, "If you don't take this plea," did he tell you what you
19 were going to get for that plea when you went to court, or did
20 you have any idea what you might get as a sentence when you
21 went?

22 A No, ma'am. I was just -- I was thinking five years, but
23 then he said I was looking at 45.

24 Q Okay. Did he ever show you any of the videos or anything
25 related to your case?

1 A No, ma'am.

2 Q How did you know that those videos were there?

3 A It was said in the motion that they had video/audio, but
4 I never seen nor heard any of it.

5 Q So you never went to his office and watched them or
6 listened to them?

7 A No, ma'am.

8 Q Have you watched them since then or seen them since then?

9 A No, ma'am.

10 Q And you also said that he failed to explain the range of
11 time to you. Now, you said earlier that he told you to sign
12 the sheet and that you were facing a range of -- I think you
13 said around 45 years; is that correct?

14 A Yes, ma'am.

15 Q But when you were asking him for each charge when you
16 first hired him, did he sit down and say this is the total
17 amount of time you're looking at?

18 A No, ma'am.

19 Q Did you ask him that?

20 A Yes, ma'am. I asked him what was the max. He just said,
21 "We're focusing on the five years."

22 Q So he never told you the max until you signed that
23 sentencing sheet?

24 A Until I signed that paper.

25 Q Okays. Also, what was -- I know you had some issues with

1 the solicitor, apparently, not liking you. What were those
2 issues?

3 A I don't really know the reason why he didn't like me or
4 whatever, but I was told that he didn't like me for whatever
5 reason --

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

7 THE COURT: Sustained.

8 Q You can continue. I'm sorry.

9 A I was told that he didn't like me for whatever reason.
10 He was going to make sure I did prison time and --

11 MS. OPPENHEIMER: Your Honor, did you sustain the
12 objection?

13 THE COURT: I did sustain the objection.

14 MS. McMAHAN: Oh, I'm sorry.

15 THE COURT: Please rephrase the question.

16 MS. McMAHAN: My apologies. I totally heard something
17 different. I apologize. Let me back up. Sorry; I've lost my
18 train of thought now.

19 Q Okay. So when you talked to Mr. Rutherford, did you have
20 a conversation about the solicitor?

21 A Yes, ma'am.

22 Q Okay. And after your conversation with Mr. Rutherford
23 about the solicitor, what were your feelings about the
24 solicitor?

25 A I mean, I just felt like he had some kind of grudge

1 against me or something. I didn't know him from anywhere. I
2 never met him before.

3 Q Okay. So when you went to court and then were sentenced
4 that day, did you get more time than what you thought you were
5 getting?

6 A Yes, ma'am.

7 Q Okay. Did you ever ask Mr. Rutherford about that?

8 A No, ma'am.

9 Q Did you ever write him afterwards and ask anything?

10 A I wrote him about a PCR.

11 Q Did you ever ask for an appeal?

12 A I was told that I couldn't get an appeal. I would have
13 to go through a PCR.

14 Q Okay. Is there anything else you want to tell the Court
15 today?

16 A No, ma'am.

17 Q Answer any questions Ms. Oppenheimer has.

18 MS. OPPENHEIMER: May it please the Court, Your Honor.

19 THE COURT: Yes, ma'am.

20 CROSS-EXAMINATION

21 BY MS. OPPENHEIMER:

22 Q Did you ever give Mr. Rutherford any leads or witnesses
23 to investigate?

24 A No, ma'am.

25 Q And do you recall going before Judge Newman and pleading

1 guilty?

2 A Yes, ma'am.

3 Q And you told Judge Newman that you were satisfied with
4 Mr. Rutherford; correct?

5 A Yes, ma'am.

6 Q And that he had done everything that you asked of him?

7 A Yes, ma'am.

8 Q And that you had no complaints; correct?

9 A Yes, ma'am.

10 Q And do you recall Judge Newman going over the potential
11 sentences with you?

12 A Yes, ma'am.

13 Q And you told her that you understood that each charge
14 carried between five to 30 years; correct?

15 A I told her that I understood when she told me. I told
16 her that I do now, when she asked me a question.

17 Q So you were fully aware that the maximum was 30 years;
18 correct?

19 A Yes, ma'am.

20 Q And that the minimum was five?

21 A Yes, ma'am.

22 Q And you also understood that you could be sentenced to a
23 total of 90 years in prison; correct?

24 A Yes, ma'am.

25 Q And you understood that those could -- well, each 30-year

1 sentence could run consecutively; correct?

2 A Yes, ma'am.

3 Q And you told Judge Newman that, understanding that, you
4 still wanted to plead guilty; correct?

5 A Yes, ma'am.

6 Q And Judge Newman actually only sentenced you to eight
7 years; correct?

8 A Yes, ma'am.

9 Q And you also told Judge Newman that you were pleading
10 guilty of your own free will; correct?

11 A Yes, ma'am.

12 Q That it was your decision?

13 A Yes, ma'am.

14 Q And that no one had promised you anything, threatened
15 you, coerced you, mistreated you, or anything else to get you
16 to plead guilty; correct?

17 A Yes, ma'am.

18 Q And do you recall Judge Newman going over each of your
19 trial rights?

20 A No, ma'am.

21 Q Would looking at the record refresh your memory?

22 A Yes, ma'am.

23 Q If you'll look at page 8 that I'm handing you.

24 A Okay.

25 Q Does that refresh your recollection?

1 A Yes, ma'am.

2 Q And do you recall Judge Newman going over each of your
3 rights at trial with you?

4 A Yes, ma'am.

5 Q And you told her that you understood each of those
6 rights?

7 A Yes, ma'am.

8 Q And you understood that you were giving up those rights
9 by pleading guilty; correct?

10 A Yes, ma'am.

11 Q And you still wanted Judge Newman to accept your plea;
12 correct?

13 A Yes, ma'am.

14 MS. OPPENHEIMER: I beg the Court's indulgence.

15 Q You stated that you had never seen any of these videos.
16 You were out on bond; correct?

17 A Yes, ma'am.

18 Q And so all of your meetings would have been in
19 Mr. Rutherford's office; correct?

20 A Yes, ma'am.

21 Q So you could have asked to see those videos or heard an
22 audio but you never did; correct?

23 A Well, I didn't know that it was audio/video until I got
24 the motion, and that was one I got to Curtain (ph) -- once I
25 was in LCDC. I mean, SCDC. Sorry about that.

1 Q Did y'all ever discuss the underlying facts?

2 A No, ma'am.

3 Q So you didn't know that this was a result of a
4 confidential informant buy?

5 A Yes, ma'am.

6 Q You did know that?

7 A Yes, ma'am, I did know.

8 MS. OPPENHEIMER: Beg the Court's indulgence.

9 No further questions, Your Honor.

10 THE COURT: Any redirect?

11 MS. McMAHAN: Just a brief follow-up.

12 REDIRECT EXAMINATION

13 BY MS. McMAHAN:

14 Q When did you find out the minimum and maximum you were
15 facing on each of those charges was?

16 A It was right before we walked into the courtroom.

17 Q For the guilty plea?

18 A For the guilty plea.

19 Q Okay.

20 MS. McMAHAN: Nothing further, Your Honor.

21 MS. OPPENHEIMER: Nothing further, Your Honor.

22 THE COURT: You may step down, Mr. Summers.

23 MS. McMAHAN: Your Honor, the applicant rests.

24 MS. OPPENHEIMER: The State will call Representative
25 Rutherford.

1 real hard-on for Demetris, for lack of a better term. And I
2 couldn't understand why, because I didn't make the
3 connection.

4 And as we continued to talk about Demetris's case, it
5 became clear that this was not a case that I was going to be
6 able to get him probation for. And a lot of my cases -- I'd
7 say very few of them actually go to prison, and so I started
8 getting Demetris to tell me about why, what's going on, why
9 the emphasis on you. And so that's why we ended up meeting
10 the I guess eight times -- I'll take his word for it. And we
11 talked on the phone in between those times, because I couldn't
12 it figure out why I could not save him, for lack of a better
13 term, why I couldn't get him probation.

14 It was, I believe, because he was a former USC football
15 player and that, connected with the fact that the solicitor
16 believed that he had been given the benefit of the doubt
17 because of that in the past and that enough was enough and
18 that law enforcement was tired of dealing with him. And these
19 were the conversations that I had with the solicitor and
20 relayed these to Demetris on several occasions in trying to
21 move his case back so that maybe Gill would leave, so that law
22 enforcement would leave, so that they would lose something,
23 and that never happened, and so we picked the best judge we
24 could at the time and went in front of Jocelyn Newman.

25 Q All right. Now, let's clarify some of that. You stated

1 that Mr. Summers was a former USC football player? And he --
2 I'm sorry; would you answer?

3 A It's freezing in here; I'm sorry.

4 Yes, yes.

5 Q And he had gotten in trouble several times before this;
6 correct?

7 A This was my conversation with the solicitor and what I
8 was -- because I don't want to get into hearsay, but it was
9 why I believed that Demetris was not going to be able to get
10 probation, because my conversation with the solicitor led me
11 to believe that law enforcement had been, to use my word,
12 enamored with him, and so they didn't press hard until now,
13 until they were tired of feeling like he was getting away with
14 stuff, and so they wanted their pounds of flesh.

15 Q All right. So he had had some --

16 A And it is literally so cold in here, I'm having a problem
17 thinking. So if I stutter, that's why.

18 Q That's all right.

19 So he had had a prior history, gotten in trouble before?

20 A That's correct.

21 Q During these meetings, what would y'all discuss?

22 A We discussed his interactions with law enforcement and my
23 interactions with Gill and what the best possible scenario was
24 going over the discovery as it related to the fact that there
25 was nothing we were going to be able to do if we went to

1 trial, that he was in Lexington County, and because this is
2 what law enforcement and the Solicitor's Office wanted, we
3 were -- and if they were not willing to reduce the charges or
4 dismiss anything that, at a minimum, we were facing five
5 years.

6 Q Did you ever promise him that he would go to prison only
7 for five years?

8 A My statement for 22 years -- and I am requested for a
9 number of people -- if you guarantee this, if you can --
10 anyone in this business that is guaranteeing you something is
11 lying to you. I firmly believe that. I would never guarantee
12 anyone anything, especially on a straight-up plea.

13 It was clear -- and it is clear to me even as I heard the
14 facts again -- that what Demetris got was, at the time -- and
15 I would argue even now -- the best possible scenario by going
16 in front of Judge Newman, who is a visiting judge, and not
17 beholdng to the Lexington -- not that the judge would be, but
18 not beholdng to the Lexington County Narcotics Division or
19 the Solicitor's Office, and so that was simply the best
20 possible way to do it.

21 I remember at the time being somewhat surprised by how
22 much she went up, but Gill's testimony, his recitation
23 throughout the plea was more extensive than it is in other
24 cases, just from what I've dealt with. And it was clear it
25 that law enforcement believed him to be a problem.

1 Q All right. And so was he fully aware of both the minimum
2 and maximum punishments?

3 A Absolutely.

4 Q And did you explain to him the elements of the charges
5 and what the State would be required to prove at trial?

6 A Absolutely.

7 And if I could go back, one of the reasons why he was
8 made aware of the minimum and maximum would have been because
9 we were choosing a judge or trying to choose what we thought
10 was the best judge. If it was locked in at five, we could
11 have gone in front of anybody at any time, but he wanted to
12 get Judge Newman to try to get her to get him to the five-year
13 minimum.

14 Q All right. Did you discuss the CI buys with Mr. Summers?

15 A Yes, because that's how we got to the fact that we can't
16 win this; that we don't have a choice. Even though he's not
17 dismissing any of the charges, we don't have a trial. There's
18 not a choice because they've got you dead to rights.

19 Again, I understand what PCRs are about, but I think he
20 knew that. And this was not a -- it was more the transferral
21 of "Yes, I understand where I am. I need your help. I need
22 you to do better," is what the conversation was between he and
23 I, and quite honestly, I probably could have but for who he is
24 and what law enforcement thought about him.

25 Q Did you inform him of the consequences of his plea?

1 **A** Yes.

2 **Q** Did you inform him of his constitutional rights?

3 **A** Absolutely.

4 **Q** Did he ever tell you he didn't understand anything?

5 **A** No.

6 **Q** Did you review all of the discovery material with him?

7 **A** Absolutely.

8 **Q** And whose decision was it to plead guilty?

9 **A** Mr. Summers'.

10 **Q** Did he ever indicate he wanted to go to trial?

11 **A** No.

12 **Q** And do you feel that you properly addressed the alleged
13 prejudices that Mr. Bell may or may not have had against

14 Mr. Summers?

15 **A** You know, I don't -- it was not a racial prejudice. It
16 was not a prejudice that could be addressed by anything other
17 than what he believed Mr. Summers had gotten away with in the
18 past and what his conversations with law enforcement led him
19 to believe.

20 Do I believe that, if it had been a solicitor that did
21 not know who Demetris was and I could have gotten a better
22 deal? Yes. But do I believe that if Demetris had never been
23 in trouble with law enforcement before, I could have got him a
24 better deal? Yeah.

25 And these are -- I mean, he said six to eight times -- it

1 was six to eight times, but it was not six to eight times for
2 five minutes. I mean, we -- and I went over with him where we
3 were and how we got here and just, you know, I'm sorry that I
4 can't do any better than this.

5 And, again, I remember feeling caught off-guard because
6 he was a client to me, and that's always very important, and
7 not to say that he's more important than anybody else, but I
8 didn't realize who he was until it became clear that I
9 couldn't get him probation. And so, you know, this dance of
10 yes, Gill did not want to help me out with him, but he didn't
11 cross the line because the evidence was overwhelming.

12 Q And just to reiterate, he did have a prior criminal
13 history before you represented him; correct?

14 A That's correct.

15 Q And he was facing 90 years but only got eight?

16 A That's correct.

17 MS. OPPENHEIMER: Beg the Court's indulgence.

18 No further questions, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. McMAHAN:

21 Q Just for the record, Mr. Rutherford, I also am freezing.

22 A Thank you. I mean, I feel like a crackhead up here. I'm
23 just sitting here shaking and shivering, but it is freezing in
24 here.

25 Q I feel like if somebody touches my feet, they might fall

1 off:

2 A Yeah.

3 Q So did you ever represent Mr. Summers prior to this?

4 A I did not.

5 Q So it was your first time?

6 A It was my first time.

7 Q And you said the evidence was overwhelming. Could you
8 explain what the evidence was exactly?

9 A They made a CI buy from him, and they knew who he was.
10 They did not -- and, again, I do a lot of drug cases.
11 Sometimes they just happen upon people. They didn't happen
12 upon him. They wanted to get him because they felt like he
13 had caught a break --

14 MS. OPPENHEIMER: Objection to the characterization that
15 law enforcement wanted to get Mr. Summers. I don't think
16 that's approp- --

17 THE COURT: Your objection's noted. It's overruled. I'm
18 going to let him testify to what he understood.

19 A And, again -- let me try and warm up a little bit. It is
20 not -- it was not a targeted thing in terms of "let's go find
21 somebody." It was the belief that he was still dealing drugs,
22 and they were going to put a stop to it.

23 Q Did you ever watch the CI videos?

24 A Yeah.

25 Q Did you show Mr. Summers the CI videos?

1 **A** Yeah. And that's what I'm saying. When he came to my
2 office, it was not a short visit. He didn't just breeze by.
3 Because when it became clear that Gill was not going to give
4 us a break, that's when we had to start doubling down to see
5 whether there was anything we could do, and there was just --
6 there's nothing we could do.

7 **Q** How many different CI buys were there?

8 **A** I don't remember. I'm sorry.

9 **Q** Okay. Was it all video and audio or just -- do you
10 remember any of that?

11 **A** I don't. I'm sorry. I watch a bunch of drug videos.
12 And I reference to him because, again -- you know, I've been
13 practicing law long enough to remember when they didn't have
14 video and they didn't have audio. It would just be a CI would
15 go make a buy and say "that's who I made the buy from."

16 And so we even talked about, even if you can get them
17 thrown out, it doesn't matter, if the CI is still willing to
18 say that you're the person that sold them the drugs; that a
19 drug case does not hinge on the fact that video and audio
20 exist.

21 And in his case, law enforcement knew who he was, and
22 they had dealt with him before, and that was the big impetus
23 for all of this. This did not hinge on the fact that it was a
24 drug case. It hinged on the fact that they thought he had
25 caught a break and they were tired of it. And I say that

1 because drug cases are reduced routinely. They're dismissed,
2 they're thrown out, they're changed around, but Mr. Summers
3 could not -- I was unable to avail him of any of that because,
4 like I say, they knew who he was.

5 Q So you said you watch a lot of CI buys. Was this sort of
6 like your typical CI videos?

7 A Nothing unique about it, as I remember.

8 MS. McMAHAN: One moment, Your Honor.

9 Nothing further, Your Honor.

10 THE COURT: Any redirect?

11 MS. OPPENHEIMER: Nothing further, Your Honor.

12 THE COURT: You may step down and warm up.

13 THE WITNESS: Thank God.

14 MS. OPPENHEIMER: We'd ask that Mr. Rutherford be excused
15 from his subpoena.

16 THE COURT: He's free to go.

17 THE WITNESS: Thank you, Judge.

18 THE COURT: Any other witnesses from the State?

19 MS. OPPENHEIMER: No further witnesses, Your Honor.

20 THE COURT: Would counsel like to make closing remarks?

21 MS. OPPENHEIMER: If Your Honor would like them.

22 THE COURT: I don't think they're necessary but I want to
23 give you the option to if you'd like to.

24 MS. OPPENHEIMER: I'll leave it up to Ms. McMahan.

25 THE COURT: Okay.

1 MS. McMAHAN: I don't believe they're necessary. I think
2 we can just go by what was already admitted on the record.

3 THE COURT: All right. Well, I've heard from Mr. Summers
4 and I've heard from both Petitioner's counsel and the State,
5 and I'll have it under advisement.

6 MS. McMAHAN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 Thank you, Mr. Summers.

9 THE APPLICANT: Yes, sir.

10 (The above hearing concluded.)

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1 CERTIFICATE OF TRANSCRIBER

2 CASE: Demetris Summers v State (2017-CP-32-03595)

3 DATE: 11/7/2018

4
5 I, Bobbi J. Fisher, do hereby certify that the
6 foregoing transcript is a true and correct record of the
7 recorded proceedings; that said proceedings were transcribed
8 to the best of my ability from the audio recording and
9 supporting information; and that I am neither counsel for,
10 related to, nor employed by any of the parties to this case,
11 and I have no interest, financial or otherwise, in its
12 outcome.

13
14
15 

16 Bobbi J. Fisher, SC Official Court Reporter

17 NCRA Registered Professional Reporter/Transcriber

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED
2018 NOV 27 PM 3:01

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Demetrius Summers, #372191,

Applicant,

v.

State of South Carolina,

Respondent.

LISA M. COMER
CLERK OF COURT
LEXINGTON, SC

Case No. 2017-CP-32-03595

ORDER OF DISMISSAL

This matter comes before this court by way of an application for post-conviction relief filed October 2, 2017, by Demetrius Summers (Applicant). The State (Respondent) made its return on December 4, 2017, requesting an evidentiary hearing be held. Thereafter, on July 16, 2018, Applicant, through his counsel, filed an amendment to the application for post-conviction relief. An evidentiary hearing into the matter was convened on November 7, 2018, at the Lexington County Courthouse before the Honorable Walton J. McLeod, IV. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

PROCEDURAL HISTORY

The records before this court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its May 2016 term, the Lexington County Grand Jury indicted Applicant for second-offense trafficking crack cocaine, more than ten (10) grams but less than twenty-eight (28) grams (2016-GS-32-01404), second-offense manufacturing crack cocaine (2016-GS-32-01405), and second-offense distribution of crack cocaine (2016-GS-32-01406). James Todd

Rutherford, Esquire, represented Applicant on these charges. On April 14, 2017, Applicant appeared before the Honorable Jocelyn Newman and pled guilty as indicted to all charges. Judge Newman accepted the plea, found Applicant made the plea freely, voluntarily, knowingly, and intelligently, and sentenced Applicant to a term of imprisonment of eight years for each charge.¹ The sentences were to be served concurrently. Applicant did not appeal his plea or sentence.

CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel:
 - a. Counsel was ineffective where he failed to do pretrial investigation.

In his amendment to the application for post-conviction relief, Applicant raises the following additional grounds of ineffective assistance of counsel:

1. Counsel informed [A]pplicant prior to the plea that he was getting the benefit of a recommendation of a five [(5)] year sentence from the solicitor. However, counsel informed [A]pplicant just prior to the plea hearing that he was going to argue for five years and that there was not a recommendation by the solicitor for a five [(5)] year plea offer. Applicant was not aware it was a straight up plea until the plea hearing started[;]
2. Counsel failed to explain to [A]pplicant the range of time he was exposed to for each charge[;]
3. Never showed the [A]pplicant the underlying video related to his case[; and]
4. Failed to address the solicitor's prejudices towards the [A]pplicant.

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

STATEMENT OF FACTS

Beginning in August 2015,¹ law enforcement began working other low level dope cases.

Tr. 5. In working those cases, law enforcement repeatedly heard Applicant's name come up. Tr.

¹ Judge Newman also ordered Applicant to pay a \$50,000.00 fine for trafficking crack cocaine.

5. Based on this, law enforcement began sending confidential informants to purchase drugs from Applicant. Tr. 5. The confidential informants made three (3) controlled buys, the first on August 31, 2015, and the second on September 7, 2015, all of which were recorded via audio and visual. Tr. 5. In these videos, Applicant is seen handing crack cocaine to the confidential informants in exchange for money. Tr. 5. In fact, one (1) video depicts Applicant in the process of cooking the crack cocaine. Tr. 5.

After executing these buys, law enforcement obtained a search warrant for Applicant's home, which they executed on September 18, 2015. Tr. 6. Inside the home was a myriad of drug paraphernalia, Tupperware containing crack cocaine being cooked, finished product of both cocaine and crack cocaine, various firearms, and marijuana. Tr. 6.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of attorney Rutherford (Counsel). This court also had before it a copy of Applicant's plea transcript, the records of the Lexington County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and the records from this current post-conviction relief application.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he met with Counsel six (6) to eight (8) times while he was out on bond. He testified he usually asked Counsel how much time he was facing, and Counsel told him five (5) years. He elaborated when he asked Counsel what the maximum sentence was, Counsel would tell him they were focusing on five (5) years. He further elaborated Counsel never said anything that would suggest Applicant could receive more than five (5) years, but told Applicant it was

guaranteed he would have to go to prison. Applicant testified based on these conversations, he thought he would only receive a five (5) year sentence.

Applicant further testified he and Counsel discussed the offenses and the evidence against him. He testified Counsel explained to him why he was charged with a second offense and also explained the enhancement. He explained he had a prior possession of crack cocaine. He also testified Counsel never showed him the videos from his case, and he did not know about them until he received his "motion" when he got to the Department of Corrections. Applicant elaborated he still had not watched the videos but knew they were based off of a buy from a confidential informant. Applicant also testified he never gave Counsel and leads or witnesses to investigate. He also testified the solicitor did not like him. He explained after talking with Counsel, he got the feeling the State had a grudge against him.

He testified he decided to plead guilty because he wanted a five-year sentence. He further testified, however, when he saw the sentencing sheet, he became aware he was facing between five (5) and thirty (30) years. He elaborated he asked Counsel about this, and Counsel told him he was facing up to forty-five (45) years if he did not plead guilty. He further elaborated Counsel never told him the maximum sentence he was facing until he signed the sentencing sheet. Applicant also testified he received more time than he thought he would get, and he never talked to Counsel about this. He elaborated he only discovered the minimum and maximum sentences immediately before the plea.

Applicant further testified at the plea, he told the plea court he was satisfied with Counsel and had no complaints of him. He testified he recalled the plea court reviewing potential sentences with him. He explained he informed the plea court he understood each charge carried between five and thirty years and understood he was facing ninety (90) years if the court chose to

run his sentences consecutively. He further explained he informed the plea court understanding everything about the potential sentences, he still wanted to plead guilty. Applicant testified he only received eight (8) years. He further testified he told the plea court he was pleading of his own free will, it was his decision to plead guilty, and no one had promised him anything, threatened him, coerced him, or mistreated him in order to get him to plead guilty. He also testified the plea court reviewed each of his constitutional rights at trial with him, and he told the court he understood each of those rights and wanted to waive those rights. He further testified he asked the plea court to accept his plea of guilty.

Applicant rested after his testimony, and Respondent presented the testimony of Counsel. Counsel testified he has been practicing law for twenty-two (22) years, and eighty-five (85) to ninety (90) percent of his practice involves criminal law. He also testified he was retained to represent Applicant. He testified he met with Applicant approximately eight (8) times and also spoke with Applicant on the phone. Counsel testified these meetings were lengthy, and they reviewed everything. He further testified during these meetings, he and Applicant discussed Applicant's interactions with law enforcement and also discussed possible scenarios. Counsel testified he reviewed the discovery material with Applicant and reviewed the elements of the charges and the State's burden of proof. He further testified they discussed the buys from the confidential informant, and he explained to Applicant "we cannot win these," which Applicant understood. He explained there was overwhelming evidence of Applicant's guilt, particularly in light of the CI-buy and the fact law enforcement knew who Applicant was. He further explained although law enforcement was fed up with Applicant and "wanted to get him," their focus on him was justified by the belief Applicant was still dealing drugs. Counsel also testified he watched the videos from the CI-buys, and he showed them to Applicant. He further testified

there was nothing unique about these videos and he did not see a way to suppress these videos, based on his familiarity with drug cases.

He testified shortly after meeting with Applicant, he met with the solicitor about this case. He explained the solicitor was upset with Applicant and Counsel could not tell why. He further explained after this conversation, he realized this would not be a case in which he could get Applicant probation. Counsel also testified Applicant was a former USC football player, and he believed the solicitor thought Applicant had been given the benefit of the doubt before and the State was fed up with Applicant. Counsel explained Applicant had been in trouble several times before, and law enforcement was finally fed up with Applicant. He further explained the solicitor believed Applicant had gotten away with things in the past. He further testified because of this, the solicitor refused to offer probation.

Counsel also testified he discussed potential sentences with Applicant and informed Applicant at a minimum, he would get a five-year sentence at trial. He testified he explained to Applicant he would not get probation due to his priors and issues with law enforcement. He further testified Applicant was aware of the amount of time he was facing, including the minimum and maximum sentences. He explained he never guarantees his clients anything, and he believed the eight-year sentence was the best possible outcome he could have gotten for Applicant, particularly in light of the fact Applicant was facing ninety years imprisonment. Counsel further explained the solicitor's recitation of the facts at the plea was detailed, which he believed explains the eight-year sentence from 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 at the post-conviction relief hearing. This court has further had the opportunity to

observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Applicant's allegations are ineffective assistance of counsel for: (1) ensuring Applicant he would plead to five years imprisonment when, in fact, he was pleading to a straight up plea; (2) failing to explain to Applicant the potential sentence; (3) failing to show Applicant the underlying video from the CI-buy; and (4) failing to address the solicitor's prejudices towards Applicant.

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); see also *Butler*, at 441, 334 S.E.2d at 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, at 441, 334 S.E.2d at 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Id.* (citing

Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

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

Counsel's alleged promise to Applicant regarding his sentence and alleged failure to inform Applicant of the potential sentences he was facing

Applicant contends Counsel was ineffective for assuring Applicant he would receive a five (5) year sentence, when in reality, he was pleading straight up. Specifically, Applicant argues Counsel promised him he would receive five (5) years and never made him aware of the potential sentences he was facing.

Applicant testified Counsel never told him the maximum sentence he was facing on these charges, and he only discovered the potential sentences he was facing immediately before the plea. He further testified when he asked Counsel about the potential sentences, Counsel assured him they were only focusing on a five (5) year sentence and Applicant would only be sentenced to five (5) years. Counsel, however, testified he made Applicant very aware of the potential sentences, including the maximum and minimum sentences Applicant was facing. He further testified he never promised Applicant he would only receive a five-year sentence. This court finds Counsel's testimony with respect to this allegation credible, whereas Applicant's testimony

is not. Based on the foregoing, this court further finds Applicant has failed to prove Counsel was deficient.

Similarly, this court finds Applicant has wholly failed to establish any prejudice as a result of this alleged deficiency. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976); *Clark v. State*, 259 S.C. 378, 382, 192 S.E.2d 210 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, the applicant must prove the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. *Clark*, at 382, 192 S.E.2d at 210; *State v. Cogdell*, 273 S.C. 563, 568, 257 S.E.2d 748, 751 (1979). Here, Applicant was charged with second-offense trafficking crack, more than ten (10) grams but less than twenty-eight (28) grams, second-offense manufacturing crack cocaine, and second-offense distribution of crack cocaine. A person convicted of second-offense trafficking crack, more than ten (10) grams but less than twenty-eight (28) grams, must be sentenced to "a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted." S.C. Code Ann. § 44-53-375(C)(1) (2017). A person convicted of second-offense manufacturing crack cocaine and distribution of crack cocaine must be sentenced to a term of imprisonment "not less than five years nor more than thirty years." S.C. Code Ann. § 44-53-375(B)(2) (2017). Applicant was sentenced to a term of imprisonment of eight (8) years for each charge. The sentence Applicant received was well within the sentencing range-prescribed.

Additionally, at the plea, Applicant informed the plea court he understood each charge carried a minimum of five (5) years imprisonment and a maximum of thirty (30) years

imprisonment. Tr. 9-10. He further understood the charge of trafficking crack carried a mandatory fine of \$50,000.00. Tr. 10. He also understood he faced a maximum of ninety (90) years imprisonment if the court chose to run the sentences consecutively. Tr. 10. Understanding the potential sentences he faced, Applicant chose to plead guilty. Tr. 11. For the foregoing reasons, Applicant cannot establish he was prejudiced from Counsel's alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to review the evidence

Applicant further alleges Counsel was ineffective for failing to review all of the evidence with Applicant. Specifically, Applicant alleges Counsel never showed him the underlying videos, which depicted the controlled buys between Applicant and a confidential informant. Applicant testified he never viewed the videos with Counsel and did not know they existed until after he got to the Department of Corrections. On the other hand, Counsel testified he and Applicant had several lengthy meetings, during which they reviewed everything. Counsel specifically testified he reviewed the discovery material with Applicant, including the videos of the CI-buy. This court finds Counsel's testimony credible, whereas Applicant's testimony is not credible. This court further finds, based on the foregoing testimony, Applicant has failed to establish any deficiency on the part of Counsel.

Similarly, this court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Applicant wholly failed to present this court with any concrete evidence as to what benefit would have been realized from these videos. Indeed, Counsel testified after reviewing the videos, he saw no basis upon which he could suppress them at trial. Furthermore, law enforcement was familiar with Applicant, making any suppression of these videos or defenses at trial difficult. Because Applicant failed to produce the videos at the evidentiary

hearing, any testimony as to how these videos could have been beneficial is “purely speculative.” *Bannister v. State*, 333 S.C. 298, 304, 509 S.E.2d 807, 810 (1998). This court finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to address the solicitor's prejudices towards Applicant

Applicant further contends Counsel was ineffective for failing to address the solicitor's prejudices towards Applicant. “[T]he solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” *State v. Langford*, 400 S.C. 421, 436 n. 6, 735 S.E.2d 471, 479 n. 6 (2012). Indeed, “there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial.” *Weatherford v. Bursey*, 429 U.S. 545, 561 (1977). Moreover, counsel cannot be found deficient for failing to obtain a plea offer when the solicitor is under no obligation to make an offer. *See Collins v. State*, 422 S.C. 250, 261-62, 810 S.E.2d 871, 877 (2018) (finding counsel was not deficient for failing to discuss an expired plea offer with the solicitor when “the solicitor would have been under no obligation whatsoever to revive the expired offer.”). Counsel testified he attempted to negotiate a probationary sentence with the solicitor, but the solicitor was unwilling to offer probation. He further testified because Applicant had gotten in trouble before and been given a break, the solicitor was unwilling to continue to give Applicant a break for these offenses. Although Counsel was unable to negotiate a probationary sentence for Applicant, he was able to get the solicitor to drop approximately ten other charges in connection with these CI-buys and the search of Applicant's home. *See Tr. 6*. Based on the foregoing, this court finds Applicant has failed to establish Counsel was deficient.

Similarly, this court finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. At the plea, the solicitor asked the court to "sentence [Applicant] to something higher than the minimum." Tr. 14. He did not request any specific amount of time. Counsel, however, highlighted to the court there was "nothing in this case that separate[d] it from any other garden variety drug case." Tr. 15. Moreover, Counsel requested the minimum sentence, stating: "[W]e do not believe that any other sentence other than the minimum would be appropriate in this case." Tr. 16. Applicant received a sentence of eight (8) years for each charge, which were to be served concurrently. The sentence Applicant received was vastly lower than the ninety (90) years he was facing. Accordingly, this allegation must be denied and dismissed with prejudice.


CONCLUSION

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

This court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 454 409 S.E.2d 395, 396 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.
Walton J. McLeod, IV
Presiding Judge

November 27, 2018
Lexington, South Carolina

WITNESSES

Lexington County Sheriffs Department

M. S. Merckle

Law Enforcement Case #: 15015276

GB

ARREST WARRANT NUMBER

2015A3210201608

ACTION OF GRAND JURY

TRUE

Foreperson of Grand Jury

Date: 5-16-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS3201406

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2016

THE STATE

vs.

Demetris Terrell Summers

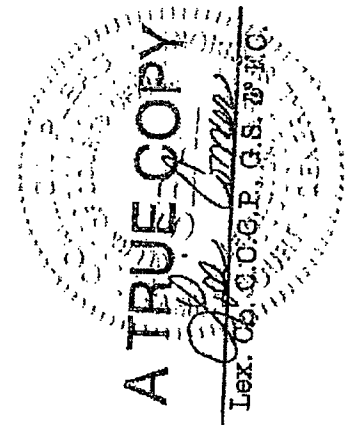
CDR #: 3015

Indictment for

Distribution Crack Cocaine

§ 44-53-0375(B)(2)

DONALD V. MYERS, SOLICITOR



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)


INDICTMENT FOR
Distribution Crack Cocaine

§ 44-53-0375(B)(2)

At a Court of General Sessions, convened on May 2016, the Grand Jurors of Lexington County present upon their oath:

That **Demetris Terrell Summers** did in Lexington County, South Carolina, on or about August 31, 2015, knowingly, willfully, intentionally, and unlawfully distribute, dispense, or deliver, or otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver a quantity of crack cocaine, or cocaine base, a controlled substance under the provisions of § 44-53-110 et. seq., and in violation of § 44-53-375(B), Code of Laws of South Carolina, as amended.

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

Christina M. Bell
ASSISTANT SOLICITOR


WITNESSES

Lexington County Sheriffs Department

M. S. Merckle

Law Enforcement Case #: 15015276

GB

ARREST WARRANT NUMBER

2015A3210900174

ACTION OF GRAND JURY

TRUE BILL



Foreperson of Grand Jury

Date: 5-16-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS3201405

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2016

THE STATE

vs.

Demetris Terrell Summers

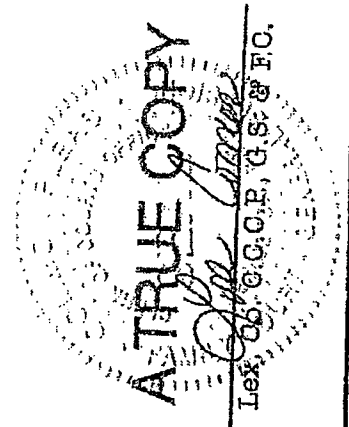
CDR #: 3015

Indictment for

Manufacturing Crack Cocaine

§ 44-53-0375(B)(2)

DONALD V. MYERS, SOLICITOR



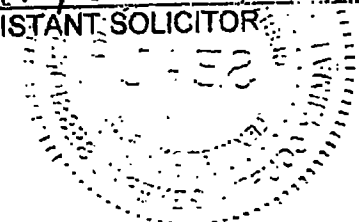
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Manufacturing Crack Cocaine
§ 44-53-0375(B)(2)

At a Court of General Sessions, convened on May 2016, the Grand Jurors of Lexington County present upon their oath:

That **Demetris Terrell Summers** did in Lexington County, South Carolina, on or about September 18, 2015, knowingly, intentionally, willfully, and unlawfully manufacture or otherwise aid, abet, attempt, or conspire to manufacture a quantity of cocaine base (crack cocaine), a controlled substance under the provisions of § 44-53-110, et. Seq. and in violation of §44-53-375 (B) Code of Laws of South Carolina, 1976, as amended.

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

Lester M. [Signature]
ASSISTANT SOLICITOR


WITNESSES

Lexington County Sheriffs Department

M. S. Merckle

Law Enforcement Case #: 15015276

GB

ARREST WARRANT NUMBER

2015A3210201606

ACTION OF GRAND JURY

TRUE BILL

W. K.
Foreperson of Grand Jury

Date: 5-16-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS3201404

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2016

THE STATE

vs.

Demetris Terrell Summers

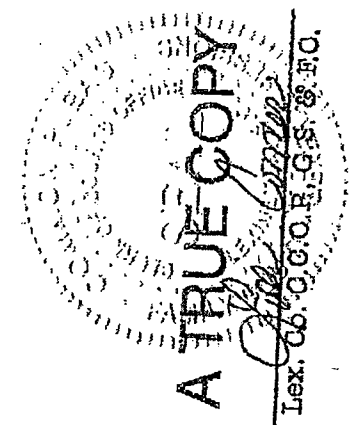
CDR #: 0451

Indictment for

Trafficking Crack (10g-28g)

§ 44-53-0375(C)(1)(b)

DONALD V. MYERS, SOLICITOR



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Trafficking Crack (10g-28g)

§ 44-53-0375(C)(1)(b)

At a Court of General Sessions, convened on May 2016, the Grand Jurors of Lexington County present upon their oath:

That **Demetris Terrell Summers** did in Lexington County on or about September 15, 2015, knowingly, intentionally, willfully, and unlawfully sell, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State; or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of Crack Cocaine, or cocaine base, a controlled substance by definition under the provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of ten (10) grams or more but less than twenty-eight (28) grams, in violation of § 44-53-375 (C)(1), Code of Laws of South Carolina, 1976, as amended.

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

Steph M. ...
ASSISTANT SOLICITOR
