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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Greenwood County

Honorable Brian M. Gibbons, Circuit Court Judge

BRANDON BARTLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000140

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
))
PLAINTIFF,)
))
- VS-)
))
BRANDON D. BARTLEY,)
DEFENDANT.)
_____)

2017-GS-24-0903
2017-GS-24-0661

TRANSCRIPT OF RECORD

JUNE 16, 2017
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR., JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:
JOSH THOMAS, ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANT:
ELIZABETH ABLE, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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(NO EXHIBITS WERE INTRODUCED DURING THIS HEARING)

1 THE COURT: Mr. Thomas:

2 MR. THOMAS: Your Honor, standing before you is Brandon
3 Bartley. He is here on true bill indictment 2016-GS-902,
4 receiving -- sorry. It's 2017-GS-661 for trafficking
5 methamphetamine. We have reduced that to first offense 28
6 to 100 grams. 17-903, possession with intent to distribute
7 methamphetamine. We have reduced that to a first offense.
8 16-902, receiving stolen goods 2 to 10K. 17-569, simple
9 possession of marijuana. 17-660, false info to law
10 enforcement, and 17-664, carrying a pistol unlawfully.

11 Your Honor, regarding the negotiations, it is a time
12 served sentence on the CPU, the false info, the simple
13 possession, and the receiving stolen goods. We have
14 negotiated a seven year sentence on the trafficking
15 methamphetamine and a consecutive three year sentence on the
16 PWID methamphetamine, and in exchange for that we are nol
17 propping possession of a stolen handgun, possession of
18 prescription drugs, escape, possession of a handgun by a
19 felon, possession of controlled substance, two counts of
20 that, possession of meth, malicious injury to personal
21 property, manufacturing meth, possession of altered
22 ephedrine, possession of a weapon during the commission of a
23 violent crime, another possession of a controlled substance.
24 So two more counts of that. This is going to clear him up.

25 THE COURT: The trafficking charge is obviously the

1 most serious of all of these. What does that carry?

2 Twenty-eight to one hundred grams is first offense. I

3 thought that was ten to -- or is it five to thirty?

4 MR. THOMAS: First offense on that is seven to twenty-
5 five.

6 THE COURT: You're right. That is correct. Ms. Able,
7 you're representing Mr. Bartley on these charges.

8 Obviously, the trafficking charge carries a minimum of seven
9 years and a maximum of twenty-five years. I believe it is
10 an 85 percent offense and it's also classified as a violent
11 and a serious offense. Receiving stolen goods two to ten
12 thousand dollars carries three years. The PWID meth first
13 offense up to 15. The CPU one year, and the remaining
14 charges 30 days. Is that your understanding?

15 MS. ABLE: Yes, Your Honor. Regarding that trafficking
16 charge, it is 85 percent. I did call SCDC yesterday just to
17 confirm that, but since these are going to be consecutive,
18 he'll do the 85 percent on the seven and then start the
19 three. So that's correct. We've also discussed that it's
20 serious and it's violent. One more thing before we get
21 started regarding the carrying a pistol unlawfully. Mr.
22 Bartley is asking to enter that plea no contest Alford since
23 he is a convicted felon. But that is a misdemeanor, so I
24 thought Your Honor would do it.

25 THE COURT: You have then reviewed with Mr. Bartley all

5

1 of his constitutional rights, the penalties involved with
2 these offenses, the elements of these offenses, and you
3 agree with his decision to plead guilty?

4 MS. ABLE: I do, one hundred percent, Your Honor. We've
5 met extensively about all of these cases, the charges, how
6 all things could play out at trial on some versus others,
7 and I think Mr. Bartley has a good understanding of what
8 he's facing.

9 THE COURT: Have you reviewed the facts and
10 circumstances and the evidence Ms. Able and do you believe
11 that the State has sufficient credible evidence to prove Mr.
12 Bartley's guilt beyond a reasonable doubt and if he were to
13 stand trial his conviction would be likely?

14 MS. ABLE: Yes.

15 THE COURT: Mr. Bartley, if you could just raise your
16 right hand for me, please.

17 BRANDON BARTLEY, having first been
18 duly sworn, testified as follows:

19 Q. Sir, are you Brandon David Bartley?

20 A. Yes, sir.

21 Q. Mr. Bartley, I'm told that you want to plead guilty to
22 numerous offenses. The trafficking in meth charge is
23 obviously the most serious one. That carries a minimum of
24 seven years and a maximum of twenty-five years. Do you
25 understand that, sir?

1 A. Yes, sir.

2 Q. Additionally, it is an 85 percent offense, it is a
3 serious offense, and it is a violent offense. The violent
4 nature of it means that you are prohibited, among other
5 things, from possessing a firearm from here on out. It
6 sounds like you are already prohibited from possessing one,
7 but it also means that when you go into the Department of
8 Corrections there are going to be programs that you are
9 simply ineligible for because it is a violent offense. Do
10 you understand that, sir?

11 A. Yes, sir.

12 Q. The serious nature of the trafficking offense means that
13 at some future point in time if you were to be convicted of
14 two additional serious offenses the State could seek life
15 without the possibility of parole against you. The State
16 could do that on its own volition and if the jury finds
17 you're guilty of that serious offense the Court will have no
18 option but to sentence you to life imprisonment. Do you
19 understand that, sir?

20 A. I do, sir.

21 Q. The receiving stolen goods charge carries three years.
22 The PWID meth charge carries up to 15. The marijuana charge
23 and the false info charge are each 30 days, and the carrying
24 a pistol unlawfully carries up to one year. You are to
25 receive, based upon your negotiations, you are to receive a

1 time served sentence on the receiving stolen goods charge,
2 the marijuana charge, the false information charge, and the
3 pistol charge. Do you understand that, sir?

4 A. I do, sir.

5 Q. Based on the negotiations you are to receive a seven
6 year sentence on the trafficking charge that will be
7 followed by a consecutive three year sentence on the
8 possession with intent to distribute methamphetamine first
9 offense charge. Is that your understanding?

10 A. I understand, sir.

11 Q. So you would have to do a full ten year sentence on all
12 this. Do you understand?

13 A. I understand.

14 Q. Because it's being presented as a negotiated sentence,
15 if I accept your plea I cannot deviate from that ten years.
16 I can't give you less. I have to give you a ten year
17 sentence, and obviously I can't give you more. So if I
18 accept your plea today you will receive a ten year sentence.
19 Do you understand that, sir?

20 A. I understand, Mr. Addy.

21 Q. So you agree with the ten year sentence?

22 A. I do, sir.

23 Q. Mr. Bartley, in the last 24 hours have you taken any
24 medication, or any substance that affects your thinking?

25 A. No, sir.

1 Q. And have you ever been treated for any mental illness
2 issues or problems understanding what's taking place?

3 A. I have not, sir.

4 Q. Mr. Bartley, are you in fact guilty of all these
5 charges?

6 A. I am.

7 Q. I'm going to ask Mr. Thomas to give me the facts. When
8 he's done speaking I'll then ask you if that's what took
9 place, okay.

10 A. Yes, sir.

11 Q. Just for the record, I understand that you're entering a
12 no contest plea to the pistol charge. That's perfectly
13 fine. Understand that when I ask whether you're pleading
14 guilty I'll simply assume that if you answer in the
15 affirmative that you're pleading guilty and that also
16 applies on the no contest to the pistol charge. All right.
17 So I realize that you are not pleading guilty to the pistol
18 charge. You understand all the rights that attach to a
19 guilty plea also attach to a no contest plea, and I'll
20 simply assume that you're waiving them for the no contest
21 plea as well.

22 A. Yes, sir.

23 Q. So pay attention to Mr. Thomas.

24 THE COURT: Go ahead.

25 MR. THOMAS: Your Honor, regarding the trafficking

1 methamphetamine, the false info to police officers, the
2 simple possession of marijuana, and the carrying a pistol
3 charge, on January 12, 2017 about 8:30 at night county units
4 were traveling past the Hot Spot out on Highway 25 South
5 here in Greenwood County. Noticed two vehicles parked side
6 by side in the back, dark location behind the Hot Spot.
7 Based on their training and experience they thought that was
8 kind of consistent with what might be an illegal drug
9 transaction going on. Pulled into the parking lot. One of
10 the cars sped past them. They turned around on that car,
11 initiated a traffic stop on it. The driver of that vehicle,
12 Mr. Brian -- ended up getting him out of the car and talking
13 with him. He did tell them that one of his back passengers
14 had illegal narcotics on him. They pulled Mr. Bartley out
15 of the back of the car. He actually gave them the name of
16 Steven Thomas Butler and a birthday of [REDACTED] 1977.
17 Obviously, the birthday was correct but the name wasn't. So
18 that's the false info charge. They patted him down for
19 weapons. They felt immediately two handguns in his pockets,
20 a Walter 22 caliber and a Kel-tec 380. That's the basis for
21 the carrying a pistol unlawfully. He does not have a permit
22 for that. Also on his person they found a bag of
23 methamphetamine weighing 33.04 grams. That is the
24 trafficking. Receiving stolen goods, on February -- I'm
25 sorry. Regarding the PWID methamphetamine. On February 23,

1 2016 agents executed a search warrant at his house at [REDACTED]
2 Matthew Heights Road here in Greenwood County. Mr. Bartley
3 was there with several other individuals. Upon a search of
4 the shed behind that residence they located 5.27 grams of
5 methamphetamine, some digital scales. There was also a
6 ledger book found in Mr. Bartley's bedroom. That's the
7 basis of the possession with intent to distribute.

8 The receiving stolen goods. On May 4, 2016 the drug
9 unit, again, executed a search warrant on his house on
10 Matthew Heights Road. During that search they noticed there
11 were several camouflage skins from a Kubota utility vehicle.
12 No utility vehicle was around. They thought that was
13 suspicious knowing Mr. Bartley -- they didn't know him to
14 have one of those. They spoke with neighbors. They said
15 they had seen him with a Kubota utility vehicle within the
16 past three days. They were able to walk into a clear cut in
17 that area behind the neighborhood. They located the ATV
18 basically bottomed out on a stump. There was about \$4,000
19 worth of damage caused to it. We've passed up a restitution
20 order for that victim in that case. I think I've attached
21 it to the PWID, which is the one he's most likely to make
22 parole on if he gets out, but -- blood from a stone,
23 obviously, on that. That would be the basis on all of these
24 charges, Your Honor.

25 His criminal history, just the relevant stuff since

1 it's a negotiated plea. He did have a distribution of
2 methamphetamine in 2014 which is what bumped all of this up
3 to a second offense, but in exchange for the negotiations
4 we've reduced it.

5 THE COURT: What was the weight on the trafficking
6 charge of the methamphetamine?

7 MR. THOMAS: 33.04.

8 THE COURT: 33.04 grams.

9 Q. Mr. Bartley, you've heard what the State alleges
10 happened on February 23 and May 4, 2016 and what took place
11 in January of this year. Is what they say accurate?

12 A. It is, sir.

13 Q. So you are guilty of all of these charges?

14 A. Yes, sir.

15 Q. I need to briefly review with you rights that you are
16 giving up by pleading guilty. If you have any question
17 about anything I tell you I want you to stop me and I'll let
18 you talk to your attorney as long as you need to or I can
19 answer any questions you have for you; okay, sir?

20 A. Yes, sir.

21 Q. Understand, Mr. Bartley, that you do not have to plead
22 guilty to any of these charges. You could have a jury
23 trial. Do you understand that, sir?

24 A. I do.

25 Q. You could actually have three separate jury trials

1 because we're dealing with three separate incident dates.
2 During the course of that trial you would help pick twelve
3 people who would be the jury. The State would have the
4 burden of proving your guilt beyond a reasonable doubt to
5 the unanimous satisfaction of all twelve members of that
6 jury. Do you understand, sir?

7 A. I do.

8 Q. The way the State would try to meet that burden is they
9 would call witnesses who would be sworn. You and your
10 attorney would have a chance to see, confront, cross
11 examine, and question those witnesses. That means you could
12 ask them any question relevant to any issue involved in
13 these cases. Do you understand that, sir?

14 A. I do, sir.

15 Q. Although you have no burden of proof, Mr. Bartley, you
16 could call your own witnesses to testify. If any witnesses
17 were hesitant or reluctant to come to court you could
18 subpoena them. You could use the power of the court to
19 force their attendance. Do you understand, sir?

20 A. Yes, sir.

21 Q. At trial, Mr. Bartley, you yourself would be free to
22 take the witness stand. Understand that no one can compel
23 you to be a witness against yourself anytime you're charged
24 with any kind of crime. So if you chose to not take the
25 stand I would instruct the jury that they could not hold

13

1 that against you. They couldn't discuss it in the jury room
2 at all. Do you understand that, sir?

3 A. Yes, sir.

4 Q. That's your Fifth Amendment right against self-
5 incrimination. By pleading guilty you waive that right in
6 that you admit that you did, in fact, commit these crimes.
7 Do you understand that, Mr. Bartley?

8 A. I do.

9 Q. Additionally, at trial you would be presumed innocent.
10 You would also have the right to challenge any of the
11 evidence that was seized in this case. I've been given a
12 brief overview of some of the facts involved in this case.
13 Do you understand that any searches that were conducted you
14 could challenge those at trial. If there was no probable
15 cause for the issuance of the search warrant or if there was
16 no reason to search the court would probably exclude any
17 drugs or other items found as a result of those searches.
18 Do you understand that, Mr. Bartley?

19 A. I understand.

20 Q. If you gave any statements to the police and you weren't
21 read your Miranda rights you could challenge those at trial.
22 If they weren't voluntarily given, the statements weren't
23 voluntarily made, the court would conclude that the jury
24 would never even hear about it. Do you understand, Mr.
25 Bartley?

1 A. I understand.

2 Q. So any evidence they have against you you could
3 challenge it all at trial. If you plead guilty you waive
4 your right to challenge any evidence, whatever that evidence
5 may be. Do you understand that, sir?

6 A. I understand, sir.

7 Q. Finally, Mr. Bartley, I have no way of knowing if you
8 have any defense to this charge or these charges. I'm sure
9 that's something you've discussed at length with Ms. Able.
10 Is that correct?

11 A. That's correct.

12 Q. You realize that by pleading guilty you waive your right
13 to present any defense. Do you understand that, sir?

14 A. I understand.

15 Q. All these are very important rights, Mr. Bartley. Are
16 you sure you want to give them up and plead guilty?

17 A. I am, sir.

18 THE COURT: Ms. Able, you are happy with the Discovery
19 response involved in this case and I assume you have
20 reviewed it with Mr. Bartley to the extent he's wanted or
21 needed to see it?

22 MS. ABLE: Yes, Your Honor.

23 Q. Mr. Bartley, do you have any complaints to make about
24 Ms. Able?

25 A. I do not.

15

1 Q. She's done everything you've wanted her to do?

2 A. She's done a great job.

3 Q. So you have understood all your conversations? You're
4 totally happy with her help?

5 A. Yes, sir.

6 Q. Very good. Do you have any complaints to make against
7 the Solicitor's office, law enforcement, court personnel, or
8 anyone involved in the prosecution of this case?

9 A. No, sir.

10 Q. You have been treated fairly then?

11 A. I have.

12 Q. No one has tried to threaten or force you to plead
13 guilty, have they?

14 A. They have not.

15 Q. Aside from the ten year sentence and dismissal of some
16 of the other charges, has anyone promised you anything else
17 or held out any other hope of reward to get you to plead
18 guilty?

19 A. They have not.

20 Q. Mr. Bartley, are you pleading guilty of your own free
21 will?

22 A. Yes, I am.

23 Q. Are you pleading guilty because you did commit these
24 crimes?

25 A. That's true.

1 Q. And you're sure you want to plead guilty as opposed to
2 go to trial on all of this?

3 A. I'm sure.

4 Q. Very good.

5 THE COURT: I find there is a basis for these pleas.
6 They are freely, voluntarily, knowingly, and intelligently
7 made. Mr. Bartley is fully satisfied with Ms. Able. He's
8 had enough time to think about this and talk to her about
9 it. I will accept his plea.

10 Q. One last matter, Mr. Bartley. I realize you won't be on
11 probation when you get done serving this time, but you agree
12 that at the very least you owe Mr. Teague \$4,942.69?

13 A. Yes, sir.

14 MS. ABLE: Yes, Your Honor. And that is joint and
15 several. I think that was the cause for hesitation.

16 THE COURT: It would be with Mr. Sweatt and Mr. Anderson
17 as well.

18 DEFENDANT: Yes, sir. I understand.

19 THE COURT: Very good. Ms. Able, happy to hear from you,
20 ma'am.

21 MS. ABLE: Thank you, Your Honor. We are asking that
22 you go along with these negotiations and we certainly thank
23 the Solicitor's Office for this resolution. Just for the
24 record regarding defenses we have discussed those. It would
25 be our contention at trial regarding this trafficking charge

1 the stop was, in my opinion, an illegal stop. We've
2 discussed that at length. Mr. Bartley knows that at trial
3 that Fourth Amendment issue could go either way. I think we
4 would have a standing issue and we've discussed that as
5 well. We have also discussed, as Your Honor mentioned, the
6 search warrants in these cases. They did seem valid to me
7 on their face, Your Honor, and he is willing to go forward
8 without arguing those. He is accompanied today, Judge. His
9 mother was here, Judge. She had to leave to go pick up his
10 children. He's also by Ms. Taylor Campbell who is standing
11 here with him as well as Mr. Justin Campbell, who is seated,
12 and Ms. Tara Talbert, a good close family friend of his.

13 Your Honor, I've known Brandon a while now, about a
14 year and a half. He's a good client. He's always kept in
15 touch with me. I think he's a good guy. I think he has a
16 drug problem and when he gets out it's got to be done. He
17 understands he is hanging himself if he gets out and picks
18 this back up. The Solicitor's Office could certainly send
19 him down the road for the remainder of his life and we've
20 talked about that at length too. So we'd ask that you
21 impose this negotiated sentence. He is entitled to credit
22 on the trafficking charge by my calculations since January
23 12 of this year, 156 days. The PWID charge, Your Honor,
24 would be 273 days total, and I think the Solicitor is in
25 agreement with those numbers.

1 MR. THOMAS: That's my calculation as well, Your Honor.

2 THE COURT: Mr. Bartley, is there anything that you
3 would care to say, sir?

4 DEFENDANT: Yeah. I'd like to thank Ms. Able for her
5 hard work and I apologize to the community for all the chaos
6 I caused.

7 THE COURT: Very good. Ms. Campbell, I appreciate you
8 being here on his behalf. Anything that you wanted to tell
9 me, ma'am?

10 MS. CAMPBELL: No. I think everything has been handled
11 pretty properly. Just -- he has four kids, you know. I'm
12 hoping that when he gets out he does the right thing.

13 THE COURT: Very good.

14 (Whereupon, there was a brief pause in the
15 proceedings.)

16 THE COURT: Mr. Bartley, I appreciate the fact that you
17 are accepting responsibility for these crimes. I would like
18 to believe that is one of the reasons the State has worked
19 out this minimal sentence on the trafficking charge.
20 Obviously, you've got a raging drug problem, sir, and I pray
21 that you get help so that you can be a daddy to these four
22 kids that you've got and hopefully not get in any more
23 trouble once you get out. I've followed the negotiations.
24 On indictments -661, that's the trafficking charge, I've
25 sentenced you to seven years and given you credit for 156

19

1 days that you've served in jail. On indictment -903, that's
2 the PWID meth first charge, I've sentenced you to three
3 years. This sentence will run consecutively to the sentence
4 on -661. You receive credit for 273 days on indictment
5 -903. You are to repay restitution in the amount of
6 \$4,942.69 if you make parole. If you don't make parole it
7 will be enrolled as a civil judgement. I've noted here that
8 it will be joint and several and I've asked that you be
9 screened for the Addictions Treatment Unit before you're
10 released from the Department of Corrections. So you've got
11 ten years to serve active on indictments -661 and -903.

12 Do you understand your sentence, Mr. Bartley?

13 DEFENDANT: Yes, sir. I do.

14 THE COURT: On indictments -902, -659, -660, and -664,
15 The Court sentences you to time served on those. Does this
16 sentence comply with y'all's negotiations, Ms. Able?

17 MS. ABLE: It does, Your Honor.

18 THE COURT: Solicitor?

19 MR. THOMAS: Yes, sir.

20 THE COURT: Again, Mr. Bartley, good luck to you. I
21 hope this time goes fast. Try and use it productively, and
22 for God's sake please don't get in trouble with the law when
23 you get out.

24 DEFENDANT: Yes, sir. Thank you.

25 THE COURT: Yes, sir. Take care.

1 Certificate of Reporter

2 I, the undersigned, Tara T. Scott, CVR, Official Court
3 Reporter for the Eighth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Greenwood County, South Carolina, on the 16th day
9 of June, 2017.

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

12

13

14

15

Tara T. Scott

16

Tara T. Scott, CVR

17

Circuit Court Reporter

18

March 8, 2018

19

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21

22

23

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FORM 5.

STATE OF SOUTH CAROLINA)

County of GREENWOOD)BRANDON DAVIO BARTLEY SCC #372164)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-24 01407

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention WATERFORD RIVER CORR INST P.O. BOX 189, Rembert
South Carolina 29128
2. Name and location of Court which imposed sentence GREENWOOD COUNTY GS
COURT
3. Name(s) of co-defendant(s) (if any) Timothy Bryan, Sherri Nealy
Tetra Smith
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017 05 24 DD661
 - (b) _____

TEST A TRUE COPY
Chastity Copeland
 CHASTITY COPELAND
 CLERK AND GS
 GREENWOOD COUNTY
 S.C.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 6-23-17 Trafficking METH 1st offense
- (b) 6-23-17 PWID METH 1st offense
- (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. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) LAYMAN TO THE ^{LAW}, UNAWARE OF CONSTITUTIONAL RIGHTS
- (b) LAYMAN TO THE LAW, UNAWARE OF COURT PROCEDURES

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASST. OF COUNSEL
- (b) CONSTITUTIONAL VIOLATIONS
- (c) DUE PROCESS VIOLATIONS
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (c) SEE ATTACHMENT
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

N/A

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

(a) which grounds have been presented:

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

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

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

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

(a) NONE
 (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? N/A
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. ELIZABETH C ABLE (ESQUIRE) CIRCUIT DEFENDER
600 MONUMENT ST. Suite 208
PARK PLAZA Bldg - 133
Greenwood SE 29646
 ii. _____
 iii. _____

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

i. PLEA
 ii. SENTENCING
 iii. _____

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

VACATE SENTENCE + RE-SENTENCE through evidentiary
with time to be served attributed to the actual crime
committed.

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

NO

STATE OF SOUTH CAROLINA)

County of

SUMTER)

VERIFICATION

I, BRANDON DAVID BARTLEY SCOC# 372964, 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.

Brandon Bartley

SWORN to and subscribed before me this 27th
 day of November 2017.

Jenna C. Deaton (s.)
 Notary Public

My Commission Expires:

March 2nd 2021

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

I, BRANDON DAVID BARTLEY SCDO #372964, 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.

Brandon Bartley
Applicant

SWORN or affirmed to and subscribed before me this
27th day of November, 2017.

Jinda C. Decker
Notary Public

My Commission Expires: March 29th 2017

2017-CP-24 01407-

TRIAL ATTORNEY

ELIZABETH CABLE

INEFFECTIVE ASST. OF COUNSEL

(REF CASE: Strickland vs. Washington, SUPRA

HARDEN vs State 602 SE 2d 48, 300 S.C. 405

Turner vs State 335, 382, 519 SE 2d 442)

(1) FAILED TO DO A TRUE + FACTUAL INVESTIGATION OF CHARGES
INDICTED

(2) FAILED TO ASCERTAIN & CHALLENGE ELEMENTS OF THE
TRAFFIC STOP (IN WHICH LEADS TO ARREST IN CONVICTION)
THROUGH Evidentiary Hearings.

(3) ATTORNEY WAIVED PRELIMINARY HEARING without the
permission of the DEFENDANT, though DEFENDANT informed
the court of his written consent to have such hearing by
signed documentation, which was timely filed and presented

(4) Failed to provide copies of BRADY, supra Rule (5) SCCamp

(5) Attorney FAILED to inform DEFENDANT of the consequences
of his plea and allowed Defendant to enter a plea made
through FEAR, IGNORANCE, COERCION, and not in the
best interest of his rights that have been afforded to
him by the U.S. Constitution.

2017-CP-240/407

PLEA

PLEA NOT KNOWINGLY AND INTELLIGENTLY MADE
(REF. CASE: BOYKIN VS ALABAMA)

DUE PROCESS VIOLATION

Counsel prejudiced defendants right to challenge
STATES EVIDENCE by falling below a competence,
and legal skill through suppression of the drugs
due to illegal traffic stop.

Counsel waived DEFENDANTS Constitutional Right
to a Preliminary Hearing. Counsel Action FORCED
AND COERCED DEFENDANT to accept a plea of guilty
and an unreasonable sentence from the court.
(Hill vs Locichart supra)

BRADY VIOLATIONS

COUNSEL FAILED to provide such documents,
evidence in which the State provided. Such documents
would have provided a competent understanding of
tangible proof to move forward in trial

(REF CASE) BRADY, SUPRA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Brandon Bartley,	)	2017-CP-24-1407
SCDC #372964,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on November 30, 2017, would respectfully show this Court:

I.

Procedural History

Applicant is presently in the South Carolina Department of Corrections. Applicant was indicted at the April 2017 term of the Greenwood County Grand Jury for trafficking in methamphetamine (2017-GS-24-0661).¹ Elizabeth Able, Esquire, represented Applicant. Assistant Solicitor Josh Thomas, prosecuted the case. On June 16, 2017, Applicant appeared with his counsel before the Honorable Frank R. Addy, Jr., and pled guilty to the lesser included offense of trafficking in methamphetamine (28-100 grams, first offense). Pursuant to a negotiated sentence, Applicant was sentenced to imprisonment for seven years. Applicant did not appeal his guilty plea or sentence.

Factual History

The following facts were presented at the plea hearing, to which Applicant acknowledged

¹ Applicant also pled guilty to PWID methamphetamine (first offense) (2017-GS-24-903), receiving stolen goods (\$2,000-\$10,000) (2016-GS-24-902), simple possession of marijuana (2017-24-569), giving false information to law enforcement (2017-GS-24-660, and carrying a pistol unlawfully (2017-GS-24-664). He only lists the trafficking charge in his application.

as true:

Your Honor, regarding the trafficking methamphetamine, the false info to police officers, the simple possession of marijuana, and the carrying a pistol charge, on January 12, 2017 about 8:30 at night, County units were traveling past the Hot Spot out on Highway 25 South here in Greenwood County. Noticed two vehicles parked side by side in the back, dark location behind the Hot Spot. Based on their training and experience they thought that was kind of consistent with what might be an illegal drug transaction going on. Pulled into the parking lot. One of the cars sped past them. They turned around on that car, initiated a traffic stop on it. The driver of that vehicle, Mr. Brian -- ended up getting him out of the car and talking with him. He did tell them that one of his back passengers had illegal narcotics on him. They pulled Mr. Bartley out of the back of the car. He actually gave them the name of Steven Thomas Butler and a birthday of [REDACTED], 1977. Obviously, the birthday was correct but the name wasn't. So that's the false info charge. They patted him down for weapons. They felt immediately two handguns in his pockets, a Walter 22 caliber and a Kel-tec 380. That's the basis for the carrying a pistol unlawfully. He does not have a permit for that. Also on his person they found a bag of methamphetamine weighing 33.04 grams. That is the trafficking.

Guilty Plea hearing transcript p: 8-9.

II.

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

1. Ineffective assistance of counsel
 - a. "Failed to do a true and factual investigation of the charges indicted"
 - b. "Failed to ascertain and challenge elements of the traffic stop (in which leads to arrest in conviction) through evidentiary hearings"
 - c. "Attorney waived preliminary hearing without the permission of the defendant, though defendant informed the court of his written consent to have such hearing by signed documentation, which was timely filed and presented"
 - d. "Failed to provide copies of Brady, supra Rule (5) SCCrimP"
 - e. "Attorney failed to inform defendant of the consequences of his plea and allowed defendant to enter a plea made through fear, ignorance, coercion, and not in the best interest of his rights that have been afforded to him by the U.S. Constitution"
2. "Plea not knowingly and intelligently made"
3. Constitutional Violations
4. Due Process Violations
 - a. "Counsel prejudiced defendant's right to challenge State's evidence by falling below a competence and legal skill through suppression of the

drugs due to illegal traffic stop. Counsel waived Defendant's Constitutional right to a preliminary hearing. Counsel action forced and coerced Defendant to accept a plea of guilty and an unreasonable sentence from the court"

5. "Brady Violations"

- a. "Counsel failed to provide such documents, evidence in which the State provided. Such documents would have provided a competent understanding of tangible proof to move forward in trial"

Attached herewith and incorporated herein by reference are the records of the Greenwood County Clerk of Court regarding the subject convictions and the transcript from Applicant's guilty plea. Respondent reserves the right to amend its return upon the receipt of other relevant records.

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

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

III.

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on going to

trial. Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

IV.

Applicant further alleges that his plea was not voluntarily made. Respondent submits that this allegation is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Each and every allegation contained within the application not expressly admitted,

qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

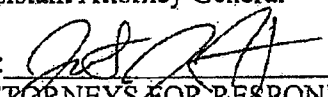
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

April 5, 2018

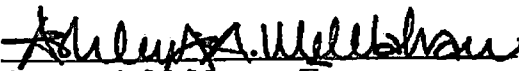
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	Case No.: 2017-CP-24-01407
Brandon D. Bartley, #372964,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on November 30, 2017, to add the following:

1. Ineffective Assistance of Counsel of Assistant Public Defender Elizabeth C. Able: Ms. Able failed to adequately raise the issue regarding the weight of the drugs that were only field tested and no SLED report was issued as to the actual weight of the drugs.

Furthermore, Applicant requests that this PCR application be amended 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

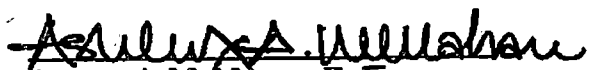
October 4, 2018

CERTIFICATE OF SERVICE

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

Janell Gregory
Assistant Attorney General
jgregory@scag.gov

This 4th Day of October, 2018.


ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) COMMON PLEAS
3 COUNTY OF GREENWOOD) OF THE EIGHTH
4) JUDICIAL CIRCUIT
5)
6 BRANDON DAVID BARTLEY,)
7 Applicant,) TRANSCRIPT OF RECORD
8 vs.) 2017-CP-24-01407
9 THE STATE OF SOUTH CAROLINA,)
10 Defendant.)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

October 17, 2018
Greenwood, South Carolina

B E F O R E:

HONORABLE BRIAN M. GIBBONS, Judge.

A P P E A R A N C E S

ASHLEY A. MCMAHON, ESQUIRE
For The Applicant

JANELL GREGORY, Assistant Attorney General
For The Defendant

Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X

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1 BRANDON DAVID BRANTLEY VS. THE STATE

2 THE COURT: All right. Madam AG, you can call
3 the case.

4 MS. GREGORY: Okay. Applicant was indicted at
5 the October 2015 term of the Greenwood County Grand Jury
6 for trafficking methamphetamine. On June 16th, 2017,
7 applicant appeared before the Honorable Frank Addy, Jr.,
8 and pled guilty to the lesser included offense of
9 trafficking methamphetamine 28 to 100 grams first
10 offense.

11 Although applicant did not provide this
12 information in his application, he also pled guilty that
13 day to possession with intent to distribute
14 methamphetamine first offense; receiving goods \$2,000 to
15 \$10,000; simple possession of marijuana; and giving
16 false information to law enforcement.

17 Finally, he also entered an Alford plea for
18 carrying a pistol unlawfully. He was represented by
19 Elizabeth Able, pursuant to a negotiated sentence.
20 Applicant was sentenced to imprisonment for seven years
21 on the trafficking charge, and a consecutive three-year
22 sentence on the possession with intent to distribute
23 methamphetamine first offense charge. Pursuant to the
24 plea agreement, the state nolle prossed over ten
25 charges.

1 Applicant filed a timely application for
2 post-conviction relief on November 30th, 2017, alleging
3 multiple allegations. And we will be going forward on
4 the allegations in his application and the amended
5 application filed by Ashley McMahon, who represents him,
6 and he is here today.

7 THE COURT: All right, thank you.

8 Ms. McMahon, are you ready to proceed?

9 MS. MCMAHON: Yes, Your Honor. I'm not -- do you
10 just want me to ask him questions from here? Is that
11 okay with you?

12 THE COURT: No, we're gonna have him up here. It
13 would be better. I got a court reporter here. Sir,
14 come on around for me, please. You can just have a seat
15 in that chair there, sir.

16 THE APPLICANT: Yes, sir.

17 THE COURT: Do you swear to tell the Court the
18 truth, the whole truth and nothing but the truth so help
19 you God?

20 THE APPLICANT: Yes, sir.

21 THE COURT: You're Mr. Brandon David Bartley?

22 THE APPLICANT: Yes, sir.

23 THE COURT: All right, thank you.

24 BRANDON DAVID BARTLEY,
25 having been duly sworn, testified as follows:

DIRECT EXAMINATION

1

2 BY MS. MCMAHON:

3 Q. Mr. Bartley, did you file this PCR application?

4 A. Yes, ma'am.

5 Q. Okay. And so you have a couple allegations. I'm
6 just gonna go through them real fast first and make sure
7 we're on the same page here.

8 A. Yes, ma'am.

9 Q. So the amended application, your allegation is
10 that Ms. Able failed to adequately raise the issue
11 regarding the amount of the drugs that were in the SLED
12 report; is that correct?

13 A. Yes, ma'am.

14 Q. And then in your initial application you have
15 ineffective assistance of counsel of Ms. Able again
16 because of failure to do an investigation; failure to
17 challenge elements of the traffic stop; waiver at the
18 preliminary hearing; you didn't get all your Brady
19 material; and failed to inform you of the consequences
20 of your plea. Is all that correct?

21 A. Yes, ma'am.

22 Q. I believe there was also a due process violation
23 and then you did a separate Brady violation, but that
24 sort of ties into number four; is that right?

25 A. Yes, ma'am.

1 Q. Okay. All right. So let's start with the
2 amended application. Can you explain to Judge Gibbons
3 what it is about the testing of the drugs that you
4 believe Ms. Able was ineffective?

5 A. Um, if they had tested the drugs, the amount
6 would have been reduced. When they said it was 33
7 grams, it could have come down to, to under that because
8 of the purity levels in the drugs.

9 Q. So what were you -- what did you ultimately plead
10 guilty to?

11 A. Trafficking 28 to 100 grams.

12 Q. And what did it come back as, the test?

13 A. I'd never seen a SLED report.

14 Q. Okay. So I'm gonna show you this, and you saw
15 this this morning, right?

16 A. Oh, yes, ma'am. It says 5.27 grams.

17 Q. Okay. But you didn't have this beforehand, did
18 you?

19 A. No, ma'am.

20 Q. Okay. So you pled the 28 to 100 in trafficking
21 meth?

22 A. Yes, ma'am.

23 Q. And what else did you plead to?

24 A. Um, PWID, possession with intent.

25 Q. And do you remember the amount on that?

1 A. Um, I think it was around six grams.

2 Q. Okay. So tell me about the incident with, you
3 said, regarding the traffic stop. What about that did
4 Ms. Able not adequately address?

5 A. Um, I'd asked her to look at some videos to find
6 out exactly why I was stopped. I believed that the
7 officers were being dishonest on the reason I was being
8 stopped.

9 Q. You thought the officers were being dishonest
10 about why they stopped you?

11 A. Yes, ma'am.

12 Q. Did they -- did the officers tell you why they
13 stopped you?

14 A. They said we looked suspicious, but we were --
15 when I pulled away from the store, when I drive away
16 from the store, we're immediately surrounded. Like
17 almost like they were laying in wait.

18 Q. Okay. How many officers were there, do you
19 remember?

20 A. I want to say there were three county cars and
21 within, I think, maybe a minute, minute-and-a-half there
22 was some unmarked vehicles.

23 Q. Okay. So it wasn't just one officer, it was a
24 lot?

25 A. That's correct.

1 Q. So you weren't sure. Were you -- had you pulled
2 into a parking lot or something or how did this occur?

3 A. Yes, ma'am. We'd pulled into the Hot Spot
4 parking lot.

5 Q. Was there anybody in the car with you that you
6 think the officers might have been trying to find?

7 A. Um, I think they were trying to find me. If I'm
8 not mistaken, there'd been a pickup order issued for me.

9 Q. Were you on probation at the time?

10 A. No, ma'am.

11 Q. Okay. Had you just gotten out of SCDC or...

12 A. No, ma'am.

13 Q. Did they just know you personally?

14 A. Yes, ma'am, they know me personally. I was
15 supposed to be in a halfway house.

16 Q. Okay. So what did Ms. Able tell you about the
17 traffic stop?

18 A. She said that she thought that it was a bad stop,
19 but that no judge would throw it out because I was
20 caught with, you know, caught with dope on me.

21 Q. Because you were caught with stuff on you?

22 A. Yes, ma'am.

23 Q. Was it on your person or was it in the car?

24 A. I had some on my person. There was others, there
25 was others in the car.

1 Q. Okay. Was it your car?

2 A. No, ma'am.

3 Q. Okay. Did you guys talk about that?

4 A. We did.

5 Q. So what did you and Ms. Able talk about? How
6 many times did you guys meet?

7 A. We met maybe two or three times.

8 Q. Did you meet in the jail? Were you meeting here
9 in the courthouse?

10 A. We met in jail twice.

11 Q. Did you meet her here once?

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

13 Q. And so when you spoke to her, what did you guys
14 talk about?

15 A. Um, well, we talked about the offer and I'd
16 asked, you know, for several months to get a copy of the
17 SLED report.

18 Q. Uh-huh.

19 A. She said she would. I never, never got it.
20 Still have not received it. I'd asked for a motion for
21 discovery for my trafficking, still have never received
22 it. You know, I asked for a lot of these things to help
23 me make a good decision. And when I seen I wasn't gonna
24 get it, I was, I was real nervous.

25 Q. Uh-huh. So what -- did you go over the discovery

1 that she had?

2 A. For the PWID?

3 Q. Um, yeah.

4 A. Yes, ma'am, I feel like we did.

5 Q. So you didn't go over much about the trafficking?

6 A. Not really. I mean, we did talk about it.

7 Q. Okay. Did she talk about, like, the weight and
8 stuff with you?

9 A. It was always 33 grams, 33 grams. She'd always
10 say that. And I'd asked about a SLED test, but she said
11 they field tested it.

12 Q. Okay.

13 A. Um, and I insisted on seeing the SLED test.

14 Q. Okay. But you never got it.

15 A. No, ma'am.

16 Q. But you got the, the PWID. Were you in dispute
17 about the weight on that?

18 A. No, ma'am.

19 Q. Okay. So what made you want -- decide that you
20 should plead guilty to it?

21 A. I was told that they would take me from PWID.
22 I'd be found guilty of that. And since I had a prior
23 drug charge, that when I went for trafficking, then that
24 would be a trafficking third and that would be a
25 mandatory 25 years.

1 Q. Okay. Did she ever talk about how, based on some
2 of your prior convictions, that they could possibly try
3 to get life without parole?

4 A. It may have came up.

5 Q. Okay. So, and I'm not trying to put words in
6 your mouth, I just want to summarize. Your conversation
7 was essentially that the solicitor was gonna try
8 everything separately and try to get as much time as
9 possible for you?

10 A. Yes, ma'am.

11 Q. Okay. So let's talk about the preliminary
12 hearing issue. What was up with that?

13 A. I think it's standard for them to waive off
14 preliminary hearings for people in the county.

15 Q. Okay. Did you ask -- had you asked her for one?
16 Did you say you wanted one?

17 A. I think I may have. I can't really remember.

18 Q. But you wanted one, but you just didn't get one?

19 A. Yes, ma'am.

20 Q. Did you ever ask Ms. Able why you didn't get one?

21 A. I think I was getting answers, their standards to
22 waive preliminary hearings for everyone in the county
23 jail.

24 Q. Okay. And then we talked about the traffic stop.
25 In the investigation that she said she didn't do a true

1 and accurate investigation, what else do you think, or
2 have you found anything else that she should have found
3 out about that you didn't know about?

4 A. Um...

5 Q. Did you feel like if she had done some more legal
6 research that maybe some things could have turned out
7 better?

8 A. Yes, ma'am. Yes, ma'am. I felt like some of the
9 officers were being dishonest about the reason I was
10 stopped and consent to search the vehicle.

11 Q. Okay. Did she talk to you about any case law or
12 anything about traffic stops or consent to search?

13 A. I think she said they seen brass knuckles
14 somewhere in the car or something. I don't know that.

15 Q. Okay.

16 A. I never seen a motion, so I don't know.

17 Q. Okay. But did she sit down and say, hey, this is
18 the law that relates to traffic stops or anything with
19 you?

20 A. I don't think so.

21 Q. Okay. We already talked about your Brady, that
22 you didn't get everything on that. What were the
23 consequences of the plea that you didn't know about that
24 you felt she should have explained to you better?

25 A. Um, what do you mean consequences? I got ---

1 Q. Okay. So I'm just gonna show you number five
2 real fast. You failed to inform you (sic) of the
3 consequences of your plea and allowed you to enter a
4 plea into coercion and not in the best interest of your
5 rights.

6 A. Oh, I could have got a better plea deal.

7 Q. Oh, okay.

8 A. A lower. If they would have checked the purity
9 levels, it would have went down.

10 Q. So if they had checked the weight of the
11 drugs ---

12 A. Maybe I would have got a three-year traffic
13 instead of a ten-year traffic or a seven-year traffic.

14 Q. Okay. So if they had checked the weight of the
15 drugs, you think it should have been the lesser
16 trafficking?

17 A. Yes, ma'am.

18 Q. And then your due process violation, what did you
19 feel like that was?

20 Oh, that goes back to your preliminary hearing,
21 Your Honor. We'll just combine all of that to that.

22 THE COURT: Okay.

23 BY MS. MCMAHON:

24 Q. And then we already talked about your Brady
25 violation. What else do you want Judge Gibbons to know

1 about how Ms. Able handled your case and how she
2 represented you?

3 A. I don't know what else to say.

4 Q. How did you feel about the representation?

5 A. I was, I was a little unhappy about it. She's
6 super sweet, but I'd asked her to do several things and
7 they, they weren't done. And when she stated that they
8 would try me separately on everything, I just kind of
9 felt pressured into taking the, the ten.

10 Q. What did you ask her that she didn't do, do you
11 remember?

12 A. Yes. I'd asked her to review the video tape from
13 the store, maybe catch the officers out of line.

14 Q. Okay. So you mean you wanted her to review the
15 security footage at the Hot Spot?

16 A. Yes, ma'am.

17 Q. Okay. Did you ever get the security footage from
18 the Hot Spot?

19 A. No, ma'am.

20 Q. What officers were involved in your case, do you
21 remember?

22 A. Steve Owens. I know he was the one who pulled me
23 out of the car.

24 Q. Okay. Do you remember anybody else, any other
25 officers?

1 A. Brian Lewis.

2 Q. Okay. Did they also work for the sheriff's
3 department?

4 A. I don't think they work there anymore.

5 Q. Okay. Anything else you want to tell the Court
6 today?

7 A. I think that's probably all.

8 Q. Okay. So answer any questions Judge Gibbons may
9 ask and Ms. Gregory, okay?

10 A. Yes, ma'am.

11 THE COURT: All right. Ms. Gregory, your
12 witness.

13 CROSS-EXAMINATION

14 BY MS. GREGORY:

15 Q. Good morning.

16 A. Good morning.

17 Q. You met with Ms. Able two or three times?

18 A. Yes.

19 Q. And she represented you on all the charges that
20 you pled guilty to?

21 A. Yes, ma'am.

22 Q. Okay. And were you unhappy with discovery on all
23 of the charges or just the trafficking?

24 A. Trafficking.

25 Q. Just the trafficking?

1 A. Yes, ma'am.

2 Q. Okay. And do you recall during the plea hearing
3 she discussed the traffic stop during the plea hearing?
4 Do you recall that?

5 A. I remember it was mentioned in passing.

6 Q. Okay. And she had said during the plea hearing
7 that she had discussed that there was a potential Fourth
8 Amendment issue regarding this traffic stop for you, so
9 you knew about that and you guys had discussed it,
10 correct?

11 A. In passing, yes, ma'am.

12 Q. Okay. So even knowing that there is that
13 potential issue, you decided to voluntarily plead
14 guilty; is that right?

15 A. Yes, ma'am. I was scared up by that time.

16 Q. Okay. And do you recall waiving your
17 constitutional rights during the plea hearing?

18 A. I don't. But if I did, it's probably in the
19 record.

20 Q. Okay. And do you recall agreeing with the facts
21 recited by the state during the plea hearing?

22 A. Yes, ma'am.

23 Q. Okay. And do you recall telling the judge that
24 you were happy with your attorney and that she had done
25 a great job?

1 A. I do actually remember saying that.

2 Q. Okay. And you wanted to thank her for all of her
3 hard work?

4 A. I actually did remember saying that.

5 Q. Okay. And that you had understood all of your
6 conversations with your attorney?

7 A. Yes, ma'am.

8 Q. And nobody had promised you anything or
9 threatened you to plead guilty; is that right?

10 A. Yes, ma'am.

11 Q. Okay. And that you were pleading guilty because
12 you were guilty?

13 A. Yes, ma'am.

14 Q. Okay.

15 A. I do remember saying that.

16 Q. And that you did not want to go to trial on those
17 charges?

18 A. Not at that time, no, ma'am, I didn't.

19 Q. Okay. And you avoided 25 years by pleading
20 guilty, right?

21 A. Apparently, yes, ma'am.

22 Q. Okay. Because they dismissed, I think it's 12
23 charges.

24 A. Pending charges but, yes, ma'am.

25 Q. Yeah, okay. No further questions.

1 THE COURT: Any redirect?

2 MS. MCMAHAN: Just briefly.

3 REDIRECT EXAMINATION

4 BY MS. MCMAHAN:

5 Q. Did you feel that you adequately discussed the
6 traffic stop with Ms. Able?

7 A. I didn't feel like it was brought up in front of
8 the judge enough, like, so I'm kind of nervous. Not
9 enough was said about it in court. Not enough attention
10 brought to it to highlight any misdeeds.

11 Q. Do you feel like if it had been adequately
12 addressed, the outcome would have been different for
13 your guilty plea?

14 A. I do. I certainly do.

15 Q. Also, you know, the charges that were dismissed,
16 if you are successful today did you want to go back and
17 start over again?

18 A. Yes, ma'am.

19 MS. MCMAHAN: I have nothing further, Your Honor.

20 THE COURT: All right. Thank you, sir, you may
21 step down.

22 (Whereupon, witness leaves witness stand.)

23 Ms. McMahan, you may call your next witness.

24 MS. MCMAHAN: The applicant rests.

25 THE COURT: Applicant rests, all right.

1 Madam AG?

2 MS. GREGORY: I call Elizabeth Able. She has a
3 table full of things. Would she be okay to testify from
4 here?

5 THE COURT: Yeah, that's fine. All right. Do
6 you swear to tell the Court the truth, the whole truth
7 and nothing but the truth so help you God?

8 THE WITNESS: I do, Your Honor, thank you.

9 THE COURT: All right, thank you.

10 ELIZABETH CAROLINA ABLE,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. GREGORY:

14 Q. Ms. Able, how long have you been practicing law?

15 A. Um, I was sworn in November of 2014. I clerked
16 for a year with Judge Addy. And I have been at the
17 Public Defender's office ever since, so I've been over
18 there three years and some change.

19 Q. Okay. And you represented the applicant for all
20 of the charges he pled guilty to?

21 A. Yes, ma'am.

22 Q. From the beginning?

23 A. I did, uh-huh.

24 Q. Was there a preliminary hearing in any of these
25 cases?

1 A. I don't, I don't believe so, no, ma'am.

2 Q. Is that your typical practice, to waive those?

3 A. It is. And, actually, in the letter that we sent
4 out, I believe there's language saying we typically
5 waive those. That's our practice. If somebody wants
6 one, you know, we'll try to do it or if there's a -- if
7 we have already gotten discovery and see that there is
8 some sort of issue, then we'll try to do it. But, I
9 mean, it's typical that we don't. I mean, I had client
10 appointments all day yesterday and city court had
11 prelims. I can't be in both places at once, so we
12 discussed it.

13 Q. Right. Would a preliminary hearing in any of his
14 charges had made a difference?

15 A. I don't believe so. And specifically on the two
16 he pled to, the PWID from February 23rd, 2016, was a
17 search warrant case with our client was valid on its
18 face.

19 Q. Okay.

20 A. And certainly I don't think it would have made a
21 difference. And then as far as the prelim for the
22 trafficking, I certainly believe if it were dismissed at
23 a prelim, Judge Addy would have direct indicted him.

24 Q. Okay.

25 A. That's all judges who are in our circuit. If you

1 get something tossed at prelims, it gets direct indicted
2 by the solicitor's office.

3 Q. Okay. And regarding the facts of the trafficking
4 case, that seems to be where most of it stems from, what
5 were the facts of that case? How did those charges
6 arise in the trafficking case?

7 A. The case, regarding that trafficking case, Mr.
8 Bartley, as he testified, was out on bond from all these
9 previous cases. He came up to my office, let's see --
10 he was out on bond. What had happened was I originally
11 got Mr. Bartley's application on all the prior cases.
12 He had been noticed for a bond revocation hearing.

13 Mr. Josh Thomas of the solicitor's office, he
14 applied for us. I got it. I got that bond revocation
15 hearing off a couple of weeks, so I'd still have an
16 opportunity to meet with Mr. Bartley. We had the
17 hearing, Judge Addy revoked those bonds, but that Laurel
18 could -- y'all could find him an inpatient treatment
19 facility. I'm more than welcome to let him CR out, go
20 to the rehab.

21 And so long as he's doing well, doing the
22 program, doing what he's supposed to do, that's fine.
23 You know, if he fails out, gets kicked out, leaves the
24 program, I'm gonna get a pickup order and have him
25 picked up or he needs to turn himself in.

1 Let's see, he came up to my office January 10th,
2 of 2017, Basically explaining to me he had been kicked
3 out of the Lighthouse facility, which was the rehab he
4 was in. He came back later that afternoon. I think I
5 had appointments all day, and we sat down and discussed
6 everything. I said, look, Brandon, you're not where
7 you're supposed to be. I have to advise you to turn
8 yourself in.

9 Long story short, he also told me he had gone and
10 begged to Chad Cox, who was the head of the drug
11 enforcement unit at that time. So I knew law
12 enforcement knew he wasn't where he was supposed to be.

13 The solicitor called me. I think Josh came down
14 to my office but, again, I was in an appointment. He
15 called or I called him back, I can't remember. He
16 asked, hey, how is Brandon Bartley? What's going on,
17 you know, and of course I was like, oh, he's good as far
18 as I know.

19 Josh was pretty much nice enough to tell me law
20 enforcement's gonna go pick him up. I called Mr.
21 Bartley to let him know that, that same afternoon. And
22 that is, that's the night that he actually was arrested
23 with this mess.

24 As far as the trafficking, there are two separate
25 SLED results. There is a SLED result sheet that I know

1 I had when he pled for 33.04 grams. And then there was
2 a separate SLED result that I shared with you guys that
3 was a 5.27, I think, from February 26th, a PWID that he
4 pled to.

5 Q. So he saw them?

6 A. Well, I don't recall if he saw them. I know I
7 met with him in the jail June 1st of 2017. I have my
8 notes, and this will kind of go to the discovery as
9 well. I'm kind of answering a lot of questions at once,
10 I apologize.

11 Q. It's okay.

12 A. I had my notes that I had written out with my
13 recollection, my summary of the discovery June 1st. And
14 then in my system I put a note that we met June 1st. I
15 have those SLED weights written down, so I know that he
16 and I talked about them. I know that I said, hey, look,
17 this is what it came back as from SLED.

18 Q. What were the weights that you had written down?

19 A. For the February 23rd, it was 5.27 grams. And
20 for January it was 33.04 grams of meth.

21 Q. So that's how he kept hearing the 33 was from you
22 discussing the SLED results?

23 A. Yeah.

24 Q. All right.

25 A. Yeah. But back to your original question,

1 Brandon was in the car with three other people and I saw
2 the video, you know, that keeps being referenced. I
3 watched it in depth. I'm sure I offered for Brandon to
4 see it if he wanted to.

5 Steve Owens, one of the sheriff's deputies here
6 in Greenwood, he and I did not see eye-to-eye often.
7 I'm quite positive I talked to Brandon about that. I
8 didn't think it was a good stop. However, he pulls him
9 over. He talks to the driver of the vehicle, who was
10 the owner of the vehicle, I think.

11 In that video he talks to the driver about
12 nine-and-a-half minutes before the driver gets consent
13 to search the vehicle. They get Brandon out. Brandon
14 says everything in here is mine. He's charged with the
15 drugs and the gun in the vehicle.

16 Q. And you discussed the traffic stop not being, in
17 your opinion, a good stop with him?

18 A. Sure. Yeah, absolutely.

19 Q. Did you discuss that you might be able to get
20 that suppressed?

21 A. We did. And, again ---

22 Q. Was it his car that he was arrested? Was that
23 his car that he ---

24 A. I don't think it was his car.

25 Q. Okay.

1 A. Off the top of my head. Let's see.

2 Q. Would he have had standing, then, to suppress?

3 A. We discussed that, that I would have -- I thought
4 we would have had a standing issue.

5 Q. Okay.

6 A. Yeah, absolutely.

7 Q. But you did discuss that you would, if you want
8 to go to trial, move to suppress?

9 A. Sure. And again, typically in our circuit if you
10 ask to have motions heard, you know, weeks in advance of
11 an actual trial, typically the solicitor's office, the
12 climate is just, well, you're not gonna get an offer.
13 We could do the hearing, but there's not gonna be an
14 offer. So it's all pretty much contingent on how the
15 hearing goes. Brandon and I discussed that, look, if we
16 aren't able to suppress these drugs --

17 Q. Okay.

18 A. -- then I'm quite confident you'd be convicted at
19 trial.

20 Q. Okay. So had he wanted to go forward with the
21 trial and you failed the suppression, then the plea deal
22 would have been off the table?

23 A. Yes.

24 Q. Okay.

25 A. I would have been comfortable thinking that, yes.

1 Q. And you did an investigation on the other charges
2 as well that he pled to?

3 A. As far as?

4 Q. Like looking into anything that he offered as far
5 as defenses or alibi ---

6 A. Yeah, I remember him -- I'm sorry for talking
7 over you.

8 Q. No.

9 A. I remember him giving me the name of somebody at
10 some point he wanted me to try to find. I can't
11 remember if we looked for him, how we found him, if we
12 didn't find him. I can't remember.

13 Q. Okay.

14 A. But I do know when we spoke in the jail, I think
15 the first time, he'd given me some names of folks in
16 some of the older cases.

17 Q. Okay. And the evidence that the state had
18 against him was, would you describe it as strong?

19 A. Yes.

20 Q. Okay. And even with the Fourth Amendment issue
21 potentially being winnable by you, did you believe it
22 was in his best interest to plead guilty?

23 A. I did. I actually found -- I have an e-mail from
24 Josh Thomas. I believe Brandon was put on the trial
25 docket the month of June, 2017. So I e-mailed him and

1 asked, you know, he's on the trial docket, which ones
2 are you gonna go forward with. Josh wrote back and said
3 it would be his intent to try the manufacturing meth and
4 possession of altered Ephedrine from April, 2015, first,
5 followed by the PWID of meth from February 2016, and
6 then the trafficking. Ultimately, I asked Brandon
7 testified to try to get as much time as possible. And
8 Brandon and I discussed that in the jail. I vividly
9 remember that. He's a smart guy. He knew --

10 Q. Right?

11 A. -- exactly what they were trying to do.

12 Q. Right. And regarding the SLED results and that
13 trafficking charge, do you recognize this?

14 A. Um, I do, yes, ma'am. This is, this is the SLED
15 report that was generated --

16 Q. Okay. -- And ---

17 A. -- given to me in separate ---

18 Q. Out of the two, which one was that one?

19 A. This is the one from the 2017 stop, the January
20 2017. And it says to methamphetamine. And one of the
21 bags was 33.04 grams.

22 Q. All right. And that's a fair and accurate
23 representation of what you were provided during
24 discovery?

25 A. Yes.

1 MS. GREGORY: Okay. At this time we'd like to
2 move this for Defendant's Exhibit.

3 THE COURT: Any objection?

4 MS. MCMAHAN: I have no objection. I'd just
5 would ask for a copy of it.

6 THE COURT: Okay. Without objection introduced
7 as State's one.

8 (Whereupon, State's Exhibit Number 1, SLED
9 Report, was marked for identification.

10 (Whereupon, State's Exhibit Number 1 was entered
11 into the record.

12 BY MS. GREGORY:

13 Q. While we're waiting on that, I will also just go
14 over this with you. Do you recognize this?

15 A. Yes, ma'am.

16 Q. Okay. And what is that document?

17 A. This is, I just call it a plea sheet. Any time
18 -- well, I try to go over it with every single client
19 but, of course, when somebody is getting a substantial
20 period of time down at SCDC, it's how I do. I go over
21 rights with clients before they plead guilty.

22 Q. And did -- were you with the applicant when he
23 saw that document? Did you provide that to him?

24 A. Yes. And what I do is, you know, when I'm
25 signing somebody up to plead guilty, obviously I have to

1 go over their rights with them. I feel like sometimes
2 people don't listen to what I'm saying, so I just kind
3 of let them read while I'm talking at them for a little
4 bit. I put their name, the date, who the prosecutor is,
5 what they're pleading to.

6 And then, you know, it's got on here if you're
7 gonna have a violation or revocation from probation or
8 parole. I'll circle that if it's applicable. As well
9 as, there's a clause about enhancement provisions, so I
10 always make sure I talk about those to the clients if
11 they ask -- well, I usually talk about them regardless.
12 The more, the more people know, the better.

13 And then I ask, typically, you know, I say, look,
14 these are the rights you have, the ones you're giving
15 up. Do you understand the ones you have, the ones
16 you're giving up by pleading guilty? Do you understand
17 what you're pleading to? Typically on these sheets I'll
18 write on here that we discussed violent and serious. I
19 didn't do that on this one, but I know I put it on the
20 record when he pled guilty that we've talked --

21 Q. Right.

22 A. -- about what he's pleading to was violent and
23 serious.

24 I ask them if they had any questions. I ask them
25 if we went over everything, and then ask that they do

1 the same. And if we have any questions, we talk about
2 them right then. But, yes, this is my signature and his
3 signature from the day he pled guilty.

4 Q. All right. You were with him when he signed
5 that?

6 A. Yes.

7 Q. And that's a fair and accurate representation of
8 what he signed?

9 A. Yes. I actually have the original in the file.

10 Q. Okay, very good.

11 A. Do you want to use it?

12 MS. GREGORY: Okay. We'd like to move this for
13 Defense Exhibit Number 2.

14 MS. MCMAHON: If I may ask one question, Your
15 Honor?

16 THE COURT: Right now?

17 MS. MCMAHON: Yes.

18 THE COURT: Okay.

19 MS. MCMAHON: About this.

20 PROFFER TESTIMONY

21 BY MS. MCMAHON:

22 Q. Did you watch Mr. Bartley sign this?

23 A. I'm sure I did. It would have been right when we
24 were signing the sentencing sheet, yes, ma'am.

25 Q. Is it typical for them to be in your presence

1 when they're signing this form and you're going over it?

2 A. Yeah.

3 Q. Then no objection, Your Honor.

4 A. I can't go over it without him there.

5 THE COURT: All right. Without objection,
6 introduced as State's Number 2.

7 (Whereupon, State's Exhibit Number 2, Guilty Plea
8 Acknowledgement of Rights, was marked for
9 identification.)

10 (Whereupon, State's Exhibit Number 2 was entered
11 into the record.)

12 BY MS. GREGORY:

13 Q. And he didn't have any questions once he signed
14 that?

15 A. I don't remember if he did.

16 Q. How did the plea negotiations come about in this
17 case? Did you approach the solicitor's office?

18 A. Um, so once Brandon was back in the detention
19 center -- let's see, I keep running, get confused on my
20 cases. Um, we discussed, you know, that I could ask for
21 a bond. We both kind of agreed about, you know, kind of
22 a waste of time and money given.

23 Then, you know, I think at that point he kind of
24 resigned himself to knowing he was gonna do some time.
25 And I have in my notes that at that time we talked about

1 it not being a good traffic stop, just for what that's
2 worth. But anyway, and we talked about it being violent
3 and serious.

4 At that point, on April 30th, he told me he
5 wanted to try for five to seven years at non-violent and
6 65 percent time. Um, we discussed violent doesn't
7 necessarily mean 85 versus 65, et cetera. We talked
8 about ten being a reasonable number, and he said that's
9 what Chad Cox had told him as well.

10 Q. Who's Chad Cox?

11 A. Chad Cox is the head of the drug enforcement
12 unit.

13 Q. Okay.

14 A. They had been in communications.

15 Q. Okay. And I told him I would start, you know,
16 asking for five and kind of work my way up through
17 negotiation.

18 That same day -- well, I think it was a few days
19 later. I met with him on April 30th. And then in my
20 notes May 2nd I talked to Josh Thomas. Saying I think
21 this is something we can work out. We need to sit down
22 and go through everything, you know, to come up with a
23 resolution. He said that he would get me an e-mail with
24 an official offer in the 10 to 15 range. I told him, I
25 said, look, do you think we could do ten non-violent?

1 We could probably do it next week. He said he didn't
2 think that was in the cards for Brandon Bartley.

3 I again asked him on May 4th, I said if it's ten
4 non-violent we can do it next week. Um, Josh e-mailed
5 me May 18th, I believe, and he gave me his original
6 offer, which he originally had 19 charges. Josh was
7 willing to let him plead to six of those. He originally
8 came in at seven. So the seven on the trafficking and
9 the five on the manufacturing or the PWID subsequent,
10 which would have been consecutive.

11 Q. Okay.

12 A. Um, let's see...

13 Q. Were all those offers communicated to Mr.
14 Bartley?

15 A. Yes. I went and met with Brandon. I got down,
16 let's see, May 18th, I think I said. I met with him
17 June 1st to talk about the offer, and then I talked to
18 Josh later that afternoon. He agreed to do the seven
19 and then came down to the three consecutive.

20 Q. Okay.

21 A. So he did come down some.

22 Q. Okay. And at that point he wanted to plead
23 guilty? He wanted to accept that offer?

24 A. Yeah. And when I was in, in the jail with
25 Brandon on the 1st, I put in my notes he and I had gone

1 through, you know, the SCDC day calculator.

2 Q. Okay.

3 A. I try to do that sometimes just to give people an
4 idea. Of course, with element I have to assume they're
5 gonna do day for day, but we all know that's not the
6 case. So if I remember, I mean he was, he was okay with
7 that. But, of course, he wanted me to try to get it
8 down some from the 12.

9 Q. Right. Did he ever indicate he did not want to
10 plead guilty and wanted to go to trial?

11 A. No.

12 Q. Had he wanted to go to trial, would you have
13 taken his case to trial?

14 A. Sure.

15 Q. You did receive all the discovery materials from
16 the solicitor's office?

17 A. I did.

18 Q. Okay. Were you satisfied that you received
19 everything that you should have in the case?

20 A. Yes.

21 Q. No further questions.

22 THE COURT: Ms. McMahon, your witness.

23 CROSS-EXAMINATION

24 BY MS. MCMAHAN:

25 Q. Do you ever go over to the solicitor's office and

1 just go over their file and see if you're missing
2 anything?

3 A. Um, I think I have done that before, once before.
4 Not typically, no.

5 Q. Did you see any reason to do that in this
6 situation?

7 A. No.

8 Q. What was the situation, do you remember, that you
9 did it before?

10 A. It was a trial case with Lance Sheek. I think it
11 was a domestic violence case. I was present and just
12 went over it all to make sure I had everything.

13 Q. Okay.

14 A. And I did.

15 Q. Um, and then -- and did the -- so the drug
16 weight, the first one, I don't believe it was entered,
17 was it? No, the first one with the PWID weight?

18 MS. GREGORY: No. We didn't put that in.

19 BY MS. MCMAHON:

20 Q. The drug weight that we just entered, that was
21 the one regarding trafficking; is that correct?

22 A. Yes, ma'am.

23 Q. And did you say that you sat with him and you
24 discussed it with him or you showed it to him?

25 A. I don't remember if I showed it to him. I know I

1 would have discussed it with him.

2 Q. Did he ever ask you to see it?

3 A. I don't recall.

4 Q. And did you ever discuss with him about whether
5 or not you could do a motion to suppress before a trial,
6 like before it gets set for a trial?

7 A. Yeah, I think so. That's what I was saying.
8 Going in circuit you're really unable to do that. I
9 think we did. I can't say 100 percent.

10 Q. So typically here you would only have the motion
11 to suppress heard if it was set for a trial and you were
12 actually worried about the trial?

13 A. It was the day of trial typically, yeah.

14 Q. Yeah, okay. So there was no -- it's not -- let
15 me back up and rephrase.

16 A. Okay.

17 Q. So normal procedure here would not be, okay,
18 let's have a Motion to Suppress and then wait a couple
19 of weeks and then try it, it's always at the same time.

20 A. Right.

21 Q. Did you ever have a conversation with Mr. Thomas
22 or ask him if he could do the Motion to Suppress ahead
23 of time and then maybe try to get a plea out of it if
24 that was denied?

25 A. I don't have that in my notes anywhere with this

1 plea. I know Josh and I talked extensively about this
2 case. I think I may have talked to him about it, but I
3 can't -- I can't say for certain.

4 Q. Okay.

5 A. I wouldn't want to say yes.

6 Q. But obviously nothing ever came of that --

7 A. Right.

8 Q. -- if it happened. Okay. Um, and did Mr.
9 Bartley ever seem like he didn't understand what was
10 going on or anything like that?

11 A. No, ma'am.

12 Q. And when you called to warn him that they were
13 coming to pick him up, did he seem to acknowledge that
14 he was supposed to be picked up or...

15 A. Yes, ma'am. I mean, he testified he knew there
16 was a pickup order.

17 Q. Okay. Did he ever tell you or discuss that he
18 might have had a drug addiction problem?

19 A. Sure.

20 Q. Was there any discussion as far as sentencing to
21 force him into rehab or at this point was that sort of
22 like not any issue anymore?

23 A. He knew ---

24 Q. Well, I know based on bond he was supposed to do
25 rehab; is that correct?

1 A. Yes.

2 Q. Was there any discussion with Mr. Thomas about
3 having part of the sentence be served in a rehab
4 facility versus at SCDC?

5 A. I don't think so. No, ma'am.

6 Q. Was he ordered into ATU at all?

7 A. I think -- I believe he was. I think it was
8 screened for ATU. Let me check my notes. I'm not sure.
9 I thought he was, but I didn't write it down.

10 Q. Did you guys discuss the strikes laws?

11 A. Yeah. Yeah, we would have. Sure.

12 Q. What were the issues with him and the strike
13 laws? Like how many prior strikes did he have?

14 A. I know he had that ABHAN, but I don't know. I
15 know he had -- I think he pled to a distribution of meth
16 in 2014. I can't -- was it -- yeah, that came out as
17 violent. I'm not sure if it's serious. I don't think
18 he had any because the ABHAN would have been 1995, so
19 that was before ---

20 Q. So it would have been common law?

21 A. Right. Because I don't believe he had an ---

22 Q. What did you discuss strikes in, in terms of how
23 the solicitor was gonna try him separately on all these
24 charges and wondered how that would have affected him?

25 A. How it would have affected him if they tried him,

1 is that what you're asking me?

2 Q. Yeah, separately. Yeah.

3 A. I don't believe anything else would have been a
4 strike prior to the trafficking.

5 Q. Okay. For like third offenses or anything like
6 that? Second offense? Instead of being ---

7 A. Are you asking me about offenses or strikes? I'm
8 sorry.

9 Q. I'm sorry, I'm gonna ask him about offenses now.
10 Did you discuss that?

11 A. Yeah, 100 percent. I was very confident they
12 were to pat him on a trafficking third, how he's going
13 forward with trafficking. I believe I also discussed
14 with him, I was concerned at one point they could have
15 tried to indict him on a third, just based off of his
16 record. His record doesn't reflect that 2014 place.

17 Q. Oh, okay.

18 A. But it was out there and I was concerned they
19 would have found that.

20 Q. Yeah.

21 A. And it was pled as a first, but I was concerned
22 they would have tried to say it was a second, which
23 would have fallen the trafficking to a third. He and I
24 discussed that at length together.

25 Q. Okay. Um, okay. So the meth report that was

1 entered, on items one and all that, what -- do you know
2 why they weren't subjected to confirmatory testing?

3 A. No, ma'am, I don't.

4 Q. Was there ever any followup by the solicitor or
5 any conversations about that with Mr. Thomas?

6 A. I wouldn't have necessarily wanted them to add
7 any more weight to the 33 grams so, no, ma'am.

8 Q. So it says containing a crystal substance. It
9 wasn't subjected to confirmatory testing. You probably
10 would not have wanted that to followup just in case that
11 came back something else and made the weight higher?

12 A. Right.

13 MS. MCMAHON: I have nothing further, Your Honor.

14 THE COURT: All right. Any redirect?

15 MS. GREGORY: Oh, no, sir.

16 THE COURT: All right. Thank you, ma'am, you can
17 step down. Does the state have any other witnesses?

18 MS. GREGORY: No, sir.

19 THE COURT: All right. Let's hear argument or do
20 you have any reply?

21 MS. MCMAHON: Your Honor, I have no reply. I
22 mean, our argument is that basically just, you know,
23 obviously you've heard all the testimony. You've heard
24 everything from Mr. Bartley. I believe, Ms. Able's
25 representation fell below an objective level of

1 reasonableness, just based on the weight of the drugs.
2 And we would just ask that you grant the PCR.

3 THE COURT: Thank you. Anything from the state?

4 MS. GREGORY: We believe that the application
5 should be dismissed based on the prejudice alone. He
6 clearly wasn't prejudiced by her representation, and I
7 believe her testimony indicates she represented him very
8 effectively.

9 THE COURT: Thank you. Naturally, I need to take
10 this matter under advisement to review the transcript,
11 along with other documents submitted and considering
12 arguments counsel made today. Ladies, I'll let you know
13 what my decision is probably within the next week, okay?

14 MS. MCMAHON: Thank you.

15 THE COURT: All right. So Mr. Bartley, you're
16 gonna hear from your lawyer and she'll let you know what
17 my decision is. I can't make it today because I've got
18 to read over this transcript and all this other stuff,
19 okay?

20 MR. BRANTLEY: Yes, sir.

21 THE COURT: You have a good day. All right,
22 we're gonna take a brief recess.

23 (Whereupon, hearing concluded at 11:31 a.m.)

24

25 --- THIS ENDS REQUESTED TRANSCRIPT ---

1 COURT REPORTER CERTIFICATE

2

3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the Court of
10 Common Pleas in Greenwood County, South Carolina, on the
11 17th day of October, 2018.

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

14

15

16

17

18

s/Julie A. Cendroski

19

Julie A. Cendroski

20

Circuit Court Reporter

21

Seventh Judicial Circuit

22

23

24

25

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief

Travis Cox
Greenwood County Sheriff's Office
528 Edgefield Street
Greenwood, SC 29646

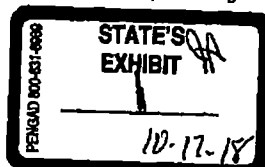
DRUG ANALYSIS
March 29, 2017
SLED LAB: L17-03150
Your Case No: 171284
Incident Date: 02/12/2017
[S] Brandon Bartley

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

- Sub # 1** On February 24, 2017, items were received in B264266 from Greg Allison of the Greenwood County Sheriff's Office.
- Item: 1.1** Plastic heat-sealed bag containing plastic bag containing crystal substance.
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 33.04 +/- 0.01 grams (509.87 +/- 0.15 grains). Confidence level for the weight is 99.7%.
- Item: 1.2** Plastic heat-sealed bag containing red ziplock bag containing crystal substance.
RESULTS:
Based on indicative testing results, the maximum attainable statutory threshold has been met for this substance. Item was not subjected to confirmatory testing.
- Item: 1.3** Plastic heat-sealed bag containing clear ziplock bag containing crystal substance.
RESULTS:
Based on indicative testing results, the maximum attainable statutory threshold has been met for this substance. Item was not subjected to confirmatory testing.



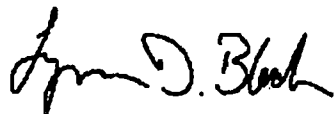
AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

March 29, 2017
L17-03150

Page 3

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Lynn D. Black
Forensic Scientist



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P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



FORM A
REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)

I, Lynn D. Black, am a Forensic Scientist employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a Forensic Scientist qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 17 years and 0 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 128 times. I have received the following training as a Forensic Scientist.

B.S. Chemistry, Kentucky Wesleyan College, Owensboro, KY, 1984
 Certificate of Medical Technology, University of Louisville, Louisville, KY, 1986
 M.S. Forensic Science, Marshall University, Huntington, WV, 1998
 Training in Forensic Drug Analysis, Georgia Bureau of Investigation, 1999
 Forensic Chemist, Georgia Bureau of Investigation, Decatur, GA, 1998-2007
 Drug Enforcement Administration, Forensic Chemist Seminar, 2000
 Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2009
 SC Law and Legal Training, South Carolina Criminal Justice Academy, 2009

Sub # 1 On February 24, 2017, items were received in B264266 from Greg Allison of the Greenwood County Sheriff's Office.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test	☒ Gas Chromatography
☒ Microscopic Exam	☒ Mass Spectroscopy
☒ Infrared Spectroscopy	☐ Physical Test
☒ Visual Examination	☒ Published Literature

See Drug Analysis Report L17-03150 for Results.

Forensic Scientist

Lynn D. Black

Lynn D. Black

Date: March 29, 2017



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Issuing Authority: Quality Manager



SLED Forensics Form # DDA 020, November 2013
 Page 1 of 1

Date: 6/16/2017 Solicitor: Josh Thomas

GUILTY PLEA ACKNOWLEDGEMENT OF RIGHTS

The State v. Brandon Bartley

The Defendant avers that the Defendant desires to plead guilty to:

Trafficking 28-102 (neg 7), consecutive PWD (neg 3)

The Defendant further certifies to the Court that their signature acknowledges their desire to plead guilty, their understanding of the statement and rights listed below, and their desire to relinquish those rights upon pleading guilty:

- I understand my Constitutional right to a jury trial, at which the state would have to prove my guilt beyond a reasonable doubt.
- I understand my right to empanel a jury of twelve impartial jurors and that all of those twelve jurors must unanimously agree on my guilt before I am convicted.
- I understand my right to use the Court's subpoena power to call witnesses to court and further understand my right to confront, cross-examine, and question all witnesses testifying against me.
- I understand my right to take the witness stand and testify at trial. Conversely, I understand my right to not testify and my right to remain silent. I also understand that a jury cannot take it as evidence or use it against me if I choose not to testify.

I understand that if I am on probation or parole, this plea could result in a violation or revocation.

- I understand, if applicable to my charge(s), the severity of statutory enhancement provisions.
- I understand that I have a right to appeal my sentence within 10 days of my guilty plea.

The signature below certifies my desire to plead guilty, my acknowledgement and waiver of my rights, and my acknowledgement that my attorney did, in fact, instruct and explain said rights.

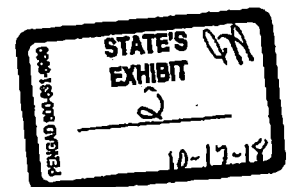
BT Bartley

(Defendant's Signature)

I certify that the above rights were explained fully to Defendant and that in my opinion the Defendant understands the possible punishment for the charge(s) and his/her Constitutional rights that will be waived if the plea is accepted.

[Signature]

(Attorney's Signature)



RSG
SPM
a/c info
PU
Time
renewed

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
 FOR THE EIGHTH JUDICIAL CIRCUIT

2017-CP-24-1407

Brandon Bartley, #372964,

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

Filed in 8th and Cr Greenwood, SC
 2018 JAN 22 AM 10:22

This matter comes before the Court by way of an Application for post-conviction relief filed on November 30, 2017, by Brandon Bartley ("Applicant") and amended on October 12, 2018. The State ("Respondent") filed a Return on April 11, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 17, 2018, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Plea counsel, Elizabeth Able of the Eighth Circuit Public Defender's Office, ("Counsel") also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenwood County Clerk of Court's order of commitment. During the April 2017 term, the Greenwood County Grand Jury indicated Applicant for trafficking in methamphetamine (2017-GS-24-0661), receiving stolen goods (\$2,000 - \$10,000) (2017-GS-24-902), possession with intent to distribute (PWID) methamphetamine

(2017-GS-24-903), simple possession of marijuana (2017-GS-24-659), false information to law enforcement (2017-GS-24-660), and carrying a pistol unlawfully (2017-GS-24-664). Counsel represented Applicant. Assistant Solicitor Josh Thomas of the Eighth Circuit Solicitor's Office prosecuted the case.

On June 16, 2017, Applicant appeared with Counsel before the Honorable Frank R. Addy, Jr. and pled guilty to the lesser included offenses of trafficking methamphetamine (28-100 grams, first offense) and PWID methamphetamine (first offense); Applicant pled guilty to the remaining charges as indicted. Pursuant to a negotiated sentence, Judge Addy sentenced Applicant to seven years for the trafficking methamphetamine charge with credit for 156 days; a consecutive three years imprisonment for the PWID methamphetamine charge with 273 days of credit; and time served on the remaining charges. Applicant was also ordered to pay restitution in the amount of \$4,942.69 if he makes parole, however, if he does not make parole, the restitution order will then become a civil judgment. Applicant did not appeal his guilty plea.

II. SUMMARY OF FACTS

On January 12, 2017, Greenwood County units were traveling past the Hot Spot on Highway 25 South in Greenwood County. (GP Tr. 9.) Officer noticed two vehicles parked side by side in a dark area behind the Hot Spot. (GP Tr. 9.) Based on their training and experience, officers believed this activity was consistent with an illegal drug transaction and pulled into the parking lot. (GP Tr. 9.) At that time, one of the vehicles sped past them and officers initiated a traffic stop. (GP Tr. 9.) The driver of the vehicle told officers one of the back passengers had illegal narcotics on him. (GP Tr. 9.) Officers had Applicant get out of the car and Applicant provided officers with a fake name and his actual birth date. (GP Tr. 9.) Officers patted him down for weapons and found two handguns in his pockets. (GP Tr. 9.) Applicant did not have a permit



for either weapon. (GP Tr. 9.) Applicant also had a bag of methamphetamine, which weighed 33.01 grams. (GP Tr. 9.)

On February 23, 2016, agents executed a search warrant at Applicant's house on Matthew Heights Road. (GP Tr. 9-10.) Applicant was present at his home with several other subjects. (GP Tr. 10.) During a search of the shed behind Applicant's residence, agents recovered 5.27 grams of methamphetamine and digital scales. (GP Tr. 10.) Agents also recovered a ledger book in Applicant's bedroom. Applicant was charged with PWID methamphetamine. (GP Tr. 10.)

On May 4, 2016, the drug unit executed a search warrant on Applicant's residence. (GP Tr. 10.) Agents located several "skins" from a Kubota utility vehicle, however, no utility vehicle was located. (GP Tr. 10.) Neighbors told agents they had seen Applicant with a Kubota utility vehicle within the last three days. (GP Tr. 10.) Agents walked into a clearing behind the neighborhood and located the utility vehicle bottomed out on a stump. (GP Tr. 10.) Damage to the utility vehicle was estimated at around \$4,000.00. (GP Tr. 10.)

III. ALLEGATIONS RAISED

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

1. Ineffective assistance of counsel
 - a. "Failed to do a true and factual investigation of the charges indicted"
 - b. "Failed to ascertain and challenge elements of the traffic stop (in which leads to arrest in conviction) through evidentiary hearings"
 - c. "Attorney waived preliminary hearing without the permission of the defendant, though defendant informed the court of his written consent to have such hearing by signed documentation, which was timely filed and presented"
2. Involuntary Guilty Plea
 - a. "Attorney failed to inform defendant of the consequences of his plea and allowed defendant to enter a plea made through fear, ignorance, coercion, and not in the best interest of his rights that have been afforded to him by the U.S. Constitution"
3. Due Process Violations

- a. "Counsel prejudiced defendant's right to challenge State's evidence by falling below a competence and legal skill through suppression of the drugs due to illegal traffic stop. Counsel waived Defendant's Constitutional right to a preliminary hearing. Counsel action forced and coerced Defendant to accept a plea of guilty and an unreasonable sentence from the court"
- 4. "Brady Violations"
 - a. "Counsel failed to provide such documents, evidence in which the State provided. Such documents would have provided a competent understanding of tangible proof to move forward in trial"

On October 12, 2018, Applicant filed an amended application to include the following allegation:

- 1. Ineffective Assistance of Counsel:
 - a. Counsel failed to adequately raise the issue regarding the weight of the drugs that were only field tested and no SLED report was issued as to the actual weight of the drugs.

An evidentiary hearing was held on October 17, 2018, Applicant informed this Court he intended to proceed on the following grounds for relief:

- 1. Counsel failed to do a true and factual investigation of Applicant's charges;
- 2. Counsel failed to challenge the elements of the traffic stop through an evidentiary hearing;
- 3. Counsel waived Applicant's preliminary hearing without his permission;
- 4. Brady violations;
- 5. Counsel failed to adequately raise the issue regarding the weight of the drugs that were only field tested and no SLED report was issued as to the actual weight of the drugs;
- 6. Involuntary guilty plea.

IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he met with Counsel two or three times while he was in jail. Applicant testified he asked Counsel to review the video of the traffic stop because he believed the officers were being dishonest regarding the reason for the stop. Applicant testified at the time of the traffic stop he had an active pick-up order because he left a halfway house. Applicant testified Counsel discussed the traffic

stop with him and she thought it was a bad stop. However, Applicant testified Counsel told him no judge would throw it out because he was caught with stuff on him. Applicant testified he asked Counsel for a copy of the South Carolina Law Enforcement Division (SLED) report, which he never received. Applicant testified the amount of drugs on him would have been reduced because of purity levels. Applicant believes he needed to see the SLED report in order to make a good decision on whether to enter a guilty plea. Applicant testified he believes he could have received a better plea deal had the weight of the drugs been checked. Applicant testified he was told he could be found guilty of PWID based on weight and he could be looking at a mandatory twenty-five years based on his prior drug charges. Applicant testified life without the possibility of parole may have come up prior to the guilty plea. Applicant testified that he thinks he asked for a preliminary hearing, but he never received one.

Applicant testified Counsel was very sweet, but he was a little unhappy with her representation. Applicant testified he asked her to review footage from Hot Spot and the traffic stop, but she never did. Applicant testified the two officers who pulled him out of the car that night no longer work for the sheriff's office.

On cross-examination, Applicant testified he did not recall waiving his constitutional rights, but he did recall telling Judge Addy that he was satisfied with Counsel. Applicant testified he recalled agreeing with the facts of the case presented by the State. Applicant testified he recalled telling Judge Addy he was pleading guilty because he was guilty and did not want to go to trial. Applicant testified he avoided a twenty-five year sentence by pleading guilty. Applicant testified on re-direct that not enough was said during the plea hearing about the traffic stop to highlight the misdeeds of the officers. Applicant testified he believes the outcome could have been different if more information was provided to the court about the traffic stop.



Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified she has been with the Eighth Circuit Public Defender's Office for three years and was appointed to represent Applicant. Counsel testified Applicant did not have a preliminary hearing because it is typical to waive those hearings and she sent a letter to Applicant regarding the waiver. Counsel testified the preliminary hearing would not have made a difference because the search warrant was valid and if the trafficking charge was dismissed, the State would just directly indict Applicant. Counsel testified Applicant was out on bond for a previous case and was noticed for a bond revocation hearing. During that hearing, Counsel testified Applicant was allowed to attend an in-patient treatment facility, but if he failed to successfully complete that program a pick-up order would be issued. Applicant was kicked out of the in-patient facility on January 1, 2017. Counsel testified she advised Applicant to turn himself in to law enforcement since he was in violation of his bond. Counsel testified shortly thereafter Applicant was arrested on these charges. Counsel testified she met with Applicant in jail on June 1, 2017, and discussed two SLED reports¹ and the weight of the drugs. Counsel also testified she saw the video of the traffic stop and offered Applicant the opportunity to see it as well. Counsel testified she did not think it was a bad stop but believed there was a standing issue since it was not Applicant's vehicle. Counsel testified she discussed her concerns with a suppression hearing Applicant. Counsel testified she believes if they had moved forward with a suppression hearing and lost, the offer from the State would have been off the table. Counsel testified the State had strong evidence against Applicant and if he had proceeded to trial he would have been convicted. Counsel testified she believes it was in Applicant's best interest to plead guilty.

¹ Respondent entered SLED reports as Exhibit 1 during the hearing.



Counsel testified she tried to get Applicant's charges reduced to non-violent and asked for five years, even though she believed ten years would be reasonable in Applicant's case. Counsel testified the initial offer from the State was in the ten to fifteen year range, which she communicated to Applicant. Counsel testified she received several other offers from the State, all of which were communicated to Applicant. Counsel testified she explained Applicant's constitutional rights to him and went over a plea wavier form², which she signed and she observed Applicant sign. Counsel testified she would have taken Applicant's case to trial had he wanted to proceed to trial.

On cross-examination, Counsel testified she did discuss the SLED reports with Applicant, but does not recall if she showed the reports to Applicant. Counsel testified she discussed the possibility of a suppression hearing with Applicant and that those are typically done the day of trial. Counsel testified she talked to Assistant Solicitor Josh Thomas extensively about the case. Counsel testified Applicant knew there was a pick-up order issued for him. Counsel testified she discussed enhancements with Applicant and was concerned about Applicant going to trial on a trafficking third offense charge. Counsel testified Applicant was able to plead to trafficking first offense. Counsel testified she did not request any confirmatory testing on the drugs recovered from Applicant because she did not want to risk adding weight to the drugs.

V. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the

² Respondent admitted plea waiver form as Exhibit 2 during the hearing.

trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the

attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Moreover, this Court notes the record reflects the knowing and voluntary nature of Applicant's guilty plea. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

Counsel failed to investigate Applicant's charges and challenge the traffic stop

Applicant alleges Counsel was ineffective for failing to view the traffic stop video and obtain SLED reports on the drug analysis conducted on the drugs found on Applicant. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

This Court finds Counsel's performance did not fall below the standard of professional norms. This Court finds credible Counsel's testimony that she reviewed the video of the traffic

stop and the SLED reports analyzing the drugs found on Applicant. This Court also finds credible Counsel's testimony that she discussed the SLED reports with Applicant and the possibility of a suppression motion. This Court also finds credible Counsel's testimony that a suppression motion was unlikely to be successful and it was not in Applicant's best interest to pursue a suppression motion as he faced significantly higher sentence if convicted at trial. This Court also finds credible Counsel's testimony that the search warrants executed on Applicant's residence were valid. Here, Applicant has failed to show what additional investigation Counsel should have undertaken in this case and how that would have affected his decision to accept the plea offer from the State. Consequently, this allegation must be denied and dismissed with prejudice.

Counsel failed to request a preliminary hearing

Applicant asserts counsel was ineffective for failing to request a preliminary hearing on his behalf. The purpose of a preliminary hearing is "solely to determine whether sufficient evidence exists to warrant the defendant's detention and trial." Rule 2(a), SCRCrimP. However, a defendant has no constitutional right to a preliminary hearing. See State v. Ballington, 346 S.C. 262, 269, 551 S.E.2d 280, 283 (Ct. App. 2001). ("[A] defendant has no constitutional right to a preliminary hearing. Thus, although Applicant may have timely requested a preliminary hearing, his right to have the hearing ended with the grand jury's indictment. Furthermore, the circuit court judge could not restore the right to a preliminary hearing by ordering a post-indictment preliminary hearing.") (citations omitted) (overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009)).

At the evidentiary hearing, Counsel testified it is typical practice within the Eight Circuit Public Defender's Office to waive preliminary hearings. Counsel testified she sent a letter to Applicant indicating the preliminary hearing for his charges had been waived. Counsel testified

discovery in this case was not an issue and a preliminary hearing in Applicant's case would not have made a difference in the outcome in his case.

This Court finds Counsel was not deficient in failing to request a preliminary hearing as Applicant was probably indicted by the Greenwood County Grand Jury based on sufficient probable cause. Applicant has failed to establish that he was not properly indicted by the grand jury, that there was not sufficient probable cause for indictments on his charges, or that his charges would have been dismissed had a preliminary hearing been held. Therefore, this Court finds Applicant has failed to meet his requisite burden and this allegation is denied and dismissed with prejudice.

Brady³ Violations

Applicant alleges Counsel was ineffective for failing to provide him with documents, SLID reports, and evidence the State provided to Counsel. Applicant alleges these documents would have allowed him to understand the case the State had against him in order to move forward with trial. Applicant testified he met with Counsel two or three times prior to his plea. During one of the meetings, Applicant testified Counsel went over discovery for Applicant's PWID methamphetamine charge, but did not discuss his trafficking charge. Counsel testified she received all discovery from the State and reviewed it with Applicant. Counsel also testified she watched the video of the traffic stop and offered Applicant the opportunity to view the video himself. Counsel testified the State had strong evidence against Applicant and, because of his criminal history, he was looking at a significant amount of jail time. Counsel testified she discussed a suppression hearing with Applicant, but felt it would not be successful and once that motion was denied any plea offer would be off the table.

³ Brady v. Maryland, 373 U.S. 83 (1963).

This Court finds credible Counsel's testimony that she received discovery from the State and reviewed discovery with Applicant. This Court finds Applicant has failed to establish any deficiency of Counsel or any prejudice. Therefore, this allegation must be denied and dismissed with prejudice.

SLED Reports and Analysis

Applicant alleges Counsel failed to raise the issue regarding the weight of the drugs and obtain SLED reports showing the actual weight of the drugs. Applicant testified he requested the SLED reports from Counsel, but never received the reports. Applicant testified if the drugs had been tested the amount attributed to him would have been reduced based on the purity levels of the drugs. Counsel testified she did obtain two SLED reports showing the drug weights and analysis for all of the substances in Applicant's case. Counsel testified she showed Applicant the SLED reports during one of their meetings. Counsel testified the SLED analysis showed the net weight of the methamphetamine recovered from Applicant during the traffic stop was 33.04 grams. Counsel testified the SLED analysis report showed 5.27 grams of methamphetamine was recovered when officers executed a search warrant at Applicant's residence. Counsel testified both SLED reports provided analysis that substantiated all of Applicant's drug charges.

This Court finds credible Counsel's testimony that she obtained the SLED reports and reviewed them with Applicant. This Court also finds credible Counsel's testimony that the results from the SLED analysis supported Applicant's charges. This Court finds Applicant has failed to establish deficiency of Counsel or any prejudice for this allegation. Therefore, this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

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

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntarily made. The records before this Court, and particularly the transcript of Applicant's plea proceeding, show that Applicant engaged in a thorough colloquy with the court before electing to forgo his constitutional rights and knowingly, voluntarily, and intelligently enter a plea of guilty. This Court finds Applicant knew the charges

he was facing and understood the plea he was entering to the lesser-included offense, including the significant benefit of avoiding a potential twenty-five year sentence on the trafficking methamphetamine charge alone based on his negotiated plea. This Court also finds Applicant was properly and fully advised of his constitutional rights and knowingly and voluntarily waived those rights to accept a favorable negotiated plea based on the advice of competent Counsel.

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

CONCLUSION

Based on the foregoing, the 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.

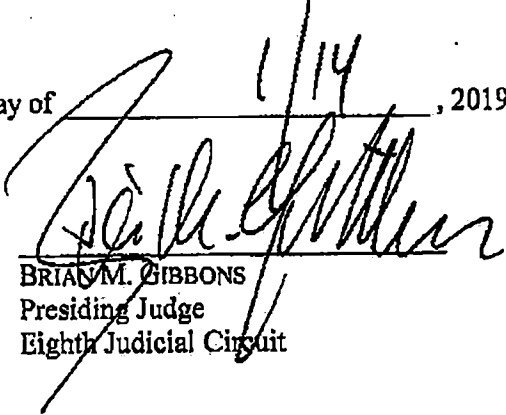
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if 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.

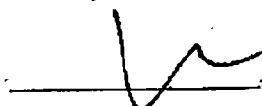


IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this _____ day of _____, 2019.


BRIAN M. GIBBONS
Presiding Judge
Eighth Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 31 2019

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-24-01407

Brandon D. Bartley, #372964, ... Petitioner,

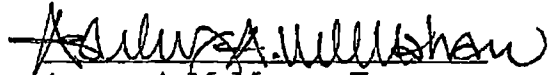
v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Brandon D. Bartley, appeals the order of the Honorable Brian M. Gibbons, dated January 14, 2019, and filed January 22, 2019.

Jan. 20th, 2019


ASHLEY A. McMAHAN, ESQUIRE
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SC Bar No. 71676
ATTORNEY FOR APPLICANT

Opposing Counsel:
Janell H. Gregory, Asst, Attorney General
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Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 31 2019

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-24-01407

Brandon D. Bartley, #372964, ... Petitioner,

v.

State of South Carolina, ... Respondent.

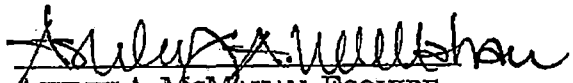
PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Janell H. Gregory, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

Jan 29th, 2019


ASHLEY A. McMAHAN, ESQUIRE
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803-219-1110

WITNESSES

Steven B. Owings
Greenwood County Sheriff

WARRANT NUMBER

2017A2410200052

True Bill

Crystal D.

Foreman of the Grand Jury

Date: 4/2/17

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

April Term, 2017

Indictment # 17GS24- 0661

THE STATE

vs.

Brandon David Bartley

INDICTMENT FOR

TRAFFICKING IN METHAMPHETAMINE
§ 44-53-0375

CDR: 0389

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF GREENWOOD****TRAFFICKING IN METHAMPHETAMINE
§ 44-53-0375**

At a Court of General Sessions, convened on the 7th day of April, 2017, the Grand Jurors of Greenwood County present upon their oath:

That Brandon David Bartley, on or about January 12, 2017, in Greenwood County, did willfully, unlawfully, and knowingly traffic in methamphetamine by being in actual or constructive possession, or knowingly attempting to become in actual or constructive possession of 28 grams or more, but less than 100 grams, of methamphetamine, in violation of Section 44-53-375(C)(2)(b) of the South Carolina Code of Laws, 1976, as amended.

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


Assistant Solicitor