

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

MICHAEL F. WIGGLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000166

APPENDIX

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1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } IN THE COURT OF GENERAL SESSIONS
3
4 The State, }
5 -vs- } TRANSCRIPT OF RECORD
6 Michael Fitzgerald Wiggleton, } 2014-GS-42-248;248A;249
7 Defendant. } 2013-GS-42-5669
8 } October 18, 2016
9 } Spartanburg, SC

10 B E F O R E:
11
12 HONORABLE J. DERHAM COLE, JUDGE
13

14 A P P E A R A N C E S:
15
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No sworn testimony.

No exhibits entered into evidence.

1 (Proceedings October 28, 2016)

2 MR. BULSA: Your Honor, this is in the matter brought
3 by Mr. McCardy, matter of State vs. Michael Wiggleton.

4 THE COURT: All right. Mr. McCardy or Mr. White.

5 MR. WHITE: Well, just to give the Court a little bit
6 of the factual background, I haven't been in a lot of these
7 particular situations, but what's happened is Mr. Wiggleton
8 is charged with trafficking in cocaine ten or more grams
9 second offense.

10 He's also charged with trafficking in cocaine
11 400 grams or more.

12 And he's also charged with weapons during a violent
13 crime and possession with intent of cocaine within a half
14 mile of a school.

15 And then he's looking at a probation revocation up to
16 five years based on a sentence he received from Judge Hayes
17 on a drug related charge.

18 He is scheduled for trial next week -- the week of
19 October the 31st. Excuse me. I thought that was next
20 week, Judge.

21 He's charged. He's up for trial on October the 31st.
22 We've had a number of fine solicitors that have been
23 involved in the case. Now we have Deputy Bulsa who's
24 involved and will be trying the case with, I guess, himself
25 or other people in the solicitor's office.

1 We've been made an offer in the case, but prior to
2 this he's been put on notice of the fact under Section
3 17-25-45 that if he is convicted he's looking at life
4 without parole in terms of being struck out.

5 So where we wouldn't have any misunderstanding or
6 misgivings in regards to it, we wanted to put on the record
7 today the following offer in the case and that he is under
8 a plea offer, that he must consummate the plea by the end
9 of court this week. And then there would be a week in the
10 interim, and then his case would be up for trial on October
11 the 31st.

12 So this is more of a point of advisement. What's gone
13 on -- and you're kind to hear us this morning -- is he was
14 originally put on an advisement by Solicitor Sam Bass on
15 September the 10th of 2015. And what I didn't want Michael
16 to think is, you know, these things are just put up there
17 and then they leave and then they'll put them up here
18 again, and they'll leave.

19 What I want him to understand, that he he has been put
20 on notice under that code section that if he's convicted of
21 any of the drug offenses here that he would be subject to a
22 sentence that would be life without parole and that the
23 plea offer expires if he doesn't consummate the plea by
24 Friday of this week or whenever the Court concludes this
25 term, and it will be withdrawn never to come up again,

1 since it's been offered and the time has expired. But
2 Solicitor Bulsa has been gracious enough not to hold us to
3 the expiration dates that occurred before, and I appreciate
4 his benevolence in doing that. But Friday when Court is
5 over, the time is over, and I want him to know that. And I
6 wanted to put it on the record today where we would haven't
7 any misgivings.

8 The other thing, Your Honor, he says he's satisfied
9 with our services, he doesn't have any complaints, he's
10 happy with us. We'll be ready to go to trial in his case
11 the week of October the 31st.

12 He's been made an offer in the case. I don't know if
13 the Court wants to know what that offer is or not. I think
14 the case is scheduled before --

15 THE COURT: Mr. Bulsa will tell me about it.

16 MR. WHITE: Okay. But so that's what we're here for
17 this morning, a notice issue on the record. And because
18 it's gone and expired and gone, but they've been benevolent
19 enough to offer it again, I just wanted to let him know
20 that there wasn't going to be any more negotiations. As I
21 understood it from Mr. Bulsa, this was the last and final
22 offer and he had to fish or cut bait.

23 MR. MCCARDY: And if I could just have one other
24 thing, Judge. By way of previous order -- and I'll hand
25 this up to the Court -- I think Mr. Bulsa has the -- this

1 is the order that referenced -- you signed in January to
2 retain jurisdiction on the case. So you have jurisdiction
3 over the case both for today and then on October 31st, Your
4 Honor.

5 THE COURT: Okay. Mr. Bulsa. Have you got anything
6 you want to --

7 MR. BULSA: No, sir. They've correctly stated it.

8 My deadline is this Friday. This has been going on
9 for three years. It goes back to June of 2013, my multiple
10 plea offers. Multiple solicitors that have handled this
11 case. We're ready to get it over with.

12 THE COURT: All right. He's charged with trafficking,
13 two separate cases?

14 MR. BULSA: Yes, sir.

15 THE COURT: He's previously been convicted of
16 trafficking in what?

17 MR. MCCARDY: A half-mile charge, Your Honor.

18 THE COURT: Is everyone in agreement that he is
19 subject to a life sentence without parole if convicted of
20 trafficking?

21 MR. BULSA: Yes, sir. He has two prior strikes, a
22 trafficking in cocaine conviction in 1990 and a 2012
23 conviction for possession with intent to distribute cocaine
24 within one half mile of a school.

25 Your Honor, during that 2012 conviction it was put on

7
1 the record during the sentencing hearing that should he be
2 charged and convicted of another violent offense he would
3 be looking -- or excuse me -- another serious or most
4 serious offense he would be looking at a
5 life-without-parole sentence. So he's been given much more
6 benefit than he probably deserves.

7 THE COURT: So everybody's in agreement that his prior
8 history exposes him to a life-without-parole sentence if
9 convicted of trafficking?

10 MR. WHITE: It appears to us. And I think he doesn't
11 disagree. Do you?

12 THE DEFENDANT: I don't disagree.

13 MR. WHITE: He doesn't disagree.

14 THE COURT: All right. And the state has made --
15 what's the offer the state has made to him?

16 MR. BULSA: Your Honor, the offer is a 12-year active
17 Department of Corrections sentence with two and a half
18 years home detention to follow.

19 MR. WHITE: With the probation running concurrent.

20 THE COURT: Okay. And the deadline for his acceptance
21 or rejection of that offer is when?

22 MR. BULSA: The end of the court week today -- this
23 week.

24 THE COURT: Ending this week?

25 MR. BULSA: Yes, sir.

1 THE COURT: All right. Mr. Wiggleton, you're here
2 with your lawyers, Mr. White and Mr. McCurdy.

3 The purpose of your being here is for us to find out
4 what you want to do about your case, and so you understand
5 what your situation is.

6 THE DEFENDANT: Yes, sir, yes, sir.

7 THE COURT: He has been served with a notice of
8 seeking of life without parole?

9 MR. BULSA: Yes, sir.

10 MR. WHITE: Yes, sir.

11 THE COURT: All right. You've been previously
12 convicted of trafficking and possession with intent to
13 distribute within half mile of a school.

14 You're now charged with trafficking again. The law
15 provides that upon a conviction where the state seeks a
16 life without parole sentence pursuant to law if you are
17 convicted of trafficking -- is this cocaine?

18 MR. BULSA: Yes, sir.

19 MR. WHITE: Yes, sir.

20 THE COURT: If you are convicted in this case you have
21 pending now, if you're convicted of trafficking in cocaine
22 you will be required to receive a life sentence.

23 In other words, the Court won't have any choice about
24 that. The Court will have to impose a life sentence.

25 The state makes that determination. The state is the

1 one that invokes that law, but once they do that -- it's in
2 their discretion -- but once they do that if you are
3 convicted, then the Court has to sentence you to life
4 without parole. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, Mr. Bulsa says that he has made an
7 offer to you through your lawyers of, if you plead guilty
8 to, a sentence of 14 and a half years. Two and a half of
9 those years would be on home detention. In other words,
10 you'd do 12 years in the Department of Corrections and two
11 and a half years after that on home detention.

12 And he says that's -- he's willing to recommend that
13 to the Court. But if you want him to make that
14 recommendation to the Court you've got to accept that offer
15 by the end of this week.

16 If you don't accept it by the end of this week, then
17 it's withdrawn, and there won't be any such offer. And if
18 that happens, once that offer is withdrawn you go to trial
19 on the week of October the 31st. You can go to trial or
20 you can still enter a plea of guilty if you want to, but
21 the sentence is going to be the same if you're convicted,
22 either by a jury or by entering a guilty plea. The
23 sentence is going to be life without parole. Do you
24 understand it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. So do you want to accept the
2 prosecutor's offer or do you want to go forward with the
3 trial on October the 31st?

4 THE DEFENDANT: I'll let them know by the end of the
5 week.

6 THE COURT: Okay.

7 MR. WHITE: Well, now, see, that's why I wanted to be
8 here, not to be here for that, but to be here and be sure
9 he understood this.

10 THE DEFENDANT: I understand.

11 MR. WHITE: Friday at 1:00 o'clock he can't call and
12 say I accept the offer. The offer says that he's got to
13 come before the Court this week and plead guilty and be
14 sentenced.

15 THE COURT: It's got to be a guilty plea this week?

16 MR. BULSA: Yes, sir.

17 THE COURT: Okay. All right. Well, okay. I
18 misunderstood it then.

19 MR. WHITE: I'm sorry.

20 THE COURT: He's made an offer to you, and that's the
21 offer, 14 and a half years, 12 in the Department of
22 Corrections, two and a half on home detention, probation
23 revocation run concurrent.

24 You not only have to accept that offer. The case has
25 to be disposed of --

1 THE DEFENDANT: Okay.

2 THE COURT: -- this week. And what I'm suggesting to
3 you is that if you want to accept that offer you better do
4 that by Thursday, because if you wait until the last minute
5 on Friday --

6 THE DEFENDANT: Yes, sir.

7 THE COURT: -- I might get up and leave. I might have
8 an emergency. I might decide not to come back from lunch.
9 I might not wake up Friday morning. I might sleep in. I
10 might be sick. And if that happens you wouldn't get your
11 case disposed of.

12 THE DEFENDANT: I understand, sir.

13 THE COURT: And that means you'd be here on
14 October the 31st looking at life without parole.

15 Now, I don't know if you have defenses to your charges
16 or not. I'm sure you've talked to your lawyers about that.
17 And that's one thing you have to consider, you know, when
18 you make a decision.

19 But the fact of the matter is, you know, nobody can
20 force you into pleading guilty. Nobody can require that
21 you accept that offer. It's totally your decision. It's
22 your choice. But you just need to understand that while it
23 is your choice, the choices that you have is to accept the
24 offer, waive your constitutional rights and any defective
25 search or seizure if there was any. I don't know whether

1 there was or wasn't. But you have to accept the offer and
2 plead guilty giving up your rights to have a trial, or you
3 can say, no, I want to go forward I want -- I want to put
4 forth my defenses and I want to have a jury decide the
5 case.

6 But bottom line is if you plead guilty you know what
7 the outcome is likely to be. If you plead not guilty and
8 have a jury trial and a jury finds you guilty, you know
9 what the outcome is going to be. It's life without parole.

10 THE DEFENDANT: Yes, sir. I understand.

11 THE COURT: Okay.

12 MR. WHITE: Judge, the other thing I'd say is this.
13 They also wouldn't object to him getting 808 days against
14 the original 12-year sentence credit. He's been
15 incarcerated for 808 days, so.

16 THE COURT: On these charges?

17 MR. WHITE: Yes, sir.

18 THE COURT: Well, the law --

19 MR. WHITE: Okay. But it wouldn't -- it wouldn't be
20 off the home detention. They've agreed if the Court would
21 go along with that on a negotiated plea that he'd get
22 credit.

23 THE COURT: Oh, I understand.

24 MR. WHITE: The other thing he said was this, and this
25 is why I wanted -- and I appreciate the time this morning.

1 He says, "I like Judge Cole." I said, "I like Judge Cole
2 too." He says, "Well, I think Judge Cole is fair." And I
3 said, "I think Judge Cole is fair too." But I said, "You
4 know, Michael, if we go before your mama, you know -- you
5 know she's going to give you a life sentence. So Judge
6 Cole's not going to have any discretion if you decide that
7 you want to go to trial." And that's why we are here
8 today.

9 THE COURT: Well, and I think I expressed that
10 earlier, is that if you go to trial and you're convicted, I
11 don't have a choice. No judge would have a choice.

12 The law would require a life sentence. The life
13 sentence is not required if you plead guilty because the
14 state is agreeing not to seek it. But once they serve you
15 with a life notice, if you go to trial and are convicted,
16 the Court won't have any choice about it. You'll have to
17 be sentenced to life.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: But that's only if you're convicted.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. So, anyway, that's a decision
22 you've got to make, but I suggest you make it by Wednesday.
23 I mean, you can make it whenever you want to, but I'm just
24 saying if it doesn't get done this week, if the case
25 doesn't get disposed of this week, the offer is off the

1 table. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, you know, you and your lawyers and
4 the solicitor won't have any control over what my schedule
5 is. Do you know what I'm saying?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If you say, well, I'm going to wait until
8 Friday to decide it, I might not be here, and then it won't
9 get disposed of.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Think it over and talk to your
12 lawyers about it.

13 MR. WHITE: Thank you so much.

14 MR. BULSA: Thank you, Your Honor.

15 END OF PROCEEDINGS OCTOBER 18, 2016

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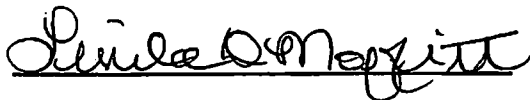
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 18th day of October 2016.

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

October 28, 2016

A handwritten signature in cursive script, reading "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } IN THE COURT OF GENERAL SESSIONS

3 The State, }
4 -vs- } TRANSCRIPT OF RECORD
5 Michael Fitzgerald Wiggleson, } 2014-GS-42-249
6 } 2013-GS-42-5669
7 } October 21, 2016
8 } Spartanburg, SC
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

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16 Attorney for the State

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guilty plea -- 3.

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No sworn testimony.

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No exhibits entered into evidence.

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1 (Proceedings October 21, 2016)

2 MR. BULSA: May it please the Court, Your Honor. The
3 State vs. Michael F. Wiggleton, 2013-5669, possession with
4 intent to distribute a controlled substance within a half
5 mile of a school; 2014-249, trafficking in cocaine between
6 10 and 28 grams second offense.

7 These are negotiated sentences. He's represented by
8 Ryan McCardy and -- of the John White office.

9 THE COURT: All right. You're Michael Wiggleton.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You waited until the last minute, didn't
12 you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How come?

15 THE DEFENDANT: We were still discussing the case.

16 THE COURT: You were talking about it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: But y'all have made a decision now?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: What do you want to do?

21 THE DEFENDANT: Plead guilty.

22 THE COURT: All right. I've got two indictments.

23 Indictment 2014-249 charges you with trafficking in cocaine
24 second offense which carries up to 25 years in jail.

25 Excuse me. Carries up to 30 years in jail.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: But they're -- you and your lawyers and
3 the solicitor have worked out an agreement.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Whereby, you would be sentenced to only 12
6 years in jail.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is that true? And so that's what you want
9 me to do?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: There's also Indictment 2013-5669, which
12 is possession with intent to contribute -- possession with
13 intent to distribute cocaine within half mile of a school,
14 which would carry up to ten years in jail, in addition to
15 the trafficking. And y'all have apparently negotiated that
16 sentence also, and that's a sentence of 30 months home
17 detention, which would be consecutive to the 12 years in
18 the Department of Corrections.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is that true?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And that's what you want me to do?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have your lawyers -- Mr. McCardy is here
25 with you today, but I know you've talked to Mr. White and

1 maybe somebody else. Was anybody else involved?

2 MR. MCCARDY: Your Honor, over the course of our
3 representation I'm the --

4 THE COURT: Well, I mean, who was here last Monday?

5 MR. MCCARDY: Tuesday. John and I were here with
6 Mr. Wiggleton. We had advised him of the plea.

7 THE COURT: Right. Okay. So have you had plenty of
8 time to talk to your lawyers about your case and your
9 decision --

10 THE DEFENDANT: Yes, sir.

11 THE WITNESS: -- to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: They've gone over the indictments with
14 you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you know what you're charged with?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you know what kind of sentence you
19 could receive if you were convicted?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And they served a notice of seeking a life
22 sentence on you, did they not?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So if you were convicted you'd know you
25 could receive a life sentence.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: But you prefer to plead guilty, then
3 allowing -- withdrawing that request and agreeing to the 12
4 years --

5 THE DEFENDANT: Yes, sir.

6 THE WITNESS: -- and 30 months home detention
7 consecutive?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you've had plenty of time to talk to
10 your lawyers about that.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And plenty of time to think about it
13 yourself.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did they explain to you about your rights
16 to remain silent, to confront and to examine the witnesses
17 in court and to have a jury decide if you're guilty or not?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand those?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you wish to give them up in order to
22 plead guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did you tell them everything you know
25 about the facts that relate to the allegations?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did y'all determine whether or not you had
3 a defense to either charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you?

6 THE DEFENDANT: No, sir.

7 THE COURT: Has anybody forced you into pleading
8 guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Anybody threatened you in any way that
11 caused you to make that decision?

12 THE DEFENDANT: No, sir.

13 THE COURT: Anybody pressured you in any fashion?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you pleading guilty freely and
16 voluntarily?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And are you guilty of trafficking and
19 possession with intent to distribute just like it's
20 described in each of these indictments?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you're 49 years old?

23 THE DEFENDANT: Yes, sir.

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

25 THE DEFENDANT: Twelfth grade.

1 THE COURT: Are you married?

2 THE DEFENDANT: Divorced.

3 THE COURT: Children?

4 THE DEFENDANT: Two.

5 THE COURT: What kind of work have you done?

6 THE DEFENDANT: I worked at B.M.W. some. I worked at
7 old Hoechst Fibers. I worked at Kohler. Several different
8 plant jobs.

9 THE COURT: How long have you been in jail?

10 THE DEFENDANT: 811 days.

11 THE COURT: On these charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And are you on probation now?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: For what?

16 THE DEFENDANT: Drugs.

17 THE COURT: Tell me about his probation case.

18 PROBATION AGENT: He's currently under supervision for
19 distribution or manufacture, PWID, controlled substance
20 near a school and M.D.P. narcotics, Schedule I, Schedule II
21 first offense. He had five years suspended.

22 He has two warrants. One warrant was served, and then
23 he didn't come to his V.O.P. hearing, and we issued a
24 failure to appear. The original charges, the original
25 ones, were -- stemmed from his charges for the weapon and

1 the cocaine.

2 THE COURT: And what's his exposure there?

3 PROBATION AGENT: He has five years.

4 THE COURT: Okay. Do you understand if you plead
5 guilty today and I accept it that's going to be a violation
6 of your probation?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And I can revoke all or any portion of it.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you still want to go forward?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. I'll accept your pleas and
13 hear from you and Mr. McCardy. First Mr. Bulsa is going to
14 tell me about it.

15 MR. BULSA: Thank you, Your Honor.

16 This dates to June 28th of 2013. Officers with the
17 city police department, Spartanburg city, were on patrol in
18 the area of Arch Street and Howard Street. They got behind
19 the vehicle being given by the defendant. He turned left
20 without using a turn signal. Then they paced him at going
21 45 in a 30-mile-per-hour zone.

22 They initiated a traffic stop. Based on his actions,
23 it appears that he was trying to hide something under the
24 seat. They got him out and were questioning him about
25 that, which led to a patdown of his person. And they found

1 a bulge in his pocket which they immediately believed to be
2 narcotics. They weighed it out on the street at 16 grams.
3 In the lab it weighed out at 13.73 grams of cocaine.

4 He has prior drug convictions in 1990 for trafficking
5 in cocaine, possession with intent to distribute crack
6 cocaine; also, 2012 possession of cocaine; 2012, possession
7 with intent to distribute within a half mile. Therefore
8 making these at least a second offense.

9 This stop was within a half mile of the Woodland
10 Heights Elementary School on John White Boulevard, which
11 gives rise to the half-mile charge.

12 Other convictions on his record are driving under
13 suspension, three counts, 1990; also, false information to
14 police and failure to stop for a blue light in 1990.

15 Your Honor, in exchange for this plea we're also
16 dismissing a second count. There was a search warrant done
17 at the defendant's residence pursuant to this traffic stop
18 and other information. Another large quantity of drugs
19 were found, but based on this negotiated plea that would be
20 dismissed.

21 THE COURT: All right. You heard what the solicitor
22 told me. Do you agree or disagree?

23 THE DEFENDANT: I agree, sir.

24 THE COURT: Do you still want to plead guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I'll accept your plea and hear from you
2 and Mr. McCardy.

3 MR. MCCARDY: Your Honor, if it pleases the Court.

4 Mr. Wiggleton hired John who started representing him
5 in July of 2013.

6 We're asking respectfully that the Court grant him
7 credit for the time served of 811 days total time served on
8 these charges. He's not been on home arrest or anything
9 during that time. That's actual incarceration.

10 Your Honor, I've had the opportunity to meet with
11 Michael on multiple different occasions to review the
12 evidence that the state has against him, talk and go over
13 with him the defenses that he might have. We discussed the
14 likelihood of success on those defenses on multiple
15 occasions.

16 He still held out hope even up until today that we
17 might be able to have some defense with it. But he's
18 making the election -- as we've always told him, it's his
19 choice, but he's making the election to go forward with the
20 plea in part based on our advice and counsel in that
21 regard.

22 We're thankful to the state for allowing the plea to
23 exist knowing what the consequence of it is. If he were to
24 go to trial and if a jury did find him to be guilty of
25 that, I believe it's a very reasonable sentence given what

1 the other side or what the consequences should he get
2 convicted at trial.

3 Your Honor, respectfully, we're just asking you to
4 accept the negotiation and impose the sentence as it's been
5 negotiated. Thank you.

6 THE COURT: All right. Mr. Wiggleton, one thing I
7 forgot to ask you about.

8 Did Mr. McCardy and Mr. White tell you about
9 trafficking being classified as a violent offense and also
10 classified as a serious offense?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand the significance of
13 those classifications?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Does that change your mind about pleading
16 guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you have anything you want to add to
19 what Mr. McCardy told me?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Probation. I find he's
22 wilfully failed to comply. Revoke it and run it concurrent
23 with everything today.

24 Indictment 2014-249, trafficking, 12 years. Credit
25 for any time he's entitled to.

1 2013-5669, possession with intent to distribute, 30
2 months consecutive. He's allowed to do 30 months on home
3 detention. Good luck to you.

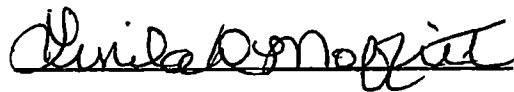
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 21st day of October 2016.

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

October 28, 2016



Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

IN THE COURT OF COMMON PLEAS

2017-CP-42-1250

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

Michael Fitzmaurice Wigginton)
v. 167168)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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 Tyger River Correctional Institute 200 Prisoner Release SC 2933F
2. Name and location of Court which imposed sentence Spartanburg County - Court of General Session
3. Name(s) of co-defendant(s) (if any) NA
4. ~~The indictment~~ (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014G54200249 - Trafficking in Cocaine and offense (10-28 grams)
 - (b) 2013G54305669 - PWID of Cont. Sub. New School
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10-21-2016, 12 year negotiated sentence
 - (b) 10-21-2016, 30 months home detention consecutive



- (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. NA
- ii. NA
- iii. NA
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. NA
- iii. NA
- (c) the date of each such result:
- i. NA
- ii. NA
- iii. NA
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. NA
- iii. NA
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) was not aware that I could appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2017 APR 18 AM 8:52
MURDER & ROBBERY

- (a) Ineffective Assistance of Counsel
 (b) coerced into a plea of guilty
 (c) Counsel did not impart to the applicant an understanding of the law on the relation of the facts
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to articulate 4th amendment violation.
 (b) counsel did not familiarize himself with the facts of the case.
 (c) counsel failed to take me to trial
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? —
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? —
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? —
 (d) any other petitions, motions or applications in this or any other Court? —
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 i. —
 ii. —
 iii. —
 iv. —
- (b) the name and location of the Court in which each was filed:
 i. —
 ii. —
 iii. —
 iv. —
- (c) the disposition thereof:
 i. —
 ii. —
 iii. —

2017 APR 18 AM 8:52
 M. HOFF BLANCHETT

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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) NO - First Appeal of conviction

(b) _____

(c) _____

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

2017 APR 18 AM 8:52
M. HOPE GILGORE

- (a) your arraignment and plea? yes
- (b) your trial, if any? —
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? —
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- John White Jr. - 178 West Main St. Spartanburg, SC 29301
 - Steve Denton - 178 West Main St. Spartanburg, SC 29301
 - Ryan McCarty - 178 West Main St. Spartanburg, SC 29301
- (b) the proceedings at which each such attorney represented you:
- Arraignment and plea - John White Jr
 -
 - Sentencing - Ryan McCarty
19. State clearly the relief you seek in filing this application:
Reversal of conviction,
20. Are you now under sentence from any other court that you have not challenged?
NO

2017 APR 18 AM 8:52
M. HOFFE BLANKET

STATE OF SOUTH CAROLINA

County of Spartanburg

) Michael Fitzgerald Wiggles
)
) VERIFICATION

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

Michael Fitzgerald Wiggles

SWORN to and subscribed before me this 6
 day of April, 2017.

Paul Van C... (L.S.)
 Notary Public

My Commission Expires: Dec. 19, 2024

2017 APR 18 AM 8:52
 H. HOPKINS CLERK

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

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

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

Michael Wigginton
Applicant

SWORN or affirmed to and subscribed before me this

6 day of April, 2017.

Paul J. [Signature]
Notary Public

My Commission Expires: Dec. 19, 2024

2017 APR 18 AM 8:52
M. HOPE CLARK

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Michael Wiggleton, #167168,	)	Case No.: 2017-CP-42-1250
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on April 11, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In December 2013, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute ("PWID") cocaine within one-half mile of a school (2013-GS-42-5669). Applicant was subsequently indicted in January 2014 for trafficking cocaine, 10-28 grams (2014-GS-42-0249), trafficking cocaine, 400 grams or more, and possession of a weapon during the commission of a violent crime (2014-GS-42-0248 count I and II). John Belton White, Jr., Esquire and Ryan F. McCarty, Esquire represented Applicant. Deputy Assistant Solicitor Derrick B. Balsa represented the State.

On October 28, 2016, Applicant pled guilty as indicted to PWID and trafficking (10-28g) before the Honorable J. Derham Cole. Pursuant to a negotiated sentence, Judge Cole sentenced Applicant to imprisonment for consecutive terms of twelve years for trafficking cocaine and thirty months' home detention for possession with intent to distribute cocaine. The State dismissed the

trafficking, 400 grams or more, and the weapons charges in exchange for Applicant's guilty plea. Applicant did not appeal his conviction or sentence.

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

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel did not import to the Applicant an understanding of the law on the relation of the facts."
 - b. "Counsel failed to articulate 4th Amendment Violation"
 - c. "Counsel did not familiarize himself with the facts of the case."
 - d. "Coerced into pleading guilty"
 - e. "Counsel failed to take me to trial."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel 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 [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz

v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty

plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

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

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRPC. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. 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), SCRPC.

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, witnesses, and materials used to produce potential expert witness testimony be provided 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.

VI.

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

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VII.

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

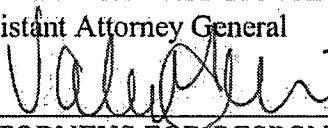
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

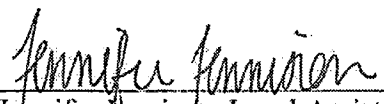
NOV. 1, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	2017-CP-42-1250
MICHAEL WIGGLETON, #167168	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

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

Rodney Wade Richey, Esquire
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603-0916

DATED this the 1st day of November, 2017.



Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

MICHAEL WIGGLETON,

APPLICANT,

-VS-

STATE OF SOUTH CAROLINA,

RESPONDENT.

2017-CP-42-01250

TRANSCRIPT OF RECORD

NOVEMBER 7, 2018
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MARK HAYES, III

APPEARANCES:

ATTORNEY FOR APPLICANT:

RODNEY W. RICHEY, ESQ.

ATTORNEY FOR RESPONDENT:

JORDAN A. COX
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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MICHAEL WIGGLETON

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RYAN McCARTY

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
R-1	PACKET OF CORRESPONDENCE -----	40	40

1 **MR. COX:** Your Honor, may it please the Court? The
2 case before you now is Mr. Michael Wiggleton versus the
3 State of South Carolina. That case number is 2017-CP-42-
4 1250.

5 This Applicant is present and confined in the
6 Department of Corrections pursuant to orders of commitment
7 of the South Carolina County Clerk of Court, I'm sorry,
8 Spartanburg County Clerk of Court.

9 In December of 2013 the Spartanburg County Grand Jury
10 indicted the Applicant for possession with the intent to
11 distribute cocaine within one half mile of a school. He was
12 subsequently indicted in January of 2014 for trafficking
13 cocaine, ten to twenty-eight (28) grams, trafficking cocaine
14 four hundred (400) grams or more and possession of a weapon
15 during the commission of a violent crime.

16 Mr. John White, Jr. and Mr. Ryan McCarty represented
17 the Applicant. And Deputy Assistant Solicitor Derrick Bulsa
18 represented the State.

19 On October 28th, 2016 the Applicant pled guilty as
20 indicted to possession with intent to distribute and
21 trafficking ten to twenty-eight (28) grams before the
22 Honorable Judge Cole. Pursuant to a negotiated sentence,
23 Judge Cole sentenced the Applicant to imprisonment for
24 consecutive terms of 12 years for trafficking cocaine and 30
25 months home detention for possession with the intent to

1 distribute.

2 The State dismissed the trafficking four hundred (400)
3 grams or more and the weapons charge in exchange for
4 Applicant's guilty plea. The Applicant did not appeal his
5 conviction or sentence. Mr. Wiggleton filed an application
6 for post conviction relief and is here represented by
7 attorney, Mr. Rodney Richey.

8 In his application for post conviction relief the
9 Applicant alleges the following grounds; Ineffective
10 assistance of counsel in that counsel did not import to the
11 Applicant an understanding of the law on the relation of the
12 facts; Counsel failed to articulate Fourth Amendment
13 violation; Counsel did not familiarize himself with the
14 facts of the case; Coerced into pleading guilty; Counsel
15 failed to take me to trial.

16 And, Your Honor, at this time I would turn it over to
17 Mr. Richey for any amendments to the application or to
18 articulate the allegations any further.

19 **MR. RICHEY:** Your Honor, that's the allegations. I
20 contacted attorney general and told him that Mr. Wiggleton
21 was going to go forward and that he believed that counsel
22 should have advised him of his right to appeal. So with
23 that, we'd add that ground. But with that, we're ready to
24 move forward, Your Honor.

25 **THE COURT:** All right. And, Mr. Wiggleton, you

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

6

1 understand that in the event that you are successful with
2 your application that you would be subject to prosecution of
3 the -- for the original charges?

4 **MR. WIGGLETON:** Yes, sir, Your Honor.

5 **THE COURT:** All right. Meaning that you would have
6 exposure of ten, 25 -- a substantial amount more time --
7 prison exposure in the event that ---

8 **MR. WIGGLETON:** Yes, sir, Your Honor.

9 **THE COURT:** --- you start over? Okay. Yes, sir, Mr.
10 Richey.

11 **MR. RICHEY:** We call Mr. Wiggleton.

12 **THE COURT:** Sir, just come right up here. If you
13 would, just come over here. Lay your papers over there and
14 place your left hand on the Bible and raise your right.

15 **Michael Wiggleton, being**
16 duly sworn testified as follows;

17 **THE COURT:** Thank you, sir. Watch your step, but step
18 up there and have a seat in the red chair. And pull the red
19 chair up to the microphone.

20 **Direct Examination by Mr. Richey:**

21 Q. Sir, would you state your name, please.

22 A. Michael Fitzgerald Wiggleton.

23 Q. And, Mr. Wiggleton, are you currently in the Department
24 of Corrections?

25 A. Yes, sir.

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

7

1 Q. And is it for the charges and the sentences the
2 attorney general read out in court?

3 A. Yes, sir.

4 Q. Okay. This case -- this case, just kind of brief
5 facts, this case occurred when the police stopped your car,
6 is that correct?

7 A. Yes, sir.

8 Q. And where were you driving when they stopped your car?

9 A. Excuse me, sir?

10 Q. Where were you driving?

11 A. What was I driving?

12 Q. Yeah, what location were you driving?

13 A. Arch Street and Howard Street in Spartanburg.

14 Q. And when you -- when you were driving and the cops got
15 behind you at some point, correct?

16 A. Yes, sir.

17 Q. And they stopped your car?

18 A. Yes, sir.

19 Q. And when they stopped your car they allegedly found
20 drugs on your person, correct?

21 A. Yes, sir.

22 Q. Now, where were the -- where was this package or where
23 -- where was it located?

24 A. In my front left pocket.

25 Q. Okay. And when the police stopped your car and you got

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

8

1 out did you give them any authorization to search your
2 person?

3 A. No, sir.

4 Q. Did the item resemble anything that -- was the item
5 anything that resembled a weapon or anything?

6 A. No, sir.

7 Q. And how big was the item?

8 A. Very small.

9 Q. Okay. And so the item -- do you think the item could
10 have been mistaken for a weapon?

11 A. No, sir.

12 Q. Okay. You were subsequently arrested that night,
13 correct?

14 A. Yes, sir.

15 Q. And at that arrest you were charged with having those
16 drugs, correct?

17 A. Yes, sir.

18 Q. And based off that arrest was a search warrant issued
19 based off that arrest?

20 A. Yes, sir.

21 Q. And where was that search warrant issued? Do you
22 recall?

23 A. Yes, sir.

24 Q. Where?

25 A. At another house, 296 Pine Lake Court.

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

9

1 Q. And based off that search warrant did you come to find
2 out there were drugs seized from that search warrant, ---

3 A. Yes, sir.

4 Q. --- correct? And it is then your position that that
5 initial stop and search of you was unlawful, correct?

6 A. Yes, sir.

7 Q. And did you -- did you discuss with your lawyers that
8 search?

9 A. Very little.

10 Q. What?

11 A. Very little.

12 Q. Okay. Did y'all go over what rights you had in regards
13 to that search?

14 A. We went over some, but not clearly.

15 Q. Okay. Well, looking at it now -- you've done some
16 research on your case, correct?

17 A. I've done a little research.

18 Q. And do you believe that that was a central issue that
19 you and your lawyers have discussed?

20 A. Yes, sir.

21 Q. And -- and it's your position if y'all had discussed
22 that, to your knowledge, and now you would have went to
23 trial?

24 A. I would have went to trial.

25 Q. Okay. And tell me why you believe that that is an

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

10

1 issue that you could have won on a trial?

2 A. Like, first, when they pulled me over, they told
3 multiple lies. I discussed it with my lawyer. He said, who
4 you think a jury going to believe, you or them? I said, you
5 got a good point.

6 So we went further into it. And then he said,
7 everything they did was right. He said, if you go to trial,
8 you've got a zero percent chance at winning. I said, zero
9 percent chance? He said I have no defense. So I had to
10 take his word for it, you know?

11 It first happened in 2013. And I stayed out of court
12 for like three years. The whole three years they told me I
13 had no defense, zero percent chance at winning.

14 So when I got to prison I looked up my case, I started
15 researching it. But I have a defense. And I was like, how
16 could you tell me I have no defense for three years, and I
17 looked up my case, I found a defense?

18 It first happens -- they pulled me over for speeding
19 and no turn signal. I told him the police officer didn't
20 even have radar. How could I be speeding? And I know that
21 neighborhood.

22 So he said, it's your word against they word. I said,
23 okay, fine, I can give you that because it's going to be
24 hard for a jury to believe me. But then they -- they got
25 conflicting statements. One of them said he thought I had a

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

11

1 weapon. The other police said he thought I reached for
2 something. They kept lying, they kept telling multiple
3 lies.

4 They said, we going to get out -- they asked me out the
5 car and searched me. They didn't have probable cause to
6 search me. I had license, I had insurance, there was no
7 weapons in the car, there was no alcohol, there was nothing
8 in the car.

9 One of them said he thought I reached for a weapon, but
10 when he checked me, I had no weapons. The other one said he
11 thought I placed something in the car. So the interest was
12 instead of searching me, they should have searched the car,
13 you know? So instead they searched me.

14 They patted me down, they determined I didn't have no
15 weapons on me. So what he did, he stuck his hands in my
16 pockets. He pulled out a bag of cocaine, which he had no
17 probable cause. At the time I didn't know it. My lawyer
18 didn't discuss it with me.

19 When I went to prison I looked up a law case, Terry
20 versus Ohio, Minnesota versus Dickerson. It states if a
21 police pull you over he have the right to search you, but
22 it's limited to only weapons that can -- to harm the
23 officers and others. Once he determines he has no weapons
24 on you, everything else is fruit of the poisonous tree.

25 So when he arrested me and found no drugs on me, they

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

12

1 put multiple charges on me. My lawyer should have told me
2 that's a violation of my constitution. That's a Fourth
3 Amendment violation.

4 You can search me, but only for weapons. You can
5 search -- if you got -- if you got reasonable suspicion, but
6 less than probable cause, you have a right to search me.
7 But you didn't have probable cause.

8 I told him they started making up multiple lies. When
9 they first pulled me over, the first lie they told was --
10 they said I'm speeding. They don't have radar. I know the
11 neighborhood. I wasn't speeding. Okay.

12 After they arrested me they took multiple phones from
13 me. They said, if you sign ---

14 MR. COX: I'm going ---

15 A. --- this consent ---

16 MR. COX: --- to object, Your Honor. This goes into
17 hearsay, what the officers told him.

18 THE COURT: All right. You want to ask questions?

19 MR. RICHEY: Okay.

20 Q. Sir, did the officers take items from you?

21 A. Yes, sir.

22 Q. And what were those items?

23 A. They took five cell phones from me. And they told me
24 if I sign ---

25 Q. You can't tell me what they told you. But ---

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

13

1 A. They took five cell phones from me.

2 Q. Okay. And those cell phones -- so you're saying that
3 those cell phones have beneficial evidence to your case?

4 A. Yes, sir.

5 Q. Okay. And did you discuss with your lawyers the
6 contents of what was on those cell phones?

7 A. No, sir.

8 Q. And when you say the lawyer did not familiarize himself
9 with the facts, are you referring to all these facts that
10 dealt with the stop?

11 A. Yes, sir.

12 Q. And the conflicting statements and all that?

13 A. Right. Right. Okay. When they pulled me over they
14 didn't have probable cause to search me. So they made up
15 probable cause. Okay.

16 The drugs -- the drugs was in my left pocket. Okay.

17 When they pulled me over one officer was on my right and one
18 officer was on my left. Both of them was very close to me.
19 One of them was so close to me, I handed him my driver's
20 license. The other one was so close to me that he put his
21 hands on my passenger car door.

22 So tell me what common sense person going to reach for
23 something when you got a officer so close to me I handed him
24 my driver's license. So he two inches away from me. The
25 other one got his hands on my car door. So he is inches

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

14

1 away from me. Tell me how could I reach for something or
2 place something?

3 When you say -- you looking at me right now, and you 20
4 feet away from me, you can see me place something. A
5 officer is two inches away from me. Nobody in they common
6 mind, they common sense is going to reach for something,
7 place for something.

8 If he thought I was reaching for a weapon, nobody's
9 going to provoke a officer and get shot. If I reach for
10 something, he got a right to shoot me. Nobody in they right
11 mind is going to reach for a weapon or pretend like they got
12 a weapon or provoke a officer.

13 They was following me around town for months. They
14 knew who I was. So when they pulled me over, they -- they
15 probably thought that there was a good chance I had drugs on
16 me. So they got to make up probable cause to search me.
17 They did not have probable cause.

18 They had reasonable suspicion to check me for weapons.
19 But Cherry versus Ohio, Minnesota versus Dickerson permitted
20 states that they could only check me for weapons to harm
21 officers or another person. They cannot find no evidence on
22 me or use it.

23 Q. Okay. Well, let me ask this. What you -- what you've
24 just stated and went through, did you and your lawyer at
25 that time have a discussion about these issues?

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

15

1 A. We never discussed it.

2 Q. Did y'all have that type of -- he didn't tell you about
3 what reasonable suspicion and all that was?

4 A. He did not tell me anything.

5 Q. Okay. And so it is your position that the case should
6 have went forward to trial and let the judge hear that
7 issue?

8 A. Yes. I told him several times to go to trial. He told
9 me several times I had a zero percent chance at winning. He
10 didn't want me to go to trial. I was facing life without
11 parole.

12 He said, you have a zero percent chance at winning
13 hundreds of times. I told him hundreds of times, they can't
14 do that. I didn't know the correct terms to put it in, but
15 I knew that you can't pull somebody over, tell them to get
16 out of the car and search them. And you can't make up a
17 story, we thought you reached for a weapon. We thought you
18 had something. Okay.

19 When they checked me and they checked the car, there
20 was nothing. So what was I reaching for? I'm reaching at
21 the air, you know?

22 Q. And I'm going to ask you this. You've seen this
23 booklet I've got ---

24 A. Yes, sir.

25 Q. --- that we'll probably present.

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

16

1 A. Yes, sir.

2 Q. Where in it that you sign that y'all had talked about
3 some of these issues. You've seen this?

4 A. Yes, sir.

5 Q. Can you tell me why you signed this or do you remember?

6 A. I can't remember a lot of things. I was under a lot of
7 pressure, a lot of stress. I had stayed in the county jail
8 for over two years.

9 Q. Right.

10 A. And so -- so like -- so I'm in the county jail. So
11 when he come to see me, time is precious, time is valuable.
12 He got a lot more clients. So he might not stay quite as
13 long. So he might explained something to me. I probably
14 wasn't paying no attention, because like I say, you stay in
15 the county jail for over two years, that's a lot of pressure
16 on you.

17 I had done lost like probably 30 pounds. I was going
18 through a divorce. I was stressed out. So when he tell me
19 something, I might understand, I might not understand.
20 He'll say, check this, but he never explained it to me.

21 If you -- if you're my lawyer and you set me down and
22 you explain the way I just did, police pulled you over, Mr.
23 Wiggleton, they search you, what was the probable cause? If
24 you tell me a police pull you over and he had probable
25 cause, I mean, reasonable suspicion, but not probable cause,

MICHAEL WIGGLETON - DIRECT EXAMINATION BY MR. RICHEY

17

1 he can't search you like this, there's no way I'd take a
2 plea bargain.

3 Q. And so that's why you believe that your plea was not --
4 was coerced and not voluntarily ---

5 A. Right.

6 Q. --- given?

7 A. He didn't explain it all to me.

8 Q. Okay. And -- and another -- a failure for counsel to
9 file an appeal, we discussed this and you believe they
10 should have filed a guilty plea -- an appeal on your guilty
11 plea, is that correct?

12 A. Yeah. My understanding is when I went to trial, okay,
13 the judge supposed to told me I had ten days to appeal, but
14 my counsel failed to notify the court to tell me that I had
15 ten days to appeal.

16 Q. So it's your position that you would win on the search
17 issue?

18 A. Yes, I do.

19 Q. Okay. Thank you. Answer any questions attorney
20 general have for you.

21 **MR. COX:** Your Honor, just one second.

22 (Pause)

23 **THE COURT:** Mr. Wiggleton, if you need any water,
24 there's some right behind you, just let us know.

25 **MR. WIGGLETON:** Thank you, sir.

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

18

1 Cross-Examination by Mr. Cox:

2 Q. Mr. Wiggleton, ---

3 A. Yes, sir.

4 Q. --- before you took the stand today you swore to tell
5 the truth.

6 A. Yes, sir.

7 Q. And you did that same thing before you entered your
8 guilty plea, correct?

9 A. Yes, sir.

10 Q. You spoke with the judge about this was your decision
11 ---

12 A. Yes, sir.

13 Q. --- to enter the guilty plea?

14 A. Yes, sir.

15 Q. You told the judge it was your decision?

16 A. Yes, sir.

17 Q. It's part of your allegations that you were coerced
18 into entering or into putting your, excuse me, entering your
19 guilty plea, correct?

20 A. Yes, sir.

21 Q. It was not your decision?

22 A. We came to a decision. Okay. He asked me to plead
23 guilty. I stated probably ---

24 Q. Who is he?

25 A. Mr. McCarty, and Mr. White and Steve Denton. It was

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

19

1 three lawyers. They said -- they told me I had zero
2 defense. So -- so if you my lawyer and you tell me I have
3 zero defense, I have no choice but to plead guilty.

4 But they withheld evidence. They never mentioned
5 illegal search and seizure. They never mentioned Fourth
6 Amendment violations. If they explained this to me, I'd
7 never plead guilty. They told me I had zero -- if somebody
8 tell you you have zero percent chance, they're pretty much
9 not playing.

10 I have no experience with a jury trial. Mr. McCarty
11 used to be a prosecutor and now he a lawyer. That's a lot
12 of experience. The other one is Steve Denton. He was a
13 high ranking official with Spartanburg County for like
14 twenty something years, now he a lawyer. Mr. White
15 reputation speaks for itself.

16 If they tell you you have zero percent chance at
17 winning, they know what they talking about. You have zero
18 percent chance at winning. That's my understanding. I have
19 no choice. They didn't tell me I had a ten percent chance.
20 They said zero percent chance.

21 But yet, I have a defense. I didn't know anything
22 about the Fourth Amendment rights or illegal search and
23 seizure. They told me the police did everything right.

24 Q. Did you tell the judge at your guilty plea that you
25 didn't have a choice?

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

20

1 A. No, uh-uh (negative). I didn't know this at the time.
2 I didn't know nothing about the Fourth Amendment rights or
3 -- I thought I was completely guilty. I thought they did
4 everything right and I didn't have a choice.

5 I was very happy with they outcome. I thought
6 everything was perfect, they did a great job under the
7 circumstances. They did a wonderful job. But if they would
8 have told me this could be illegal search and seizure, you
9 have a Fourth Amendment violation, I would have never pled
10 guilty. They didn't mention it. They didn't tell me
11 nothing about it. I didn't know anything about it.

12 Q. During the guilty plea, Mr. Wiggleton, the judge asked
13 you are you pleading guilty freely and voluntary, right?

14 A. Yes, sir.

15 Q. And your answer to him was yes, sir?

16 A. Yes, sir.

17 Q. Then his next question was are you guilty of
18 trafficking just like is described in these indictments, and
19 you told him yes, sir?

20 A. I was guilty of trafficking, yes, sir.

21 Q. So you admitted at the guilty plea that you were, in
22 fact, guilty?

23 A. Yes, sir.

24 Q. And the judge asked you if you had any defenses to
25 these charges, correct?

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

21

1 A. At the time I didn't know. Yes, sir, that's what I
2 said.

3 Q. You said yes, sir?

4 A. I said yes, sir, I don't have no defense.

5 Q. You didn't tell the judge my attorneys told me I don't
6 have a defense?

7 A. No, sir.

8 Q. You said, I do not have a defense?

9 A. I said, I have no defense.

10 Q. The judge asked you if you'd been pressured in any way
11 ---

12 A. No ---

13 Q. --- to enter your guilty plea?

14 A. I was not -- at the time I was not pressured because
15 they said I was guilty, I thought I was guilty, I thought I
16 didn't have no defense.

17 Q. So at the time you had your guilty plea you had no
18 pressure?

19 A. I had no pressure.

20 Q. You were aware that you had the right to go to trial?

21 A. Yes, sir.

22 Q. You knew you had the right to confront witnesses?

23 A. Yes, sir. I had no witnesses, no co-defendants.

24 Q. But you knew you had the right to do so?

25 A. Yes, sir.

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

22

1 Q. And you knew that pleading guilty you gave up that
2 right?

3 A. Yes, sir.

4 Q. And by pleading guilty you gave up the right to assert
5 any defenses, even if you had one?

6 A. Yes, sir.

7 Q. And, again, that was your choice?

8 A. That was my choice.

9 Q. Mr. Wiggleton, part of your allegations are that your
10 attorneys did not go over the facts of the case?

11 A. Yes, sir.

12 Q. But the solicitor went over the facts of the case that
13 would be presented against you at trial during your guilty
14 plea, right?

15 A. I can't remember if he went over the facts. I don't
16 think he did. I don't even think he spoke, you know, at the
17 trial, the solicitor.

18 Q. You don't remember if the solicitor spoke at the guilty
19 plea?

20 A. I don't think so.

21 **MR. COX:** Your Honor, may I approach the witness?

22 **THE COURT:** (Affirmative nod).

23 Q. Mr. Wiggleton, I wouldn't expect you to recognize this
24 particular document, but you pled guilty on October 21st,

25 ---

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

23

1 A. Yes, sir.

2 Q. --- 2016, correct?

3 A. Yes, sir.

4 Q. And did you understand that there was a court reporter
5 at that ---

6 A. Yes, sir.

7 Q. --- guilty plea?

8 A. Yes, sir.

9 Q. And you knew she was taking down everything?

10 A. Yes, sir.

11 Q. Okay. I've spoken with your attorney. That is his
12 copy of this -- of your guilty plea, a transcript?

13 A. Yes, sir.

14 Q. And if you need help getting to a page, I believe we
15 can assist you on that. If you would, turn to page 9. Just
16 let me know when you get there.

17 A. I'm there.

18 Q. Okay. I'm going to read aloud. And if you would,
19 follow along with me, and I'm going to have some questions
20 for you. Starting at line 12, ---

21 MR. COX: Your Honor, do you have a copy of the
22 transcript?

23 THE COURT: (Affirmative nod). What page?

24 MR. COX: This is page 9.

25 THE COURT: All right. I've got that there's two

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

24

1 transcripts, one from the 21st and one from the 18th.

2 MR. COX: This is on the 21st.

3 THE COURT: Okay.

4 MR. COX: Page 9, line 12.

5 Q. The court says, all right. I'll accept your pleas and
6 hear from you and Mr. McCarty. And when he says you, he was
7 referring to you, Mr. Wiggleton, correct?

8 A. Yeah.

9 Q. He said, first, Mr. Bulsa, who was the solicitor, is
10 going to tell me about it, correct?

11 A. Yes, sir.

12 Q. Now starting on line 16 Solicitor Bulsa discusses the
13 facts of the case. He says, officers with the City Police
14 Department, Spartanburg City, while on patrol in the area of
15 Arch Street and Howard Street, they got behind a vehicle
16 being given [sic] to the defendant, he turned left without
17 using a turn signal, and they paced him at going 45 in a 30
18 mile per hour zone. Did I read that correctly, sir?

19 A. Yes, sir.

20 Q. They initiated a traffic stop. Based on his actions,
21 it appears that he was trying to hide something under the
22 seat. They got him out and questioned him about that, which
23 led to a pat-down of his person.

24 And they found -- go to the next page, Mr. Wiggleton --
25 a bulge in his pocket, which they believed to be narcotics.

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

25

1 They weighed it out on the street at sixteen (16) grams. In
2 the lab it weighed out at thirteen point seven three (13.73)
3 grams of cocaine. Did I read that correct, Mr. Wiggleton?

4 A. Yes, sir.

5 Q. He has prior convictions in 1990 for trafficking in
6 cocaine, possession with intent to distribute crack cocaine,
7 also in 2012 possession of cocaine, possession with the
8 intent to distribute within half mile, therefore, making
9 these a second offense.

10 This stop was within a half mile of Woodland Heights
11 Elementary School and John White Boulevard, which gives rise
12 to the half mile charge. Did I read that correctly?

13 A. Yes, sir.

14 Q. And, Mr. Wiggleton, the next two paragraphs, I'm happy
15 to review them with you. I do not -- I believe you can
16 review them. These were the facts of the case as the State
17 was alleging, correct?

18 A. Yes, sir.

19 Q. And these are the same facts that you are challenging
20 here today, correct?

21 A. Yes, sir.

22 Q. But the judge asked you after the solicitor said these
23 things if you agreed with his assertion of the facts,
24 correct?

25 A. Yes, sir.

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

26

1 Q. Okay. And that's on line 21 into 22 of page 10,
2 correct?

3 A. Yes, sir.

4 Q. And your answer to the judge was I agree, right?

5 A. Yes, sir.

6 Q. So when you heard the facts of the case and the judge
7 gave you an opportunity to say that didn't happen, that's
8 not how it happened, or the police officers were lying, you
9 didn't tell him that, did you?

10 A. No, because I thought it was irrelevant. When you've
11 got a negotiated plea, don't make a difference whether today
12 Monday or Tuesday, you got a negotiated plea, you've got to
13 plead guilty. Something small like that, I didn't think
14 would make a difference.

15 Q. So it didn't make a difference when you had a guilty
16 plea, correct?

17 A. Correct.

18 Q. But it makes a difference now that you want a new
19 trial?

20 A. I didn't have all the facts. When you -- when you
21 think you have no defense, you at the court's mercy, you
22 know, and you just want to get it over with, you know? If
23 they give me something to sign, I sign it. You just -- they
24 say, say this, say that, I say it because it's a guilty
25 plea, it's not going to change. A negotiated plea is not

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

27

1 going to change.

2 It don't make no difference whether today Monday,
3 whether today Tuesday or whether they violated your rights
4 or whether they did this, you've got to plead guilty and
5 that is it, it's not a trial. So -- so I didn't know.

6 I just said -- I went along with whatever they said.
7 It's a guilty plea. I thought I had a zero percent defense,
8 you know? If I'd know what I know now, everything would
9 have been different.

10 Q. Mr. Wiggleton, when the judge asked you after those
11 facts if you still wanted to plead guilty, you said, yes,
12 sir?

13 A. Yes, sir, because I thought I was -- I had no defense.

14 Q. And you wanted to take a guilty plea?

15 A. Yeah. Yes, it was a good -- it was a good plea. When
16 you have a zero defense, that's a excellent plea.

17 Q. So you chose to plead guilty because you believed that
18 it was in your best interest?

19 A. Correct.

20 Q. And that was your decision?

21 A. Correct.

22 Q. Okay. Mr. Wiggleton, you were facing a long sentence?

23 A. Correct.

24 Q. You were facing life without parole?

25 A. Yes, sir.

MICHAEL WIGGLETON - CROSS-EXAMINATION BY MR. COX

28

1 Q. And you knew that going into the guilty plea?

2 A. Yes, sir.

3 Q. You knew that very early on -- your attorneys explained
4 that to you?

5 A. Yes, sir.

6 Q. They explained to you why you were facing life without
7 parole?

8 A. Yes, sir.

9 Q. And they advised you that if you went to trial and were
10 convicted, that's probably the sentence you would receive,
11 right?

12 A. Yes, sir. Not probably, that was the sentence. There
13 was no other sentence.

14 Q. There was no -- the judge wouldn't have discretion?

15 A. He had no other sentence. It was either zero or life.

16 Q. And that factored into your decision to plead guilty?

17 A. Yes.

18 Q. And you understand today at post conviction relief, if
19 you are successful, that is the sentence you would be facing
20 again?

21 A. Correct.

22 MR. COX: Your Honor, that's all the questions I have.

23 THE COURT: Any redirect on what he went into?

24 MR. RICHEY: No other questions.

25 THE COURT: Mr. Wiggleton, I just want to be clear.

MICHAEL WIGGLETON - REDIRECT EXAMINATION BY MR. RICHEY

29

1 When we started this hearing I asked you if you understood
2 that you would be facing a substantial amount of time. In
3 review of the transcript it does appear that you had been --
4 your lawyers and you had been served with the notice of life
5 without the possibility of parole. And so you do understand
6 that if you are successful with this post conviction relief
7 that -- and if you started over, you would be facing that
8 same life without the possibility of parole?

9 MR. WIGGLETON: Correct, Your Honor.

10 THE COURT: Okay. All right. Thank you, sir.

11 MR. RICHEY: We call Mr. McCarty.

12 THE COURT: Watch your step as you step down.

13 MR. WIGGLETON: Your Honor, could I add a couple of
14 things to the record?

15 MR. COX: As long as Mr. Richey's asking questions and
16 the witness is responding, we have no object, Your Honor.

17 **Redirect Examination by Mr. Richey:**

18 Q. Those are the issues that you put forth the Court --
19 that you want to put before the Court, is that correct?

20 A. Yes, sir. But I felt -- I felt my PCR is not really
21 complete. I had like two more violations. The violations
22 that I gave you are not violations. Like ineffective
23 assistance of counsel, that's a violation. Due process,
24 that's another violation. And involuntary guilty plea,
25 that's another violation.

RYAN McCARTY - DIRECT EXAMINATION BY MR. RICHEY

30

1 Q. Well, you've testified that your guilty plea was not --
2 was coerced and wasn't voluntary by you, correct?

3 A. Correct.

4 Q. Okay. And the due process violation that you were
5 referring to is that you did not have a suppression hearing
6 for these drugs, correct? That you had the right to have a
7 hearing and because you were not properly advised you did
8 not have a hearing, correct?

9 A. Correct.

10 MR. RICHEY: Thank you, Your Honor. We call Mr.
11 McCarty.

12 THE COURT: Sir, if you would, just put your left hand
13 on the Bible and raise your right hand.

14 Ryan McCarty, being duly
15 sworn testified as follows;

16 THE COURT: Thank you, sir. And watch your step as
17 you're stepping up. Just have a seat in the red chair and
18 pull the red chair up to the microphone.

19 **Direct Examination by Mr. Richey:**

20 Q. Can you state your name, please.

21 A. Ryan McCarty, M-c-C-a-r-t-y.

22 Q. And are you an attorney in Spartanburg, South Carolina?

23 A. Yes, sir. I'm an attorney with the law firm of
24 Harrison White located in Spartanburg.

25 Q. And do you recall representing Mr. Wiggleton?

RYAN McCARTY - DIRECT EXAMINATION BY MR. RICHEY

31

1 A. I do.

2 Q. And you were in the courtroom for his testimony,
3 correct?

4 A. Yes, sir. .

5 Q. And really you understand the issue in this case is
6 whether he had a valid defense under Terry in this case? Is
7 that -- you understand that?

8 A. As I understand his testimony today it was we didn't
9 discuss with him whether or not he had a defense on the
10 vehicle stop.

11 Q. Well, let me ask you this. The facts that he outlined,
12 and without -- the general facts that he was stopped, and
13 the stop and the cop patted him down, those basic parts of
14 the facts would be correct, is that right?

15 A. Yes, sir.

16 Q. Okay. And so when you talked to him -- well, let me
17 ask you this. Under the Fourth Amendment do you believe
18 that the officer has the right to go in his pocket and take
19 stuff out?

20 A. Well, that's -- just by a simple blanket statement of
21 that, no, I wouldn't necessarily agree with that. But I
22 think that when you do the analysis of the facts that we had
23 presented to us of the incident report provided by law
24 enforcement and the other information that we had available
25 from our client, when you compare that with case law, the

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1 precedent that's out there both in our State and at the
2 federal level involving searches of both vehicles and of the
3 person, that's how we arrived at our conclusions as to what
4 occurred in that traffic stop.

5 Q. Okay. Do you mind just telling us what those
6 conclusions were?

7 A. Sure. And but just by way of reference, Mr. Richey, I
8 provided to you what you referenced earlier there. In tab 3
9 of that, I actually, after one of our discussions that we'd
10 had with our client, I kind of set forth a simplified
11 analysis with regard to both the stop, the factors for why
12 he was asked to step out of the car and then the Terry
13 analysis on why they were able to pat him down.

14 At the end of the day I understand his understanding of
15 the Terry frisk analysis. And I think that's a kind of a
16 common lay person's understanding, but based upon both Mr.
17 White's knowledge, my knowledge, prior prosecuting drug case
18 offenses, we looked at it from a standpoint of there are
19 other factors that maybe he wouldn't just -- that maybe he
20 just wouldn't be simply aware of. And we tried to discuss
21 that with him.

22 I understand where he's saying, you know, the officer
23 describes when he did the pat-down he felt what he
24 recognized based on his training and experience, and I don't
25 want to quote that, but that's more or less what the

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1 incident report says, as an object that he recognized to be
2 some form of controlled substance.

3 And that's how we looked at that as to whether or not
4 is that reasonable? Does case law support a finding and
5 conclusion that he could make that determination? And we
6 believed that he could.

7 Q. So your position is because it did not resemble a
8 weapon he was not precluded in going further with the
9 search?

10 A. Well, correct. I mean, even if he had recognized it to
11 be something else. But if he was able to, again, I don't
12 have the benefit of the incident report right here to say
13 exactly what the officer's language was, but if the
14 conclusion was that he recognized, and based on his training
15 and experience, what the object was that he could make that
16 determination and retrieve that item based on him believing
17 that it was a controlled substance or something like that.

18 The vice versa would be true, I guess, if we looked at
19 it from a search warrant standard. If we go in and we're
20 searching for drugs and we come across an automatic weapon,
21 it doesn't necessarily mean you can't seize the automatic
22 weapon.

23 Q. He was -- what was -- do you recall what the traffic
24 stop was for?

25 A. Yes, sir.

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1 Q. What was it for?

2 A. The traffic stop involved two officers that stopped
3 him. There was no in-car video. And that is something we
4 tried to determine. We also asked if there were any body-
5 cams being used by the City of Spartanburg at that time, and
6 there were not.

7 So we didn't have the aid of any benefit of audio or
8 video in this regard. We had to rely on the incident report
9 and our client's facts.

10 The incident report, as I recall, stated that Mr.
11 Wiggleton had made a left hand turn without using a traffic
12 signal, or excuse me, without using a turn signal. The next
13 bit of facts in that incident report had indicated that when
14 they got behind him in traffic through that intersection
15 where he'd made the left hand turn that they paced him on
16 the road and indicated that he was going 40 miles -- 45
17 miles per hour in a 30 mile per hour zone. And so our
18 conclusion, when we look at that analysis, is from a
19 probable cause standpoint to see did a traffic offense
20 occur?

21 Again, in that letter in tab 3 I tried to set forth
22 what the statute was that they would say was violated, both
23 with regard to the traffic signal and with regard to
24 speeding. And the court would have to make a determination
25 or weigh whether or not there was probable cause, but in

RYAN McCARTY - DIRECT EXAMINATION BY MR. RICHEY

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1 this instance it would be the officer's testimony.

2 Q. And based off the initial stop, the speeding, the left
3 hand turn, ---

4 A. Yes, sir.

5 Q. --- those are not offenses where -- those are offenses
6 where you're given courtesy summons most of the time, right,
7 like a ticket?

8 A. Yes, sir. Depending -- if there were no other
9 infractions present, yes, sir.

10 Q. Right. And so when -- did he discuss with you about
11 going to trial on the case?

12 A. Correct.

13 Q. He did?

14 A. Absolutely.

15 Q. Did he want to go to trial?

16 A. Right up until the day of the plea he had repeatedly,
17 multiple times said he wasn't going to accept the State's
18 offer from us. We had continued to negotiate with the
19 State.

20 And in the sentence that he received, I'm actually
21 surprised and pleasant, you know, glad to hear today that he
22 said we did a good job with that because that was somewhat
23 of a contentious process, not only contentious in a bad way
24 other than just he was affirming his right to want to go
25 forward with trial. That's always said against the backdrop

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1 of he had been served with life without parole notice in the
2 cases.

3 We had brought him in earlier in the week, the week of
4 which he had the plea. And I think it was on the 18th of
5 October, 2016 was advised on the record what the terms of
6 the plea were and that the State was going to withdraw the
7 plea had he not accepted it by the end of that week. Mr.
8 Wiggleton had indicated that he would accept the plea terms.
9 And I believe it was on Friday, the 21st, if I recall
10 correctly, was when the plea actually occurred.

11 Q. And had you discussed with him his right to appeal?

12 A. Yes, sir. If you'll look at tab number 8 of your
13 folder there, that's an advisement of rights that we fill
14 out with all of our clients for any of the forms they have.

15 And I think if you'll look towards the -- maybe it's
16 the second to the last page, it's paragraph number 24, but
17 there's an advisement on there that he has ten days in which
18 he can appeal. And we ask that he notify us or have his
19 family members notify us no later than eight days so that we
20 have time to file a notice of appeal with the courts. And I
21 -- and, Mr. Richey, I believe too, I don't have the benefit
22 of the transcript in front of me, but I believe that Judge
23 Cole also made that as part of his advisements to Mr.
24 Wiggleton as well.

25 Q. But is your testimony that you all did it outside of

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1 court?

2 A. Yes, sir. And that's what that document there reflects
3 at tab 8.

4 MR. RICHEY: One moment, Your Honor.

5 (Pause)

6 MR. RICHEY: No other questions.

7 MR. COX: Your Honor, may it please the Court?

8 THE COURT: (Affirmative nod).

9 **Cross-Examination by Mr. Cox:**

10 Q. Good morning, Mr. McCarty.

11 A. Good morning.

12 Q. How long have you been practicing law?

13 A. Twelve or 13 years, right in that area. Yes, sir.

14 Q. For a while?

15 A. Long enough, I guess.

16 Q. How much of your practice has been dedicated to
17 criminal law?

18 A. First, almost six years of that, I worked in the
19 Spartanburg County Solicitor's Office. I've followed that
20 up, been in private practice for the balance of that time
21 where I've regularly been involved with criminal law.
22 That's one of my practice's practice areas.

23 Q. During your time as an assistant solicitor did you ever
24 handle charges to what Mr. Wiggleton was facing?

25 A. Yes, sir. I spent the last couple of years of my time

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1 with the solicitor's office actually prosecuting drug
2 offenses.

3 Q. So you are familiar with the case law, the charges, the
4 statutes, everything involved with this case?

5 A. Yes, sir, I believe I was.

6 Q. How did you come to represent Mr. Wiggleton?

7 A. When I joined John White and his firm and started
8 working with them, John had already had Mr. Wiggleton as a
9 -- both a prior client and a client related to these
10 charges. I feel that probably because of my experience
11 working in drug prosecution, John brought me into the case,
12 had me start to look at it from a factual standpoint to
13 determine -- look at it to see if there were any defenses
14 that Mr. Wiggleton may have had.

15 And then that's when I started meeting with Mr.
16 Wiggleton with John. We met him at the jail on multiple
17 occasions. I had contact with Mr. Wiggleton individually
18 myself on several different occasions as well where we'd
19 talk about his case and talk about not only the State's
20 offers that had been made to him, but also discussions of
21 things that he had brought up.

22 And, you know, I'll reference back to that little
23 packet I've given to everybody here, but, you know, there's
24 -- we looked at even tab number 4. You know, one of the
25 discussions we had with Mr. Wiggleton, he asked us to look

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1 at a defense of lesser included offenses for the trafficking
2 charges. And I kind of went through the analysis therein
3 about why we don't think that that would be properly
4 admitted to the court.

5 And, you know, and then he asked about purity
6 standards. So we had that discussion with him as well. I
7 hoped that we'd had addressed all of his concerns before he
8 came to this plea.

9 Q. Let me do this.

10 MR. COX: Your Honor, -- may I approach the witness,
11 Your Honor?

12 Q. Mr. McCarty, do you recognize that packet?

13 A. I do.

14 Q. And let me take one step back. In what other ways did
15 you communicate or you communicated with Mr. Wiggleton in
16 person?

17 A. That's correct.

18 Q. Did you also communicate with him through letters?

19 A. That's correct.

20 Q. And other correspondence from your office, correct?

21 A. Correct.

22 Q. You recognize the packet that's in front of you?

23 A. I do. This is -- this was put together by my
24 paralegal. It's a copy of some of the communications and
25 advisements that we had had with Mr. Wiggleton where he was

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1 -- his signature's contained with regard to the advisements
2 being given to him, that he's received them.

3 It also has some exhibits to some of the letters that
4 we have in there that we had referenced to him. And if the
5 Court needs, I brought the original signature copies I have
6 with me, but these are simply photo copies of the same
7 documents I have here in my possession.

8 MR. COX: Your Honor, I've shown the packet to opposing
9 counsel.

10 Q. And, Mr. McCarty, does that appear to be an accurate
11 representation of your communications with Mr. Wiggleton?

12 A. It is insofar as these -- I pulled these out
13 specifically because I felt that they directly responded to
14 the allegations made in Mr. Wiggleton's PCR application.

15 MR. COX: Your Honor, at this time we would move this
16 document into evidence. We offer it into evidence.

17 THE COURT: Any objection?

18 MR. RICHEY: No objection.

19 THE COURT: All right.

20 MR. COX: Your Honor, I did not -- I apologize, I did
21 not have a chance to pre-mark this. If I may do that at
22 this time.

23 (Whereupon Respondent's exhibit 1 was marked and
24 admitted into evidence)

25 Q. Okay. Mr. McCarty, did you receive discovery in this

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1 case?

2 A. We did.

3 Q. Did you review that discovery with Mr. Wiggleton?

4 A. We did.

5 Q. What -- in your communication with Mr. Wiggleton what
6 was the State's case against him?

7 A. In summary form, as you've kind of heard, the two
8 offenses that we were involved with dealt with, number one,
9 a traffic stop in which following the traffic stop Mr.
10 Wiggleton was alleged to have possessed a quantity of drugs,
11 a trafficking weight on him, and then a subsequent charge
12 for a search warrant, which occurred at a residence. Those
13 were the two charges he faced.

14 Because of Mr. Wiggleton's prior history, he had a -- I
15 believe it was a 1990 conviction for trafficking cocaine and
16 then a 2012 conviction for half mile, which gave him two
17 strikes under South Carolina's law. He had been served by
18 the then solicitor at that time on his case with notice of
19 life without parole with the State's intent to seek that if
20 he was convicted on those charges.

21 Q. And did you see any challenge to the notice of life
22 without parole?

23 A. With regard to the search, the life without parole, we
24 didn't.

25 Q. So you understand that if you -- and if he went to

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1 trial and was convicted, he would be getting life without
2 parole?

3 A. Yes, sir.

4 Q. And did you communicate that with Mr. Wiggleton?

5 A. We did on multiple occasions. And he -- there was, in
6 the October 18th advisements about the plea that Judge Cole
7 had with Mr. Wiggleton on the record, it was also once again
8 advised there about the life without parole notice they had
9 served on him.

10 Q. Is your advice about life without parole in the packet
11 that you prepared?

12 A. Yes, sir, it is. It's contained a couple of times
13 therein. We made copies of -- made reference to it as well
14 as made copies of the notice that was served upon us so that
15 we could provide him with a copy of it as well.

16 Q. So it was clear that Mr. Wiggleton knew what he was
17 facing?

18 A. Yes, sir. He knew what he was facing insofar as if he
19 elected not to accept the State's offer and he were
20 convicted on any -- either of those two charges that that
21 would be the result and that the State would have, or excuse
22 me, the judge would have no other option then to sentence
23 him to life without parole.

24 Q. Did you believe he had a defense to these charges?

25 A. With regard to the search warrant, I did. And we

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1 instructed him on as much. I think that's referenced in one
2 of the letters there, the discussion that I believe that I
3 felt that had we challenged the search warrant based on the
4 affidavit of the search warrant we may have prevailed on
5 that issue.

6 However, I felt that the traffic stop issue, we didn't
7 have a defensible case based on the information that we had
8 and the knowledge that we had of everything. And as a
9 result, even if we'd been successful on the search warrant,
10 had he been convicted on the traffic stop he would have
11 ended up with a life without parole sentence.

12 Q. So you do not believe he had any successful defense
13 against his conviction?

14 A. In our opinion we didn't believe that.

15 Q. And did you explain that to Mr. Wiggleton?

16 A. I believe we did.

17 Q. And you would have sent that in letter form?

18 A. We would have -- it's certainly set forth in letter
19 form here at our tab number 3 to this letter ---

20 Q. Okay.

21 A. --- or to exhibit number 1, excuse me, our tab number
22 3. We set forth both of our analyses on these cases. Also,
23 we'd had that discussion with him.

24 I know we went so far as to, based on some of the other
25 discussions Mr. Wiggleton and we had, requested through FOIA

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1 some information from the City of Spartanburg with regard to
2 the number of traffic citations these particular officers
3 issued so we could review that and try to determine in the
4 context of what they were alleging here if this was anything
5 other than just a made-up or phony stop or anything like
6 that. We were looking to make sure that whatever he gave us
7 by way of defense, we tried to vet the information.

8 Q. You were here in the courtroom during Mr. Wiggleton's
9 testimony today?

10 A. Yes, sir.

11 Q. And so you heard him testify that he told you hundreds
12 of times that he wanted to go to trial?

13 A. Like I said, Mr. Wiggleton had repeatedly said he
14 wouldn't accept the State's offer. We were preparing for
15 trial. That was our whole purpose in that.

16 We also knew that the State had a time limit to accept
17 his offer. And we knew what the consequence was if he were
18 convicted on either or both of those charges what the only
19 sentence for him could be.

20 But, yes, sir, whether it's hundreds of times, I don't
21 know. But we had multiple times, I would say that, where he
22 had advised us that he did not want to accept the offer and
23 he wanted to proceed forward, and that's why we did.

24 Q. Who made the ultimate decision to plead guilty?

25 A. The ultimate decision's always made by the client.

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1 Q. And if he had expressed at the guilty plea that he
2 wanted to exercise his right to trial, would you have
3 represented Mr. Wiggleton at trial?

4 A. We certainly would have.

5 Q. Would you have put forth -- would you have attempted to
6 put forth a defense?

7 A. Absolutely. You know, with any trial where there's
8 matters of suppression, we would have asked the court to
9 review those matters prior to the commencement of the trial.
10 And depending on the ruling thereof, it may have been
11 dispositive of the issues. But, you know, I believe that we
12 had advised Mr. Wiggleton of those risks and that he made
13 the election to enter the plea and accept the State's offer
14 as it had been presented.

15 Q. Following the guilty plea did you file a notice of
16 appeal for Mr. Wiggleton?

17 A. We did not.

18 Q. Did Mr. Wiggleton have -- was he aware you could file a
19 notice of appeal?

20 A. I believe he was.

21 Q. Did you inform him that you would file a notice of
22 appeal on his behalf so he wanted -- if he wanted?

23 A. We had informed him if that was his choice that we
24 would. We asked him -- and I believe if I could look at
25 this document?

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1 Q. Yes.

2 A. On tab number 8 of exhibit number 1, paragraph number
3 24 of tab number 8, our advisement to him -- this is a
4 guilty plea sheet that we do and we prepare, states to him
5 that I, we're saying Mr. Wiggleton, understands that he has
6 the right to appeal any conviction and sentence, but he must
7 do so within ten days. And that's bold and underlined, the
8 ten days.

9 It further states that I understand that my lawyer
10 would help me file an appeal if I so desire, but I must
11 notify my lawyer of my desire to appeal within eight days of
12 my conviction. And we ask that so that we would have time
13 to make sure he had the appeal timely filed.

14 (Pause)

15 MR. COX: I'm almost done, Your Honor. I do have a few
16 more questions.

17 Q. Mr. Wiggleton in his testimony referenced cell phones,
18 ---

19 A. Yes, sir.

20 Q. --- and some cell phone evidence that could potentially
21 have been used at trial that was beneficial to him. Are you
22 aware of any beneficial evidence from the cell phones?

23 A. Well, with regard to whether any beneficial information
24 would have been contained on the cell phones, this morning
25 is the first time I'm hearing of that. And I think he

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1 alluded to that in his testimony that he didn't inform us
2 that there was anything on it.

3 Had he informed us that maybe, for example, he had
4 recorded the traffic stop, that's certainly something we
5 would have investigated. But, you know, with regard to the
6 traffic stop, I don't know what the cell phones, right now,
7 would necessarily have revealed.

8 With regard to the search warrant they may have
9 produced evidence, but I thought, again, based on just the
10 affidavit of the search warrant we may have been -- we may
11 have had a likelihood of prevailing on that case.

12 Q. Did you advise Mr. Wiggleton to take the State's offer?

13 A. Our advice had been -- yes. And it was in part based
14 -- it was based upon our review of the facts and evidence
15 that we believed the State would present against him and
16 also, too, with regard to what the offer was versus what the
17 consequence was should he be convicted.

18 Q. Mr. Wiggleton testified as to several lies the police
19 officers provided about his traffic stop. In your review of
20 the case and in your advice to Mr. Wiggleton was there any
21 issue with the police officers and their truthful testimony
22 that you would have learned at trial or you wouldn't have
23 been able to bring it up at trial?

24 A. So, again, in part of that vetting information type of
25 thing, not only did we look at traffic citations that had

1 been issued by these particular officers, we also tried to
2 look at was there any disciplinary conduct against these
3 particular officers in their files for things like this.
4 We felt that the officers' records in this situation
5 spoke for themselves insofar as their character, the
6 commendations that they had in their personnel file and that
7 had we tried to simply allege that they weren't being
8 truthful about what had occurred that, you know, the fact-
9 finder on that issue would more likely than not have sided
10 with the officers in this case as opposed to what Mr.
11 Wiggleton's testimony would have been based just upon who it
12 was that was purporting to say what they did.
13 (Pause)
14 Q. I just have a few more issues I want to make sure I'm
15 covering, any issues that were raised regarding his
16 testimony.
17 (Pause)
18 MR. COX: Your Honor, I have no further questions.
19 THE COURT: Any redirect?
20 MR. RICHEY: No questions.
21 THE COURT: Thank you, sir. Watch your step as you're
22 stepping down, but you may step down. That's an exhibit?
23 MR. COX: Yes, Your Honor, it is. Your Honor, I ask
24 that Mr. McCarty be released from his subpoena at this time.
25 (Pause)

1 **THE COURT:** Any objection to him being excused?

2 **MR. RICHEY:** None. I'm sorry.

3 **THE COURT:** Thank you, sir. You may be excused.

4 **MR. McCARTY:** Thank you.

5 **MR. COX:** Your Honor, the State does not have any -- no
6 further witnesses from the State.

7 **MR. RICHEY:** Hold on.

8 **MR. COX:** I'm sorry.

9 (Pause)

10 **MR. RICHEY:** Your Honor, Mr. Wiggleton had did some
11 amendments to his PCR. I would tell the Court I went
12 through all this stuff. He wants to file it.

13 I indicated to him that I went through this stuff and
14 that I was not willing to file it. But I've gone through
15 each one of these issues through his testimony.

16 **THE COURT:** And ...

17 **MR. RICHEY:** He just wanted me to bring that to the
18 Court's attention, but -- I'm just bringing it to the
19 Court's attention. He wanted -- he has requested that I
20 file this amended application. And I said I would not file
21 it. I've said that. But I went through each issue in here
22 that was raised. And the central issue -- that's where
23 we're at, Your Honor.

24 He had indicated, expressed to me that he wanted to
25 testify again, but I'm trying to figure out what's it in

1 regards to.

2 **THE COURT:** Well, I think the Supreme Court has made it
3 clear that when a person is represented by an attorney, the
4 attorney makes those decisions ---

5 **MR. RICHEY:** Yes, sir.

6 **THE COURT:** --- as to what will be evidence, who's
7 going to testify, what type of documents will come in. So I
8 could not accept it unless you wanted to. And then before I
9 accept it, ---

10 **MR. RICHEY:** Yes, sir.

11 **THE COURT:** --- the State would have a chance to review
12 it.

13 **MR. RICHEY:** Yes, sir. I've gone through all those
14 issues. May I ask the Court for one moment?

15 **THE COURT:** Um-hum (affirmative). I tell you what, I'm
16 going to step down just for a moment. I'll come right back.

17 **MR. RICHEY:** All right. Thank you, Your Honor.

18 (Whereupon court was in recess at 11:16 am)

19 (Whereupon court reconvened at 11:19 am)

20 **THE COURT:** Anything further from the Applicant?

21 **MR. RICHEY:** No, Your Honor.

22 **THE COURT:** The State intend to present witnesses?

23 **MR. COX:** Your Honor, no further witnesses from the
24 State. And that would be our case.

25 **THE COURT:** All right. I'll take a look at it and let

1 you know.

2 MR. RICHEY: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 MR. COX: Thank you, Your Honor.

5 (Hearing Ended at 11:20 am)

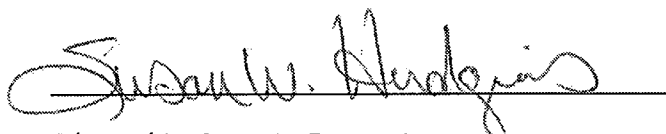
6 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 7th day of November 2018.

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

March 27, 2019


Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Michael F. Wiggleson, #167168
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-42-1250

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed on April 11, 2017, by Mr. Scotty M. Brown (Applicant). Respondent made its Return on or about November 1, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on November 7, 2018, at the Spartanburg County Courthouse in Spartanburg, South Carolina.

Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by Jordan A. Cox, Esquire, of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Respondent called Ryan F. McCarty, Esquire, ("Counsel") as a witness at the hearing. 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 the application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Spartanburg County Clerk of Court. In December 2013, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute ("PWID") cocaine within one-half mile of a school (2013-GS-42-5669). Applicant was subsequently indicted in January 2014 for trafficking cocaine, 10-28

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SPARTANBURG COUNTY

grams (2014-GS-42-0249), trafficking cocaine, 400 grams or more, and possession of a weapon during the commission of a violent crime (2014-GS-42-0248 count I and II). John B. White, Jr. and Ryan F. McCarty, Esquires, represented Applicant. Deputy Assistant Solicitor Derrick B. Bulsa of the Seventh Circuit Solicitor's Office represented the State.

On October 21, 2016, Applicant pleaded guilty as indicted to PWID and trafficking, 10-28 grams, before the Honorable J. Derham Cole. Pursuant to a negotiated sentence, Judge Cole sentence Applicant to imprisonment for consecutive terms of twelve years for trafficking cocaine and thirty months' home detention for possession with intent to distribute cocaine. The State dismissed the remaining charges. Applicant did not appeal his guilty plea or sentence.

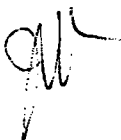
FACTUAL HISTORY

On or about June 28, 2013, Applicant was driving a vehicle in the area of Arch Street and Howard Street, within the city limits of Spartanburg, South Carolina. While on patrol, officers with the Spartanburg City Police Department observed Applicant fail to use a turn signal while making a left turn. Officers paced the speed of Applicant's vehicle as traveling forty-five miles per hour in a thirty mph zone. Officers initiated a traffic stop at this time.

Applicant was observed as attempting to hide something under the driver's seat and officers removed him from the vehicle in response. Applicant was subsequently searched and narcotics were discovered in Applicant's pocket. It was later determined the narcotics amounted to 13-73 grams of cocaine. The stop occurred within a half-mile of Woodland Heights Elementary School in Spartanburg County, South Carolina.

ALLEGATIONS

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

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2019 JAN 28 AM 11:35
SPARTANBURG COUNTY
CLERK OF COURT

1. Ineffective Assistance of Counsel
 - a. "Counsel did not import to the Applicant an understanding of the law on the relation of the facts."
 - b. "Counsel failed to articulate 4th Amendment violation"
 - c. "Counsel did not familiarize himself with the facts of the case."
 - d. "Coerced into pleading guilty"
 - e. "Counsel failed to take me to trial"

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified that he was represented by Mr. McCarty following his arrest. Applicant testified that the police told many lies throughout the process and that he informed his attorney of the many lies. Applicant testified that he was unaware that he would have been able to challenge the search of his person by law enforcement. Applicant testified that he wished to challenge the traffic stop and subsequent search by law enforcement, indicating that it was a violation of the 4th Amendment. Applicant testified that he wanted to go to trial and informed Counsel "hundreds of times" of this desire. Applicant testified that Counsel did not explain the law of his case.

Applicant testified that he remembered being placed under oath during his guilty plea proceeding. Applicant testified that he told the judge he had plenty of time to talk to his lawyer about his case and time to think about his decision to enter a guilty plea. Applicant testified that he told the judge he did not have a defense to his charges during his guilty plea proceeding. Applicant testified that he informed the judge he had not been pressured in any fashion to enter a guilty plea, during his plea proceeding. Applicant testified that he did not believe Counsel was prepared for trial. Applicant testified that Counsel failed to inform him he would be able to appeal his guilty plea.

Counsel

Mr. Ryan F. McCarty testified on behalf of Respondent. Counsel testified that he has practiced law for over ten years. Counsel testified that a majority of his career has focused on criminal law, both prosecution and defense. Counsel testified that his firm was retained to represent Applicant in July 2003. Counsel testified that Applicant did not indicate he wanted to go to trial and wanted a plea deal. Counsel testified that he met with Applicant on several occasions to discuss his case and possible defenses. Counsel testified that he informed Applicant of the likely success of those defenses. Counsel testified that his law partner met with Applicant on several occasions and these meetings were documented in the defense file. Counsel testified that after failing to appear for a bond revocation hearing, a bench warrant was issued for Applicant's arrest. Counsel testified that Applicant was not found until August 5, 2014, nearly a year after the bench warrant was issued.

Counsel testified he had Applicant acknowledge and sign each plea offer from the State. Counsel testified that through a typed letter, Applicant was informed of each offer from the State, the possible ramifications of the guilty plea, and of his firm's specific legal advice pertaining to the State's offer. These letters were presented as evidence during the PCR hearing. Applicant's signed each of these letters. Counsel testified that prior to each guilty plea, his firm's practice is to provide each client with an "Advisement of Rights" document. Counsel testified that he provided this to Applicant and thoroughly reviewed each item listed. This form was presented during the PCR hearing. The documents provided by Counsel were marked as "State's Exhibit 1."

Counsel testified that based on his experience, Applicant did not have a viable defense to the charges he eventually pleaded guilty to. Counsel testified that he believed a possible defense to the trafficking charges existed, but this would have no effect for the PWID charges. Counsel

2019 JAN 22 AM 8:34
STANFORD COUNTY

did not believe a possible defense existed to the initial traffic stop and subsequent search of Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that

counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant ~~has~~ failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

"Counsel did not import the Applicant an understanding of the law on the relation of the facts"

Applicant alleges Counsel did not explain the facts of his case of how the law applied to his case. This Court Applicant has failed to meet his burden of proof. The allegation is contrary to Applicant's testimony during his guilty plea proceeding. During this proceeding, Applicant informed the Court he had enough time to talk with his attorneys concerning his case, his attorneys reviewed the indictments and charges against him, and he understood the possible sentence his was facing. Applicant further informed the Court that he did not have a defense to his charges.

This Court finds Counsel's testimony on this allegation to be credible. Counsel testified that not only was Applicant explained every legal aspect of his charges, Applicant signed and

acknowledged the legal advice provided by Counsel in letter form. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

"Counsel failed to articulate 4th Amendment Violation"

Applicant alleges Counsel rendered ineffective assistance of counsel, because Counsel did not explain how the search of law enforcement violated his 4th amendment rights. Applicant alleges that if he had known he would have a possible defense of the traffic stop and subsequent search, he would not have pleaded guilty. Applicant has failed to show Counsel rendered deficient performance. Applicant testified that the search of his person by law enforcement following his traffic stop was a violation of 4th amendment rights, but failed to show why it was a violation. Counsel testified that although he believed Applicant had a viable challenge to the later search of his home, there was no legal challenge to the initial stop and frisk of Applicant by law enforcement. This Court finds Counsel's testimony on this allegation credible.

Assuming, arguendo, Applicant was unaware that he could have challenged the Terry search after the traffic stop and his lack of said knowledge was the fault of his lawyers, no showing has been made that such a challenge would have been successful in excluding the evidence. Therefore, Applicant has not successfully established the prejudicial element necessary for ineffective assistance of counsel. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Counsel did not familiarize himself with the facts of the case"

Applicant alleges Counsel did not familiarize himself with the facts of the case. This Court finds Applicant has failed to meet his burden of proof. Counsel testified that he represented Applicant for three years, meeting with Applicant on several occasions. Counsel testified as to the facts surrounding Applicant's case, as well as the possible defenses Applicant had. Counsel

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2019 JAN 22 AM 11:34
CLERK OF COURT
SARAH A. BOURG
COUNTY

appeared credible during his testimony and of his knowledge of Applicant's case. Furthermore, the documents provided by Counsel detailed the facts surrounding Applicant's case and Counsel's detailed analysis of his legal advice for his charges. These documents were signed and acknowledged by Applicant, contemporaneously, during Counsel's representation. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Coerced into pleading guilty"

Applicant alleges that he was coerced into pleading guilty. This Court finds Applicant has failed to meet his burden of proof. Applicant failed to provide testimony as to how he was coerced into entering his guilty plea. Applicant testified that it was his decision to enter the guilty plea. Counsel testified that it was always Applicant's intent to enter a guilty plea. Counsel testified that had Applicant wished to proceed to trial, he would have. The documents provided by Counsel indicate Applicant's knowledge that he was giving up the right to a trial by pleading guilty. Applicant testified during his guilty plea proceeding that he was entering his guilty plea freely and voluntarily. Applicant further testified that he had not been pressured in any way to enter guilty plea. This Court finds Counsel's testimony credible on this allegation. This Court finds the allegation is contrary to the record of this case, Counsel's credible testimony, as well as Applicant's own testimony during the guilty plea proceeding. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Counsel failed to take me to trial"

Applicant alleges Counsel was ineffective for failing to take him to trial on his charges. Applicant testified that he requested a trial from Counsel "hundreds of times." This Court finds Applicant has failed to meet his burden of proof. Applicant testified that it was his decision to enter his guilty plea and he did so freely. Counsel testified that if he had been instructed by Applicant to

go to trial, he would have done so. Counsel explained that he believed Applicant would not have had a viable defense at trial for his charges. Counsel provided documentation showing Applicant acknowledged he would be waiving his right to a jury trial by entering his guilty plea. This Court finds Counsel's testimony to be credible on this allegation. Applicant made the decision to enter his guilty plea freely and voluntarily. Applicant was given an opportunity to proceed to trial, but did not indicate a desire to do so. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Failed to inform applicant of his right to appeal"

During the evidentiary hearing, Applicant alleged he was unaware of his right to appeal his guilty plea. Applicant alleges that he never spoke with Counsel regarding appealing the guilty plea decision. Applicant alleges that if he had known it was an option, he would have filed an appeal. Counsel testified that it is his normal practice to inform each client that they will have 10 days to appeal a decision from the plea judge. Counsel testified that he spoke with Applicant about his right to appeal prior to the plea proceeding. Counsel testified that if Applicant had requested an appeal of his guilty plea, he would have filed one on Applicant's behalf. Counsel provided the Court with "Advisement of Rights Prior to Entering a Guilty Plea," a document signed and acknowledged by Applicant on the date of his guilty plea. Item 24 of this document provides, "I understand that I have the right to appeal any conviction and sentence, but I must do so within 10 days. I understand that my lawyer will help me file an appeal, if I so desire, but I must notify my lawyer of my desire to appeal with 8 days of my conviction." (emphasis original).

This Court finds Counsel's testimony credible on this issue. This Court finds the allegation contrary to the record, Counsel's testimony, Applicant's testimony during his guilty plea

proceeding, and the "Advisement of Rights" form signed by Applicant. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

CONCLUSION

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

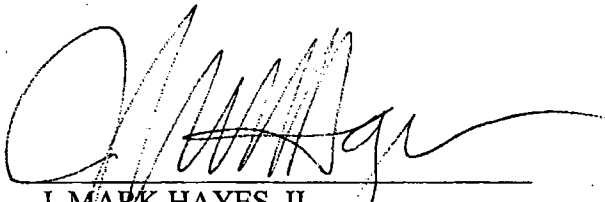
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's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

2019 JAN 22 AM 11:34
 CLERK OF COURT
 HANCOCK COUNTY

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

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


 J. MARK HAYES, II
 Presiding Judge
 Seventh Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Michael F. Wiggleton, #167168
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-42-1250

**AMENDED ORDER OF
DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed on April 11, 2017, by Mr. Michael F. Wiggleton (Applicant). Respondent made its Return on or about November 1, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on November 7, 2018, at the Spartanburg County Courthouse in Spartanburg, South Carolina.

Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by Jordan A. Cox, Esquire, of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Respondent called Ryan F. McCarty, Esquire, ("Counsel") as a witness at the hearing. 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 the application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Spartanburg County Clerk of Court. In December 2013, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute ("PWID") cocaine within one-half mile of a school (2013-GS-42-5669). Applicant was subsequently indicted in January 2014 for trafficking cocaine, 10-28

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grams (2014-GS-42-0249), trafficking cocaine, 400 grams or more, and possession of a weapon during the commission of a violent crime (2014-GS-42-0248 count I and II). John B. White, Jr. and Ryan F. McCarty, Esquires, represented Applicant. Deputy Assistant Solicitor Derrick B. Bulsa of the Seventh Circuit Solicitor's Office represented the State.

On October 21, 2016, Applicant pleaded guilty as indicted to PWID and trafficking, 10-28 grams, before the Honorable J. Derham Cole. Pursuant to a negotiated sentence, Judge Cole sentence Applicant to imprisonment for consecutive terms of twelve years for trafficking cocaine and thirty months' home detention for possession with intent to distribute cocaine. The State dismissed the remaining charges. Applicant did not appeal his guilty plea or sentence.

FACTUAL HISTORY

On or about June 28, 2013, Applicant was driving a vehicle in the area of Arch Street and Howard Street, within the city limits of Spartanburg, South Carolina. While on patrol, officers with the Spartanburg City Police Department observed Applicant fail to use a turn signal while making a left turn. Officers paced the speed of Applicant's vehicle as traveling forty-five miles per hour in a thirty mph zone. Officers initiated a traffic stop at this time.

Applicant was observed as attempting to hide something under the driver's seat and officers removed him from the vehicle in response. Applicant was subsequently searched and narcotics were discovered in Applicant's pocket. It was later determined the narcotics amounted to 13-73 grams of cocaine. The stop occurred within a half-mile of Woodland Heights Elementary School in Spartanburg County, South Carolina.

ALLEGATIONS

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

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2019 JAN 25 PM 1:58
CLERK OF COURT
SPARTANBURG COUNTY

1. Ineffective Assistance of Counsel

- a. "Counsel did not impart to the Applicant an understanding of the law on the relation of the facts."
- b. "Counsel failed to articulate 4th Amendment violation"
- c. "Counsel did not familiarize himself with the facts of the case."
- d. "Coerced into pleading guilty"
- e. "Counsel failed to take me to trial"

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified that he was represented by Mr. McCarty following his arrest. Applicant testified that the police told many lies throughout the process and that he informed his attorney of the many lies. Applicant testified that he was unaware that he would have been able to challenge the search of his person by law enforcement. Applicant testified that he wished to challenge the traffic stop and subsequent search by law enforcement, indicating that it was a violation of the 4th Amendment. Applicant testified that he wanted to go to trial and informed Counsel "hundreds of times" of this desire. Applicant testified that Counsel did not explain the law of his case.

Applicant testified that he remembered being placed under oath during his guilty plea proceeding. Applicant testified that he told the judge he had plenty of time to talk to his lawyer about his case and time to think about his decision to enter a guilty plea. Applicant testified that he told the judge he did not have a defense to his charges during his guilty plea proceeding. Applicant testified that he informed the judge he had not been pressured in any fashion to enter a guilty plea, during his plea proceeding. Applicant testified that he did not believe Counsel was prepared for trial. Applicant testified that Counsel failed to inform him he would be able to appeal his guilty plea.

CV
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Counsel

Mr. Ryan F. McCarty testified on behalf of Respondent. Counsel testified that he has practiced law for over ten years. Counsel testified that a majority of his career has focused on criminal law, both prosecution and defense. Counsel testified that his firm was retained to represent Applicant in July 2003. Counsel testified that Applicant did not indicate he wanted to go to trial and wanted a plea deal. Counsel testified that he met with Applicant on several occasions to discuss his case and possible defenses. Counsel testified that he informed Applicant of the likely success of those defenses. Counsel testified that his law partner met with Applicant on several occasions and these meetings were documented in the defense file. Counsel testified that after failing to appear for a bond revocation hearing, a bench warrant was issued for Applicant's arrest. Counsel testified that Applicant was not found until August 5, 2014, nearly a year after the bench warrant was issued.

Counsel testified he had Applicant acknowledge and sign each plea offer from the State. Counsel testified that through a typed letter, Applicant was informed of each offer from the State, the possible ramifications of the guilty plea, and of his firm's specific legal advice pertaining to the State's offer. These letters were presented as evidence during the PCR hearing. Applicant's signed each of these letters. Counsel testified that prior to each guilty plea, his firm's practice is to provide each client with an "Advisement of Rights" document. Counsel testified that he provided this to Applicant and thoroughly reviewed each item listed. This form was presented during the PCR hearing. The documents provided by Counsel were marked as "State's Exhibit 1."

Counsel testified that based on his experience, Applicant did not have a viable defense to the charges he eventually pleaded guilty to. Counsel testified that he believed a possible defense to the trafficking charges existed, but this would have no effect for the PWID charges. Counsel

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did not believe a possible defense existed to the initial traffic stop and subsequent search of Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that

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counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant ~~has~~ failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

"Counsel did not impart the Applicant an understanding of the law on the relation of the facts"

Applicant alleges Counsel did not explain the facts of his case of how the law applied to his case. This Court Applicant has failed to meet his burden of proof. The allegation is contrary to Applicant's testimony during his guilty plea proceeding. During this proceeding, Applicant informed the Court he had enough time to talk with his attorneys concerning his case, his attorneys reviewed the indictments and charges against him, and he understood the possible sentence he was facing. Applicant further informed the Court that he did not have a defense to his charges.

This Court finds Counsel's testimony on this allegation to be credible. Counsel testified that not only was Applicant explained every legal aspect of his charges, Applicant signed and

acknowledged the legal advice provided by Counsel in letter form. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

"Counsel failed to articulate 4th Amendment Violation"

Applicant alleges Counsel rendered ineffective assistance of counsel, because Counsel did not explain how the search of law enforcement violated his 4th amendment rights. Applicant alleges that if he had known he would have a possible defense of the traffic stop and subsequent search, he would not have pleaded guilty. Applicant has failed to show Counsel rendered deficient performance. Applicant testified that the search of his person by law enforcement following his traffic stop was a violation of 4th amendment rights, but failed to show why it was a violation. Counsel testified that although he believed Applicant had a viable challenge to the later search of his home, there was no legal challenge to the initial stop and frisk of Applicant by law enforcement. This Court finds Counsel's testimony on this allegation credible.

Assuming, arguendo, Applicant was unaware that he could have challenged the search after the traffic stop and his lack of said knowledge was the fault of his lawyers, no showing has been made that such a challenge would have been successful in excluding the evidence. Therefore, Applicant has not successfully established the prejudicial element necessary for ineffective assistance of counsel. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Counsel did not familiarize himself with the facts of the case"

Applicant alleges Counsel did not familiarize himself with the facts of the case. This Court finds Applicant has failed to meet his burden of proof. Counsel testified that he represented Applicant for three years, meeting with Applicant on several occasions. Counsel testified as to the facts surrounding Applicant's case, as well as the possible defenses Applicant had. Counsel



appeared credible during his testimony and of his knowledge of Applicant's case. Furthermore, the documents provided by Counsel detailed the facts surrounding Applicant's case and Counsel's detailed analysis of his legal advice for his charges. These documents were signed and acknowledged by Applicant, contemporaneously, during Counsel's representation. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Coerced into pleading guilty"

Applicant alleges that he was coerced into pleading guilty. This Court finds Applicant has failed to meet his burden of proof. Applicant failed to provide testimony as to how he was coerced into entering his guilty plea. Applicant testified that it was his decision to enter the guilty plea. Counsel testified that it was always Applicant's intent to enter a guilty plea. Counsel testified that had Applicant wished to proceed to trial, he would have. The documents provided by Counsel indicate Applicant's knowledge that he was giving up the right to a trial by pleading guilty. Applicant testified during his guilty plea proceeding that he was entering his guilty plea freely and voluntarily. Applicant further testified that he had not been pressured in any way to enter a guilty plea. This Court finds Counsel's testimony credible on this allegation. This Court finds the allegation is contrary to the record of this case, Counsel's credible testimony, as well as Applicant's own testimony during the guilty plea proceeding. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Counsel failed to take me to trial"

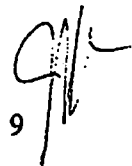
Applicant alleges Counsel was ineffective for failing to take him to trial on his charges. Applicant testified that he requested a trial from Counsel "hundreds of times." This Court finds Applicant has failed to meet his burden of proof. Applicant testified that it was his decision to enter his guilty plea and he did so freely. Counsel testified that if he had been instructed by Applicant to

go to trial, he would have done so. Counsel explained that he believed Applicant would not have had a viable defense at trial for his charges. Counsel provided documentation showing Applicant acknowledged he would be waiving his right to a jury trial by entering his guilty plea. This Court finds Counsel's testimony to be credible on this allegation. Applicant made the decision to enter his guilty plea freely and voluntarily. Applicant was given an opportunity to proceed to trial, but did not indicate a desire to do so. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Failed to inform applicant of his right to appeal"

During the evidentiary hearing, Applicant alleged he was unaware of his right to appeal his guilty plea. Applicant alleges that he never spoke with Counsel regarding appealing the guilty plea decision. Applicant alleges that if he had known it was an option, he would have filed an appeal. Counsel testified that it is his normal practice to inform each client that they will have ten days to appeal a decision from the plea judge. Counsel testified that he spoke with Applicant about his right to appeal prior to the plea proceeding. Counsel testified that if Applicant had requested an appeal of his guilty plea, he would have filed one on Applicant's behalf. Counsel provided the Court with "Advisement of Rights Prior to Entering a Guilty Plea," a document signed and acknowledged by Applicant on the date of his guilty plea. Item 24 of this document provides, "I understand that I have the right to appeal any conviction and sentence, but I must do so within 10 days. I understand that my lawyer will help me file an appeal, if I so desire, but I must notify my lawyer of my desire to appeal with 8 days of my conviction." (emphasis original).

This Court finds Counsel's testimony credible on this issue. This Court finds the allegation contrary to the record, Counsel's testimony, Applicant's testimony during his guilty plea

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proceeding, and the "Advisement of Rights" form signed by Applicant. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

CONCLUSION

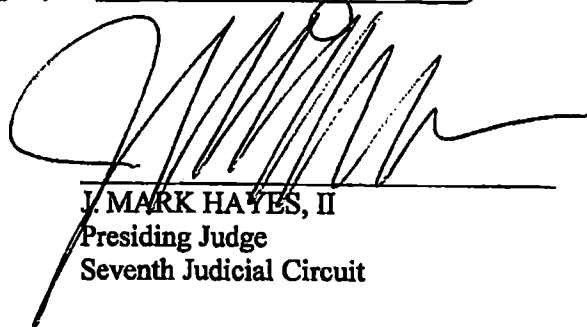
Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, the allegations are denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 25th day of Jan, 2019.


 J. MARK HAYES, II
 Presiding Judge
 Seventh Judicial Circuit

Spartanburg, South Carolina

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

MICHAEL F. WIGGLETON, #167168,

Applicant,

v.

STATE OF SOUTH CAROLINA,

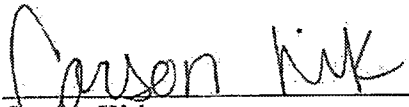
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Amended Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Rodney Wade Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603-0916

This 29th day of January, 2019.



Carson Kirk
Legal Assistant

SWORN to before me this 29th day January, 2019.



Notary Public for South Carolina.

My Commission Expires: 5/20/2025

WITNESSES

SPTBG CITY PUBLIC SAFETY *bb*

Rene M. Jones

ARREST WARRANT NUMBER

2013A4210202318

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

DEC 12 2013

REPORTER'S VERDICT

3. CARD PULLED

INDEXED

4. CHECKED WARRANTS

5. CHECKED SIGNATURE

7. ASSESSMENT AND

Foreperson of Petit Jury

Date:

DOCKET NO.

13-99-42-35669

The State of South Carolina

County of

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 16 2013

TERM

THE STATE

vs.

MICHAEL F. WIGGLETON

FTA

BW to remain active.

H. Holliday 3/6/14

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE WITHIN
ONE-HALF MILE OF SCHOOL

SC Code: 44-53-445

2014 MAR -7 AM 9:41

2013 DEC 18 PM 1:45

M. HUIE BLANCHET

STATE OF SOUTH CAROLINA)
COUNTY OF)

INDICTMENT

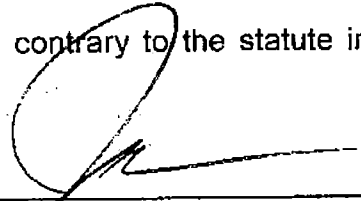
DEC 12 2013

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

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE WITHIN ONE-HALF MILE

That Michael F. Wiggleton did in Spartanburg County on or about June 29, 2013, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Cocaine, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Woodland Heights Elementary School under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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



ASSISTANT SOLICITOR

DOCKET NO.

14-GS-42-0248

The State of South Carolina

County of Spartanburg

Barry J Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 27 2014

TERM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JAN 24 AM 10:33
M. HOPE BLACKLEY2014 MAR -7 AM 9:41
M. HOPE BLACKLEY

NP-pled to other charges

both counts

Det B. Bulm

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 OCT 24 PM 12:10
M. HOPE BLACKLEY

SC Code: 44-53-370; 16-23-490

SCANNED

WITNESSES

SPTBG CITY PUBLIC SAFETY

ARREST WARRANT NUMBER

2013A4210202316 & 2013A4210202317

ACTION OF GRAND JURY

True BillForeperson of Grand Jury
Date: JAN 22 2014

VERDICT

Foreperson of Petit Jury
Date:THE STATE
vs.

MICHAEL F. WIGGLETON

FTA Both counts

BW to remain active.

M. Holliday 3/6/14

Indictment for

TRAFFICKING IN COCAINE;
POSSESSION OF FIREARM DURING
THE COMMISSION OF A VIOLENT
CRIME

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

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

COUNT ONE- TRAFFICKING IN COCAINE

That Michael F. Wiggleton, did in Spartanburg County on or about June 29, 2013, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (400) four hundred grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING
COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That Michael F. Wiggleton did in Spartanburg County on or about June 29, 2013, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: *TRAFFICKING IN COCAINE*, in violation of Code §16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

WITNESSES

SPTBB CITY PUBLIC SAFETY

Ronnie McFomata

ARREST WARRANT NUMBER

2013A4210202315

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

JAN 22 2014

REPORT INDEXED

VERDICT

3. CARD PUT IN

INDEXED

4. CHECKED WARRANTS

5. CHECKED SIGNATURE

6. ASSESSMENT AND
FINE CARD MADE

Foreperson of Petit Jury
Date:

DOCKET NO.

14-GS-42-0249

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 27 2014

TERM

THE STATE

vs.

MICHAEL F. WIGGLETON

FTA

Bw to remain active.

H. Holliday 3/6/14

Indictment for

TRAFFICKING COCAINE

SC Code: 44-53-370

CLERK OF COURT
JAN 24 AM 10:32
H. HOLLIDAY

2014 JAN -7 AM 9:41
H. HOLLIDAY

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

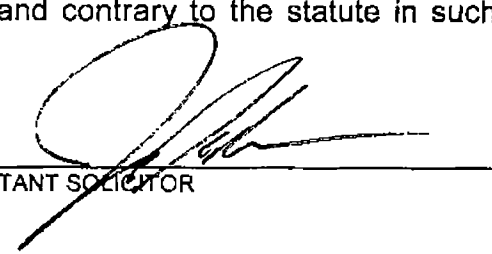
JAN 22 2014

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING COCAINE

That Michael F. Wiggleton did in Spartanburg County on or about June 28, 2013, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (10) ten grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370 , *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR