

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Robert E. Hood, Circuit Court Judge

ANTONIO TERRELL JACOBS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001740

APPENDIX

ROBERT M. PACHAK
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29210

ATTORNEYS FOR RESPONDENT

RECEIVED

MAR 02 2018

S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED DECEMBER 8, 2014	1
APPLICATION FOR POST-CONVICTION RELIEF FILED OCTOBER 29, 2015	15
RETURN	29
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 27, 2017	37
STATE’S EXHIBIT NO. 1 (PLEA DOCUMENT)	88
PLAINTIFF’S EXHIBIT NO. 1 (EMAIL)	90
PLAINTIFF’S EXHIBIT NO. 2 (RAP SHEET)	91
ORDER OF DISMISSAL FILED JULY 10, 2017	106
INDICTMENTS	119

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) FIRST JUDICIAL CIRCUIT
 COUNTY OF DORCHESTER) CASE NO.: 2014-GS-18-00498

STATE OF SOUTH CAROLINA)
)
)
 VS.)
)
)
 ANTONIO JACOBS,)
)
)
 DEFENDANT.)
 _____)

PLEA

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Dorchester County Courthouse
 St. George, South Carolina
 on Monday, December 8, 2014, Commencing at 4:20 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

Donald N. Sorenson, Esquire
1st Circuit Solicitor's Office
140 North Main Street, Suite 102
Summerville, South Carolina 29483

FOR THE DEFENDANT:

Pierce L. Wehman, Esquire
1st Circuit Public Defender's Office
107 W. 6th North Street, Suite 100
Summerville, South Carolina 29483

INDEX TO PROCEEDINGS

PAGE

PROCEEDINGS

4

CERTIFICATE OF COURT REPORTER

14

- - - - -

EXHIBITS

[None]

State vs. Antonio Jacobs
Sentencing
December 8, 2014

PROCEEDINGS

THE COURT: Are you Antonio Jacobs?

MR. JACOBS: Yes, ma'am.

THE COURT: Please swear Mr. Jacobs.

THE CLERK OF COURT: Please raise your right hand.

[Whereupon, Mr. Jacobs is duly sworn by the clerk of court as follows: do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God]

MR. JACOBS: Yes, ma'am.

THE CLERK OF COURT: Thank you.

THE COURT: Mr. Jacobs, you're scheduled for a jury trial here on these two indictments.

Do you understand that?

MR. JACOBS: Yes, ma'am.

THE COURT: I understand you wish to plead guilty; is that correct?

MR. JACOBS: Yes, ma'am.

THE COURT: And there is a negotiated plea for twenty to twenty-five years, terms left up to the Court.

Do you understand that?

MR. JACOBS: Yes, ma'am.

THE COURT: And if after hearing the facts and your prior record I cannot accept that, I would allow you to withdraw this plea.

State vs. Antonio Jacobs
Sentencing
December 8, 2014

1 Do you understand that, sir?

2 MR. JACOBS: Yes, ma'am.

3 THE COURT: Do you still wish to go forward here
4 today?

5 MR. JACOBS: Yes, ma'am.

6 THE COURT: What I also understand is I'm going to
7 accept your plea and then we're going to do sentencing
8 tomorrow to allow your family to be here.

9 Do you understand that, sir?

10 MR. JACOBS: Yes, ma'am. Thank you.

11 THE COURT: Is that what you want to do?

12 MR. JACOBS: Yes, ma'am. Thank you.

13 THE COURT: Who is going to come on your behalf?

14 MR. JACOBS: My mother and a friend of hers.

15 THE COURT: Sir, you are here to plead guilty on
16 2014-18-GS-498 and 500. I can sentence you, on the
17 trafficking cocaine ten to twenty-eight grams second
18 offense, up to -- from five years up to thirty years and
19 fine you \$50,000.

20 Do you understand that is the potential punishment?

21 MR. JACOBS: Yes, ma'am.

22 THE COURT: Knowing that, do you still wish to go
23 forward here today?

24 MR. JACOBS: Yes, ma'am.

25 THE COURT: And this was reduced from a third

State vs. Antonio Jacobs
Sentencing
December 8, 2014

1 offense?

2 MR. WEHMAN: Yes, Your Honor.

3 THE COURT: You understand that's a significant
4 reduction to you?

5 MR. JACOBS: Yes, ma'am.

6 THE COURT: You're also here to plead guilty on
7 possession of marijuana third offense. I can sentence
8 you from five to twenty years and up to a 20,000-dollar
9 fine.

10 Do you understand that's the potential punishment?

11 MR. JACOBS: Yes, ma'am.

12 THE COURT: Knowing that, do you still wish to go
13 forward here today?

14 MR. JACOBS: Yes, ma'am.

15 THE COURT: You do not have to plead guilty. By
16 pleading guilty, as I just indicated to you, you're
17 giving up your right to a jury trial. You're also
18 giving up your right to have a jury determine your guilt
19 beyond a reasonable doubt based upon the evidence the
20 State presents, as well as any evidence you may
21 introduce; the right against self-incrimination; the
22 right to say nothing at all; your right to confront and
23 be confronted by the witnesses against you, as well as
24 the right to call witnesses on your behalf. By pleading
25 guilty here today, you give up any defense that you may

MIA PERRON, CVR-CM-M

-6-

State vs. Antonio Jacobs
Sentencing
December 8, 2014

1 have to this charge -- or to these charges.

2 Do you understand those rights?

3 MR. JACOBS: Yes, ma'am.

4 THE COURT: And do you waive those rights at this
5 time?

6 MR. JACOBS: Yes, ma'am.

7 THE COURT: Mr. Wehman, did you explain to your
8 client all of the collateral consequences to a drug
9 offense? Specifically, to trafficking in cocaine ten
10 grams or more but less than twenty-eight second offense
11 is a violent and a serious offense?

12 MR. WEHMAN: Yes, Your Honor.

13 THE COURT: Mr. Jacobs, do you understand what I
14 mean by collateral consequences?

15 MR. JACOBS: Yes, ma'am.

16 THE COURT: That with each -- there are several for
17 a drug offense. But one is with each subsequent
18 offense, the penalties could increase.

19 Do you understand that, sir?

20 MR. JACOBS: Yes, ma'am.

21 THE COURT: Knowing that, do you still wish to go
22 forward here today?

23 MR. JACOBS: Yes, ma'am.

24 THE COURT: You understand that this is a violent
25 and a serious offense?

State vs. Antonio Jacobs
Sentencing
December 8, 2014

1 MR. JACOBS: Yes, ma'am.

2 THE COURT: And you understand what that means for
3 you for your future?

4 MR. JACOBS: Yes, ma'am.

5 THE COURT: In your own words, explain to me what
6 this classification means.

7 MR. JACOBS: Well, I know a violent offense is -- a
8 violent serious offense is eighty-five percent and I
9 would have to do -- I would have to complete eighty-five
10 percent of that time, and among release, what, two years
11 supervision I think.

12 THE COURT: It goes to the violent classification.
13 I always tell defendants that you should assume that
14 you're going to serve day-for-day whatever sentence that
15 I impose upon you.

16 Do you understand?

17 MR. JACOBS: Yes, ma'am.

18 THE COURT: I don't understand the department of
19 corrections calculations, and sometimes I don't know
20 that there is anybody that can, so I think it's just
21 better for you to assume that you're going to serve day-
22 for-day even though the classification may give you some
23 indication that you may serve eighty-five percent.

24 Do you understand what I'm saying?

25 MR. JACOBS: Yes, ma'am.

State vs. Antonio Jacobs
Sentencing
December 8, 2014

1 THE COURT: And as to serious, that classification
2 has to do with what most people commonly call strikes.

3 Do you understand what that means --

4 MR. JACOBS: Yes, ma'am.

5 THE COURT: -- and what the potential is for you?

6 MR. JACOBS: Yes, ma'am.

7 THE COURT: So at some point, I'm going to sentence
8 you to somewhere between twenty to twenty-five years.
9 Should you commit -- after that release, should you
10 commit a serious or most serious or a combination, the
11 State could seek for you to serve life without the
12 possibility of parole.

13 Do you understand what that classification means?

14 MR. JACOBS: Yes, ma'am.

15 THE COURT: Knowing that, do you still wish to go
16 forward here today?

17 MR. JACOBS: Yes, ma'am.

18 THE COURT: Have you been satisfied with the
19 services of your attorney?

20 MR. JACOBS: Yes, ma'am.

21 He spoke with me on several occasions about my
22 situation.

23 THE COURT: From where I sit, just looking at the
24 reductions, he has done a very good job for you.

25 MR. JACOBS: Yes, ma'am.

State vs. Antonio Jacobs
Sentencing
December 8, 2014

1 THE COURT: Any complaints about the way he has
2 handled this case?

3 MR. JACOBS: No, ma'am.

4 THE COURT: Do you think there's maybe something he
5 should have done, or perhaps should not have done, that
6 would have assisted you in your defense?

7 MR. JACOBS: Nothing that I can see.

8 THE COURT: He's also the one that asked the Court
9 to delay your sentencing until tomorrow.

10 MR. JACOBS: Yes.

11 THE COURT: You have the right to appeal this plea
12 and the sentence that I do impose -- we cannot do that
13 until tomorrow -- but you must do so within ten days of
14 the imposition of the sentence.

15 Do you understand?

16 MR. JACOBS: Yes, ma'am.

17 THE COURT: Knowing that, do you still wish to go
18 forward here today?

19 MR. JACOBS: Yes, ma'am.

20 THE COURT: I think I have covered all your
21 constitutional rights. Now we're going to listen to the
22 facts, so please listen carefully.

23 MR. SORENSON: Thank you. May it please the Court,
24 Your Honor.

25 This stems out of an investigation that the

State vs. Antonio Jacobs
Sentencing
December 8, 2014

1 Dorchester County-Summerville Metro Narcotics Unit
2 opened into regarding this defendant back in January of
3 this year.

4 They initially -- using a confidential informant,
5 they did an initial buy, controlled buy, from Mr. Jacobs
6 on January 24th of this year and that was for about
7 twenty-three grams of marijuana.

8 They subsequently, on February 4th of this year,
9 did another controlled buy where they purchased a little
10 over half a gram of crack cocaine from Mr. Jacobs.

11 And then subsequently, on April the 10th of 2014,
12 actually at his residence, Ashley Garden Apartments,
13 purchased \$100 worth of crack cocaine from Mr. Jacobs.
14 And that last buy was made at about four o'clock in the
15 afternoon.

16 They, subsequent to that last buy, got a search
17 warrant that was executed then later on that afternoon
18 and they did find kind of scattered throughout that
19 apartment what ultimately ended up coming back positive
20 -- it was right at about just under twenty grams of
21 powder crack cocaine that was found, and just under nine
22 grams of crack cocaine that were found within that
23 apartment, along with marijuana in various spots along
24 with various other paraphernalia and stuff of that
25 nature, consistent with the sale of those drugs within

State vs. Antonio Jacobs
Sentencing
December 8, 2014

1 that apartment. So that would be the basis of the drug
2 charges.

3 He also has, Your Honor -- looking back at his
4 prior record, he's got a possession of crack cocaine
5 conviction from 1998; possession of crack cocaine
6 conviction from 2001; two prior convictions for
7 possession with intent to distribute cocaine from 2003;
8 and then another crack conviction.

9 The 2004 indictment -- that I think I've got it on
10 your form up there -- when you look at his rap sheet, it
11 says distribution of crack second. Apparently, that was
12 what he initially pled to and that was overturned o a
13 PCR. That's actually a possession of crack conviction.
14 It looks like six years later, they went back and pled
15 to that.

16 So he's got about five prior drug convictions.

17 THE COURT: You heard the facts. Is that what you
18 did?

19 MR. JACOBS: Yes, ma'am.

20 THE COURT: I do find a substantial factual basis
21 for your plea. Your decision to plead guilty has been
22 freely, voluntarily, knowingly, and intelligently made.
23 You have indicated to the Court you've had the advice
24 and counsel of a competent attorney with whom you've
25 told the Court you're satisfied.

State vs. Antonio Jacobs
Sentencing
December 8, 2014

1 I hearby accept your plea of guilt. And we will
2 defer sentencing until tomorrow.

3 MR. WEHMAN: Thank you, Your Honor.

4 MR. SORENSON: Thank you.

5 THE COURT: All right. We'll see you tomorrow.

6 MR. WEHMAN: All right. Thank you.

7 [SENTENCING ADJOURNS AT 4:30 P.M.]
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State vs. Antonio Jacobs

C E R T I F I C A T E

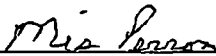
STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the plea held before the Honorable Kristi L. Harrington, on Monday, December 8, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 27th day of February, 2016.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-14-

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Dorchester)2015-CP-18- 2086Antonio Terrell Jacobs)Full name and prison number (if any) of applicant
306881)

v.)

APPLICATION FOR)

State of South Carolina)

POST-CONVICTION RELIEF)

CLERK OF DISTRICT COURT
DORCHESTER COUNTY
2015 OCT 29 PM 4:48
CERTIFIED COPY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution
4344 Broad River Rd. Columbia, SC 29210
2. Name and location of Court which imposed sentence Dorchester County
Courthouse, 5200 East Jim Billie Boulevard St. George, SC 29477
3. Name(s) of co-defendant(s) (if any) Donnell Jacobs
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 GS 180 498 December 9, 2014 20 years 3rd offense
 - (b) 2014 GS 180 500 December 9, 2014 22 years 2nd offense

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) December 9, 2014 20 years
- (b) December 9, 2014 22 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel Advised me not to Appeal, but instead to file A(Pc R)
- (b) _____

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

(a) N/A
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? No
 (c) your sentencing? No
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

(a) the name and address of each attorney who represented you:
 i. John M. Loy Deputy public Defender
107 West 6th North Street Summerville, SC 29483
 ii. Pierce W. Wehman 107 West 6th North Street
Summerville, SC 29483 Assistant Public Defender
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. none

 ii. My arraignment and Plea, bond motion,
preliminary Hearing
 iii. _____

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

A new trial

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

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Antonio T. Jacobs, 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.

Antonio Jacobs

SWORN to and subscribed before me this 9
day of October, 2015.

Thomas D. Best (L.S.)
Notary Public

My Commission Expires: My Commission Expires April 21, 2018

2015-CP-18- 2086

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

I, Antonio Jarvis T., 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.

Antonio Jarvis
Applicant

SWORN or affirmed to and subscribed before me this
9 day of October, 2015.

Notary Public
Notary Public

My Commission Expires: My Commission Expires April 21, 2018

22. (p.) State concisely and in the same order the facts which support each of the Grounds Set out in (10):

A.) Ineffective Assistance of Counsel:

2015-CP-18- 2086

- 1.) Trial Counsel was Ineffective for failure to subject prosecutions case to a meaningful adversarial testing Denying me of my 6th Amendment Right to effective Assistance of Counsel.
- 2.) Trial Counsel was Ineffective for failure to Address how Detectives never seized any buy money from me on alleged buy, and Arrest Date April 10, 2014 which could have been Argued at trial to further discredit Confidential Informant as well as Detective Martins Supplementary Report. Failure to utilize Evidence violated my 6th Amendment Right. (Exhibit)(B)
- 3.) Trial Counsel was Ineffective for failure to Inform the Court at the preliminary Hearing that I did not Receive any Incoming mail at alleged Apartment. Nor, was my name on any utility bills of Alleged Apartment. He failed to demand Evidence from Detectives which violated my 6th Amendment Right. See exhibit (C)
- 4.) Trial Counsel was Ineffective for failure to demand Detective Martin to produce Cellphone Records mentioned in supplementary Report Alleged to have belonged to me, which violated my 6th Amendment Right. Failure of unproduced Evidence could have Discredited Confidential Informants statement at trial. (Exhibit)(D)
- 5.) Trial Counsel was Ineffective for failure to Attack Detective Martins Supplementary Report at Preliminary Hearing which clearly states who was "observed" in the Alleged Apartment prior to Search. Further proving I was not present, nor did I have Knowledge of Illegal substances in Alleged Apartment. Thus, violating my 6th Amendment Right. See Exhibit (E)
- 6.) Trial Counsel was Ineffective for failure to Request a Continuance because he was not afforded enough time to Investigate and prepare my case because he was only an Assistant Public Defender, not a full fledged Public Defender. Thus, violating my 6th Amendment Right to Effective Assistance of Counsel.
- 7.) Trial Counsel was Ineffective for failure to address to the Court that I had not been Indicted within the 90 Day period Required. Thus violating my 6th Amendment Right, I was Arrested April 10, 2014 I was not Indicted until October 9, 2014.
- 8.) Trial Counsel was Ineffective because he advised me to take a plea knowing that I had not seen the audio / video Recordings, thus, Rendering my plea Involuntary, violating my 6th Amendment Right.
- 9.) Trial Counsel was Ineffective for failure to file my notice of Appeal. I asked Counsel about appeal and he told me that It would not be in my best Interest to file Appeal, but Instead it would be best If I filed for a (PLR) hearing. Thus, violating my 6th Amendment Right. No other advice was given to me.

- (Exhibit)(J) 10.) Trial Counsel was Ineffective for failure to withdraw guilty plea where Indictment charging "Possession with Intent to distribute Marijuana" did not sufficiently state Level of offense. Title of Charge in Indictment does not sufficiently state the Level of offense in which to decide punishment Range, violating my 5th Amendment Right.
- 11.) Trial Counsel was Ineffective for failure to advise me that under my 5th Amendment Right I did not have to answer to any crime whether it be Capital or Infamous unless on a presentment or Indictment of a Legal Grand Jury. (Exhibit)(K)
- 12.) Trial Counsel was Ineffective for failure to Attack fruitless Search Warrant which failed to establish Substantial basis of Knowledge for a finding of Probable Cause. Thus, violating my 4th Amendment Right. (Exhibit)(L)
- 13.) Trial Counsel was Ineffective for failure to Attack the Credibility of the Confidential Informant Referred to in fruitless Search Warrant at Preliminary Hearing. Thus violating my 4th Amendment Right. (Exhibit)(M)
- 14.) Trial Counsel was Ineffective for failure to make State Present All Evidence Alleged Against me as Required Rule (5) and Rule (6) of the Rules of Criminal Practice. Thus, violating my 14th Amendment Due Process Right. (Exhibit)(N)
- 15.) Trial Counsel was Ineffective for failure to make Detective Martin Produce Alleged Audio/video Recordings of Controlled Purchases Allegedly made by Confidential Informant at Preliminary Hearing. Alleged Buy Money was never seized. (Exhibit)(O)
- 16.) Trial Counsel was Ineffective for failure to Produce photos of Alleged crime Scene before my plea of Guilty which also could have proved I was not inside Alleged nor was I Living at Alleged Apartment. Thus, violating my 14th Amendment Due Process Right. (Exhibit)(P)

B.) Lack of Subject Matter Jurisdiction:

- 1.) Trial Court Lacked Subject Matter Jurisdiction to Accept a guilty plea the unindicted charge of Trafficking cocaine 2nd offense because Trial counsel never informed me of my right to waive presentment to the Grand Jury. Area on the Indictment to inform of my right to such action is not signed by me or any witness to prove I was informed. I never plead guilty to a Trafficking 1st offense.
- 2.) Trial Court Lacked Subject Matter Jurisdiction to convict me of "Possession with Intent to Distribute Marijuana" where Bill of Indictment does not sufficiently state the Level of offense in the language, in the statute, or in the body of Indictment with certainty and particularity to enable the Court to know what Judgment to pronounce or let me know what I was called upon to answer.

EXHIBIT (D)

CERTIFIED COPY
2015 OCT 29 PM 4:48
CLERK OF COURT
DOORCHAMBER COUNTY

Individual Arrest Report

Page 2 of 2

Offense: C555, Cont Subst/Sale/Manu Synthetic
Offense Refract: PENDING
Counts: 1
OTN:
Related Incident: 14007165

jlbook.agency = SPD jlbook.num = 31401

Name Number: 30811

ANTONIO TERRELL JACOBS, Black Male, DOB [REDACTED] /1978

4/10/2014 9:08:25 PM



Date: 04/10/2014 19:40:10

Mon: Yes
Tue: Yes
Wed: Yes
Thu: Yes
Fri: Yes
Sat: Yes
Sun: Yes

Arrest

Date: 04/10/2014 19:40:10
Location: 403 E 3rd N ST
Area: SPD NORTH EAST
Age at Arrest: 36
Arrest Type: Custody on Warrant or Incident
Disposition:
Pre-Sentence Class:
Arresting Officer: MARTIN, A
Arresting Agency: METRO NARCOTICS UNIT
Reference: 14007165
Tracking: Automatically Generated

Arrest Additional Info

PROPERTY
1 HTC CELLULAR PHONE
1 HOUSE KEY
1 BLUE AND GRAY NYLON BELT
1 YELLOW METAL NECKLACE W/ CROSS
1 ORANGE CAP

MONEY: \$224.10 INITIALS: _____

SUBJECT'S SIGNATURE: _____

CHARGE ID: CDR CODE 3039 DISTRIBUTION COCAINE BASE 3RD OFFENSE
CDR CODE 0450 TRAFFICKING COCAINE BASE
CDR CODE 0278 TRAFFICKING COCAINE
CDR CODE 0186 PVTD MARIJUANA
CDR CODE 3014 MANUFACTURING COCAINE BASE

BOND REQUEST: \$1,000,000.00

RECEIVING OFFICIAL: _____

Report Includes:

All dates arrested, All booking numbers matching "31401", All arresting agencies, All arresting officers, All arrest types, All arrest area codes, All judicial age statuses, All inmate name numbers, All offense codes, All statute codes, All alcohol/drug codes, All crime class codes, All law jurisdictions, All count codes, All entry codes, All custody flags

mpjlar.xl

04/10/14

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RACE _____ SEX _____ DATE OF BIRTH _____

SIGNATURE

Exhibit C 25

SmeadSoft Property and Evidence Room Management
New Property

Case Number	Description	Narrative	Officer ID	Type
14007105	Cocaine Base	Controlled purchase #2	amarin	Evidence

NARCOTICS EVIDENCE
 CONTROL NUMBER: 0036433
 SUBMITTING RECEIPT: TEAR ALONG LINE AND RETAIN FOR YOUR RECORDS
 Bag Sealed By: A Martin #204
 Description: Cocaine Base Case #: 14007105
 Date Sealed: 2/19/14
 Item #: 2

↑ TEAR HERE ↑



CERTIFIED COPY
 2015 OCT 29 PM
 Cheryl
 CLERK
 DEPT. OF JUSTICE

Buy #2

DORCHESTER COUNTY SHERIFF OFFICE
SEARCH WARRANT RETURN

Page 2 of 2

Case # 14007165

By Whom

Thompson

ITEM SEIZED

Drawers to the left of the stove: (2) glass Pyrex measuring cups w/ white powder residue

on the table: (1) blk Samsung cell phone

LOCATION

Kitchen

NOTHING FURTHER

I swear that this Inventory is a true and detailed account of all the property taken by me pursuant to the warrant.

SWORN to before me this

11th day of April 2014
Signature of Judge (L.S.)
3:01 pm

Signature of Officer Executing Warrant

AGENCY I.D.
SC 0180200

SUPPLEMENTARY REPORT
TOWN OF SUMMERVILLE POLICE DEPARTMENT

CASE NUMBER										NCIC	
1	4	-	0	0	7	1	6	5		REQ	EDIT

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL RETURN	☐ ADDITIONAL VICTIM	☐ ADDITIONAL SUSPECT PROPERTY
☐ MODIFIED ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENSE	☐ ADDITIONAL RECOVERED PROPERTY

Incident Date: April 10, 2014
Incident Location: Ashley Gardens Apartment, Summerville S.C./Dorchester County
Incident Type: Distribution Of Cocaine Base / Buy Walk #3
Case Agent: Detective (Cpl) A. Martin
Other Agents: Lt. S. Young, Sgt. P. Thompson, Det. H. Tanquer, Det. R. Tanner, Det. D. Allen, Det. Strickland, Det. Lundberg

On this date April 10, 2014 a Confidential Informant was utilized to conduct the third controlled purchase from the suspect Antonio Terrell Jacobs at Ashley Gardens, Summerville South Carolina in Dorchester County. Upon successful completion of the controlled purchase an Arrest Warrant was obtained for Antonio Terrell Jacobs, and a Search Warrant for his residence located at Ashley Gardens Apartment #9, Summerville South Carolina in Dorchester County. **Never saw me enter or leave Apartment.**

Antonio Terrell Jacobs was apprehended during a traffic stop by Summerville Patrol Units, and transported to Summerville Police Department to await service of Arrest Warrant # 11-619870

Prior to executing the Search Warrant, Detectives observed Grady Ashe Jr. drive into the apartment complex in a maroon Dodge Magnum bearing South Carolina LPZ 18Y, and entering apartment #9.

Detectives with the Dorchester / Summerville Metro Narcotics Unit executed the Search Warrant for [redacted] Street, Ashley Gardens, Summerville SC.

Upon entry into the residence, Detectives observed Grady Ashe Jr. sitting on the living room couch, and Donnell Jacobs at the kitchen table. Both were placed in handcuffs, and detained during the search of the residence. After Miranda Donnell Jacobs stated to Detective R. Tanner she knew there was marijuana in the residence, and pointed out its location, but denied having knowledge of cocaine or cocaine base.

The following items were discovered inside the residence.

Clear plastic bag containing white powder, clear plastic bag containing white powder, clear plastic bag containing off white rock type substance, clear plastic bag containing off white rock type substance, clear plastic bag containing green plant material, clear plastic bag containing two smaller bags of green plant material, gallon clear plastic bag containing three smaller bags of green plant material, clear plastic bag containing green plant material, purple digital scale, black & silver digital scale, metal pipes with blunt tips commonly used to smoke cocaine base, small glass jar fitted with a metal pipe, and filter commonly used to smoke cocaine base, black bag containing choke boy, gallon zip lock bag containing loose green plant residue, box of new sandwich bag, two Pyrex cups with white powder residue; which tested presumptive for cocaine. The following weights from recovered drugs / narcotics are approximate: Cocaine, 18.7g, 2.9g, - Cocaine Base, 1.2g, 3.0g, 8.9g, 2.8g Marijuana, 60.8, 28.9g, 8.3g, 11.9g, 8.7g, 23.1g, 1g.

All items were documented on the Search Warrant Return, and submitted into evidence for testing

A Search Warrant was obtained for the maroon Dodge Magnum, Grady Ashe Jr. was observed operating, after a K-9 under the control of a trained handler alerted on the driver's side door. However no contraband was discovered.

Antonio Jacobs was charged with the following: Trafficking Cocaine Base, Trafficking Cocaine, Manufacturing Cocaine Base, Possession With Intent to Distribute Marijuana, and Distribution of Cocaine Base Third.

Donnell Jacobs was charged with Trafficking Cocaine Base, Trafficking Cocaine, Manufacturing Cocaine Base, Possession With Intent to Distribute Marijuana.

Grady Ashe Jr. was charged with driving under suspension third.

This case is closed with three arrests, service of nine arrest warrants, two search warrants, and one citation

SUBJECT IDENTIFIED ☐ YES ☐ NO	INVESTIGATOR LOCATED ☐ YES ☐ NO	ACTIVE ☐ YES ☐ NO	ADJ. CLOSING ☐ YES ☐ NO	ARRESTED UNDER 18 ☐ YES ☐ NO	EX-CLAM UNDER 18 ☐ YES ☐ NO
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRAJURISDICTIONAL 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ ADVERSE - NO CUSTODY	REPORTING OFFICER(S) Detective Cpl. Andy Martin	DATE April 10, 2014	204	DATE 4/10/14	DATE 4/10/14

2015 OCT 29 PM 4:40
CERTIFIED COPY

Exhibit 27

EXHIBIT 4
PROPERTY TO BE SEIZED

2014 OCT 29 PM 4:48

- 1.) BOOKS, RECORDS, RECEIPTS, NOTES, LEDGERS, AND OTHER PAPERS RELATING TO THE TRANSPORTATION, ORDERING, PURCHASE, AND DISTRIBUTION OF CONTROLLED SUBSTANCES.
- 2.) PAPERS, TICKETS, NOTES, SCHEDULES, RECEIPTS, AND OTHER ITEMS RELATING TO DOMESTIC AND INTERNATIONAL TRAVEL.
- 3.) BOOKS, RECORDS, RECEIPTS, BANK STATEMENTS AND RECORDS, MONEY DRAFTS, LETTERS OF CREDIT, MONEY ORDERS AND CASHIERS CHECKS, RECEIPTS, PASSBOOKS, BANK CHECKS, SAFE DEPOSIT BOX KEYS, AND OTHER ITEMS EVIDENCING THE OBTAINING, SECRETING, TRANSFER, AND / OR CONCEALMENT OF ASSETS AND TO OBTAINING, SECRETING, TRANSFER, CONCEALMENT AND / OR EXPENDITURE OF MONEY
- 4.) UNITED STATES CURRENCY, PRECIOUS METALS, JEWELRY, AND FINANCIAL INSTRUMENTS, INCLUDING STOCKS AND BONDS - AMOUNTS INDICATIVE OF THE PROCEEDS OF ILLEGAL NARCOTIC TRAFFICKING.
- 5.) PHOTOGRAPHS, IN PARTICULAR PHOTOGRAPHS OF CO-CONSPIRATORS, OF ASSETS AND / OR CONTROLLED SUBSTANCES.
- 6.) INDICA OF OCCUPANCY, RESIDENCY, AND / OR OWNERSHIP OF TO PREMISES DESCRIBED ABOVE, INCLUDING, BUT NOT LIMITED TO, UTILITY AND TELEPHONE BILLS, CANCELED ENVELOPES, AND KEYS.
- 7.) RECEIPTS FOR ITEMS EVIDENCING THE EXPENDITURE OF THE PROCEEDS OF DRUG DISTRIBUTION, INCLUDING BUT NOT LIMITED TO CLOTHING, FURNITURE, AND ELECTRONIC EQUIPMENT.
- 8.) WEAPONS.
- 9.) CONTROLLED DANGEROUS SUBSTANCES AND RELATED PARAPHERNALIA.

DORCHESTER COUNTY SHERIFF OFFICE
Search Warrant Return

Page 1 of 2

Case # 14007165

I Detective R. Tanner, received the attached Search Warrant on 4/10, 2014,

and have executed it as follows:

On 4/10, 2014, at 1810 o'clock (PM) AM, searched the person of

or the premises at [REDACTED], which is described in the warrant.

I left a copy of the warrant with Residence together with a copy of the receipt for the items seized.
(Name of Person searched or location of premises searched)

The following is an inventory of property taken pursuant to the warrant:

By Whom	Item Seized	Location
Thompson	In a jean bookbag: (1) gallon size zip lock bag w/ (3) clear plastic bags w/ GPM, (1) small bag w/ (2) clear plastic bags w/ GPM, (1) clear plastic bag w/ (1) clear plastic bag w/ GPM, (1) large clear plastic bag w/ GPM, (1) smaller clear plastic bag of GPM, (2) digital scales, (2) boxes of sandwich bags, (1) box of GoodSense clear plastic sandwich bags w/ (1) clear plastic bag (large) w/ white	Dining Room Floor
Thompson	powder, (1) clear plastic bag w/ off white rock like substance (large), (1) small bag of white powder substance, (1) small bag of off white rock like substance, (2) clear plastic bags w. GPM residue, (2) baby food jars used as a smoking device, (1) blk bag w/ cher toy	Dining Room Floor
Thompson	On counter in sugar container: Loose GPM Cabinet/ Top Shelf: (1) box of sandwich bags	Kitchen
Thompson	In between the mattress & box spring: (2) metal smoking pipes	Bedroom #1

This inventory was made in the presence of: Det. Lt. Gibbons, Det. Lt. Young, Det. Sgt. Thompson, Det. Cpl. Lundberg
 Det. Cpl. Allen, Det. Cpl. H. Tanner, Det. Strickland

I swear that this inventory is a true and detailed account of all the property taken by me pursuant to the warrant
 Sworn to before me this

11th day of April, 2014
 Signature of Judge [Signature] (L.S.)
 3:01 PM

[Signature]
 Signature of Office Executing Warrant

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Antonio Terrell Jacobs, #00306881,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2015-CP-18-2086

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on October 29, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. Applicant was indicted by the October 2014 term of the Court of General Sessions for Dorchester County for two counts of possession with intent to distribute marijuana (2014-GS-18-0498) and trafficking in Cocaine, 10g or more, but less than 28g – 3rd or sub. offense (2014-GS-18-0500). Applicant was represented by Pierce L. Wheman, Esq. On December 8, 2014, Applicant waived presentment to Grand Jury and pled guilty to manufacture, possession of other substance in schedule I, II, II or flunitrazepam, with intent to distribute – 3rd or sub offense and trafficking in cocaine, 10g or more, but less than 28g – 3rd or sub. offense. Applicant was sentenced on December 9, 2014 by the Honorable Kristi L. Harrington sentenced Applicant to twenty years (20) years imprisonment for manufacture, possession of other substance in schedule I, II, II or flunitrazepam, with intent to distribute – 3rd or sub offense and twenty-two (22) years for trafficking in cocaine, 10g or

more, but less than 28g – 3rd or sub. offense to be served concurrently. Applicant did not appeal his plea or sentence.

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

II.

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

1. Ineffective Assistance of Counsel

a. Sixth Amendment

- i. "Failure to utilize evidence."
- ii. "Failure to demand evidence from Detectives."
- iii. "Failure to request a continuance because he was not afforded enough time to investigate and prepare my case because he was only an Assistant Public Defender, not a full-fledged Public Defender."
- iv. "Not indicted within the 90 day period required."
- v. "Failure to file my notice of appeal."
- vi. "Failure to withdraw guilty plea where indictment charging 'possession with intent to distribute marijuana' did not sufficiently state level of offense."

b. Fifth Amendment

- i. "Failure to advise me that under my 5th Amendment right I did not have to answer to any crime whether it be capital or infamous unless on a presentment of indictment of a Legal Grand Jury"

c. Fourth Amendment

- i. "Failure to attack fruitless search warrant which failed to establish

- substantial basis of knowledge for a finding of probable cause.”
- ii. “Failure to attack the credibility of the confidential informant.”
- d. Fourteenth Amendment
 - i. “Failure to make state present all evidence alleged against me.”
 - ii. “Failure to make Detective Martin produce alleged audio/video recordings of controlled purchases”
- 2. Involuntary Guilty Plea
 - a. “He advised me to take a plea knowing that I had not seen the audio/video recordings.”
 - b. “Failure to produce photos of alleged crime scene before my plea of guilty”
- 3. Subject Matter Jurisdiction
 - a. “Lacked subject matter jurisdiction to accept a guilty plea the unindicted charge of trafficking cocaine 2nd offense because trial counsel never informed me of my right to waive presentment to the Grand Jury.”
 - b. “Lacked subject matter jurisdiction to convict me of ‘Possession with intent to distribute marijuana’ where Bill of Indictment does not sufficiently state the level of offense in the language, the statute, or in the body of indictment with certainty.”

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends that Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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 pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. 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.

Respondent further submits Applicant's second allegation that his guilty plea was involuntary is without merit. In post-conviction relief 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) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). 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) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). 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. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). 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. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

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

questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

May 4, 2016

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2015-CP-18-02068

ANTONIO JACOBS, #306881

Applicant,

vs

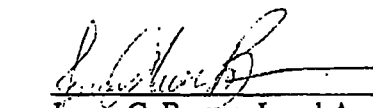
AFFIDAVIT OF SERVICE BY MAIL

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 D. Davis, Esquire
Lowcountry Law Firm
4000 Faber Place Drive
Suite 300
Charleston, SC 29405

DATED this 4th day of May, 2016.


Jennia C. Brown, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) CASE NO.: 2015-CP-18-02086

ANTONIO JACOBS)

APPLICANT)

v.)

TRANSCRIPT OF RECORD

THE STATE OF SOUTH CAROLINA)

RESPONDENT)

COPY

Monday, February 27, 2017

COMMENCING AT:

Dorchester County Courthouse
St. George, South Carolina
Before The Honorable Robert E. Hood, Judge

APPEARANCES:

For the Applicant:

Rodney Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, South Carolina 29405

For the State:

Ruston Neely, Esquire
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Heather R. Landry, CVR
Official State Reporter

INDEX

Proceeding	3
Applicant's Witness: Antonio Jacobs	
Direct Examination by Mr. Davis.....	8
Cross-Examination by Mr. Neely.....	24
Redirect Examination by Mr. Davis.....	30
State' Witness: Pierce Wehman	
Direct Examination by Mr. Neely.....	31
Cross-Examination by Mr. Davis	36
Closing Arguments	46
Reporter's Certificate	50

PLAINTIFF'S (APPLICANT) EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1	E-mail	37
2	Rap Sheet	42

STATE'S (RESPONDENT) EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1	Plea Document	33

1 (The proceeding began at 12:49 p.m.)

2 THE COURT: We're on the record in 2015-CP-18-2086.
3 This is Antonio Jacobs versus the State of South Carolina.
4 Mr. Jacobs is present represented by Rodney Davis who is
5 also present. The State is represented by Ruston Neely.
6 And, Mr. Davis, are you ready to go forward?

7 MR. DAVIS: I am, Judge. I would ask you -- this is my
8 first evidentiary hearing in front of you.

9 THE COURT: Okay.

10 MR. DAVIS: I'd appreciate -- we've talked at length,
11 and I'd appreciate if you, on the record, review the risks
12 and benefits with Mr. Jacobs. He originally had five
13 indictments. He pled to two.

14 THE COURT: What was he indicted for originally?

15 MR. DAVIS: Distribution of cocaine base, third;
16 possession with intent to distribute marijuana. There's
17 going to be an issue about which level that was, but it was
18 at least a second. Possession with intent to distribute
19 cocaine base, third; trafficking cocaine, third; and
20 manufacturing cocaine base, third.

21 THE COURT: But under your theory, what was his maximum
22 exposure upon his original charges?

23 MR. DAVIS: Judge, if I can get my keyboard to work, I
24 can tell you in just one second. (Brief pause.) I have the
25 crack-cocaine charge, each of them, being third offenses.

1 Possession with intent to distribute or manufacturing would
2 be ten to 30 on each. So 30 to 90 if convicted and run
3 consecutively. Trafficking cocaine, 10 to 28 grams, third
4 offense, is 25 to 30. So now we're up to 120 max, top end.
5 And then if it is possession with intent to distribute
6 marijuana, second, it's zero to ten. If it happened to be a
7 third . . .

8 THE COURT: It'd be five -- oh, a third. I don't know
9 what it is on a third. I don't think I've ever seen a
10 third.

11 MR. DAVIS: It would be five to 20.

12 THE COURT: Okay. So that would put it up -- his total
13 exposure would be 140 years?

14 MR. DAVIS: Yes, Your Honor.

15 THE COURT: Okay. All right. Mr. Jacobs, raise your
16 right hand.

17 (The applicant, ANTONIO JACOBS, is duly sworn.)

18 THE COURT: Okay. Now, listen, I don't know anything
19 about your case, okay? I wasn't your original trial judge.
20 I didn't represent you. Not involved in the -- I don't know
21 anything about your case in any way, shape, or form, okay?

22 THE APPLICANT: Yes, sir.

23 THE COURT: So it looks like you pled, according to the
24 paperwork before, you pled guilty. Is that right?

25 THE APPLICANT: Yes, sir.

1 THE COURT: Back in front of Judge Harrington in
2 December of 2014?

3 THE APPLICANT: Correct.

4 THE COURT: Is that right?

5 THE APPLICANT: Correct.

6 THE COURT: Okay. And she gave you -- hold on. Let me
7 see if I can figure it out here. It looks like she gave you
8 a 20-year sentence. Is that right?

9 THE APPLICANT: A 20-year sentence and a 22-year
10 sentence, Your Honor.

11 THE COURT: Twenty and 22, both to be run concurrent?

12 THE APPLICANT: Yes, sir.

13 THE COURT: Is that right?

14 THE APPLICANT: Correct.

15 THE COURT: So you're doing 22 years right now?

16 THE APPLICANT: Correct.

17 THE COURT: She did not make those consecutive?

18 THE APPLICANT: No, sir.

19 THE COURT: Is that right? Okay. So, really, even
20 though she gave you 20 on the one, you're really doing 22.
21 And those are concurrent to each other. Is that a fair
22 statement?

23 THE APPLICANT: Correct.

24 THE COURT: Okay. Now, you understand -- and, you
25 know, I used to do these PCR things all the time. You

1 understand that the only thing I can do today is sign an
2 order that says your whole case should start over back at
3 square one?

4 THE APPLICANT: Correct.

5 THE COURT: Okay. I can't reduce your sentence. You
6 understand that?

7 THE APPLICANT: Yes, sir.

8 THE COURT: I can't amend your bond and give you a
9 lower bond. Do you understand that?

10 THE APPLICANT: Yes, sir.

11 THE COURT: I can't, you know, do anything basically
12 other than sign a piece of paper that says you go back to
13 the Dorchester County Jail; you're back to facing all five
14 charges and potentially up to 140 years in prison all over
15 again.

16 THE APPLICANT: Yes, sir.

17 THE COURT: Do you understand that?

18 THE APPLICANT: Yes, sir.

19 THE COURT: And if that were to happen, and I'm not
20 saying it will, but if that were to happen then whatever
21 sentence you would get, if you got any, obviously, at the
22 end of that, no judge would be bound by the fact that you
23 only got 22 years the first time around. Does that make
24 sense?

25 THE APPLICANT: Understood.

1 THE COURT: So if you were convicted on one or any of
2 the five charges, if you decided to go to trial or if you
3 pled guilty, then the judge would not be bound by your
4 original plea agreement and could give you more time. In
5 fact, basically seven times the amount of time almost that
6 you got right now. Do you understand all that?

7 THE APPLICANT: Yes, sir.

8 THE COURT: Okay. All right. Knowing and
9 understanding all of that, you still want to go forward with
10 the PCR?

11 THE APPLICANT: Yes, sir.

12 THE COURT: Okay. All right. Let's do it.

13 MR. DAVIS: Judge, one final thing on that. He and I
14 have discussed, one of the things we intend to present in a
15 bit is some errors in original negotiation of the sentence.

16 THE COURT: Okay.

17 MR. DAVIS: We had discussed the Thompson case, he and
18 I. I'm sure the State's familiar with that.

19 THE COURT: You can sit down, Mr. Jacobs.

20 MR. DAVIS: I've got a copy of that. I will
21 acknowledge that the Smith v. State, which 775 Southeast 2nd
22 696, that case is a July 29, 2015, case. Even on issues
23 where there was an issue about the trial counselor or plea
24 counsel not objecting to the State not fulfilling its
25 promises, the sentence that jumps out from the Smith case is

Direct Examination of Mr. Jacobs by Mr. Davis

8

1 we now clarify the proper remedy is a new trial. Despite
2 that case and despite the clarification you just went on the
3 record, I will be making an argument that despite Smith, an
4 appropriate remedy might be to remand for renegotiating of
5 sentencing.

6 THE COURT: Okay.

7 MR. DAVIS: So I acknowledge that the Smith case cuts
8 against me. But I'd like to make at least the -- make an
9 equity argument on that.

10 THE COURT: Okay.

11 MR. DAVIS: Thank you, Your Honor. Our first witness
12 would be Mr. Jacobs.

13 THE COURT: All right. Come on forward, Mr. Jacobs.

14 THE CLERK: Do you want him sworn in, Judge?

15 THE COURT: He's already sworn in. You're already
16 under oath, okay?

17 THE APPLICANT: All right.

18 THE COURT: Great. Thank you.

19 DIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q. Mr. Jacobs, how old are you?

22 A. I'm 38 years old.

23 Q. And can you tell the judge where you were born and
24 raised?

25 A. Lincolnvile, South Carolina.

Direct Examination of Mr. Jacobs by Mr. Davis

9

1 Q. How far did you go in school?

2 A. Tenth grade. I'm currently in GED right out.

3 Q. Taking classes at SCDC for your GED?

4 A. Yes, sir.

5 Q. You have not obtained your certificate yet, have you?

6 A. No, sir.

7 Q. Okay. Are you okay about reading or writing?

8 A. Yes, sir. I am.

9 Q. And what was the last employment you had before
10 incarceration?

11 A. With my father, he had a plumbing. And I was working
12 with Angel Constructional also.

13 Q. Now, the judge went over with you before you start --
14 before you took the stand about the charges that you were
15 arrested for back in 2014. Do you agree with the charges
16 you were arrested for? The five charges.

17 A. Yes, I do.

18 Q. Okay. And who was your attorney to handle that case
19 for you?

20 A. Wehman, Pierce.

21 Q. And was he hired or was he appointed public defender?

22 A. Appointed.

23 Q. And he was with you sometime after the arrest all the
24 way up through the guilty plea, correct?

25 A. Yes. I believe it was in June.

1 Q. Now, can you tell the judge -- and you're talking from
2 June of 2014 you think is when he first got appointed. Are
3 you aware of that?

4 A. Yes, sir.

5 Q. Okay. So between June of 2014 and December of 2014,
6 can you tell the judge how many times you met with Mr.
7 Wehman?

8 A. We met and discussed briefly maybe three times, maybe
9 four.

10 Q. And were you out on bond or you were incarcerated
11 during that time frame?

12 A. Incarcerated.

13 Q. Okay. So would those meetings have occurred here at
14 the county jail?

15 A. Yes, sir.

16 Q. Did all three or four of those happen at the county
17 jail, or do those include meetings you would've had here at
18 the courthouse?

19 A. Well, let me correct that. They were at the
20 courthouse.

21 Q. So all three or four of the meetings were here at the
22 courthouse?

23 A. Yes, sir.

24 Q. Down on the -- or down on the first floor back in
25 lockup?

Direct Examination of Mr. Jacobs by Mr. Davis

11

1 A. Yes, sir.

2 Q. Okay. And can you tell the judge approximately how
3 long these meetings would last when he came to meet you here
4 at the courthouse?

5 A. Ten minutes most. Ten minutes, maybe.

6 Q. Were there any discussions during these meetings with
7 Mr. Wehman concerning a trial on these charges?

8 A. No, sir.

9 Q. Just so the judge will understand, did all these
10 charges come out of one incident, one arrest?

11 A. Well, I wasn't -- they arrested me, I was never -- I
12 was not present.

13 Q. A bunch of drugs found on your residence; correct?

14 A. Yes. They were found on the residence.

15 Q. And you were arrested in a vehicle at a different
16 location; correct?

17 A. Correct.

18 Q. But the State tried to connect you to that residence;
19 correct?

20 A. Correct.

21 Q. Did your mother live there?

22 A. Yes. Yes, she did.

23 Q. Was she charged as well?

24 A. Yes, she was.

25 Q. Okay. Now, during these three or four meetings with

1 Mr. Wehman -- forgive me -- but were there any in depth
2 discussions about going to trial on the charges?

3 A. No. There were no discussions about going to trial.

4 Q. Did Mr. Wehman ever discuss with you what the elements
5 of the different charges were?

6 A. No, he did not.

7 Q. Or did he ever tell you what the State would have to
8 prove to a jury to convict you of any these charges?

9 A. No, he did not.

10 Q. Did he send or bring to you your Rule 5, your discovery
11 paperwork?

12 A. He sent my Rule 5 to me. But after being incarcerated,
13 I received the other portion of my Rule 5 as well.

14 Q. Explain it a little better to the judge. What do you
15 mean after being incarcerated? Because you said you never
16 made bond on these warrants; correct?

17 A. After I was sentenced and sent to SCDC, I received the
18 pictures and everything else that I was requesting before I
19 went -- before we ever -- before I ever pled guilty.

20 Q. So you got some more discovery once you got to the
21 Department of Corrections after you pled guilty?

22 A. Correct.

23 Q. Were there any discussions about any potential defenses
24 to these arrests?

25 A. No, there was not.

Direct Examination of Mr. Jacobs by Mr. Davis

13

1 Q. Did you have -- were you able to observe paperwork
2 dealing with the search of the residence?

3 A. That was, like, part of the other evidence that I
4 received, pictures and stuff like that. I never had any of
5 that, so I didn't know what they had, you know, when it came
6 to that.

7 Q. Before you pled guilty, you didn't know what the police
8 had from the search?

9 A. No, sir. I did not.

10 Q. Okay. So was there any discussion about the search
11 warrant or the search with the K-9, a dog?

12 A. No, sir. I mentioned to him, though, that I did want
13 to see the audio video. But he never -- he told me if I
14 did, I would probably have to go to trial. But I
15 understand that was . . .

16 Q. Well, let's talk about it. There was a confidential
17 informant that gave -- an alleged confidential informant
18 that gave the basis for the search warrant. Is that right?

19 A. That's correct.

20 Q. You understand that was the evidence the police
21 indicated they had?

22 A. Yeah. I mean, I understand that now.

23 Q. Was there ever any discussion in these three or four
24 meetings before your guilty plea on how the believability or
25 the credibility of the confidential informant might be dealt

1 with at a trial?

2 A. None of that was discussed. But like I said, I
3 understand all of that now, you know.

4 Q. Was there any discussion about confidential informant's
5 bias or why the person might be working with law
6 enforcement, how that might be presented to a trial jury?

7 A. No, sir.

8 Q. You were aware that there was a search. Was there any
9 discussion with Mr. Wehman about how he might attempt to
10 suppress evidence obtained through a search warrant at
11 trial?

12 A. No, sir.

13 Q. Was there ever any discussion about how trials were
14 handled in state court in South Carolina?

15 A. No, there wasn't.

16 Q. Was there any discussion about what potential outcomes
17 could happen at trial?

18 A. He told me that if we went to trial, there was a
19 possibility that I could win. But if I won that my mother
20 would be facing the charges and she might be found guilty of
21 all this evidence that was in the residence. Also, he
22 explained to me that if I did go to trial and I was found
23 guilty, I was facing multiple life sentences.

24 Q. Was it explained to you how or what charges could lead
25 to a life sentence?

1 A. He just said based on my record, you know, from looking
2 at my record that I was facing maybe three multiple life
3 sentences.

4 Q. You heard the discussion earlier that we had with the
5 judge about the five charges and the potential range of
6 sentencing?

7 A. Yes, sir.

8 Q. Was that ever discussed between you and Mr. Wehman
9 prior to your guilty plea?

10 A. He touched on it, but he then -- after he did, he
11 mentioned the life sentences afterwards, you know. I guess
12 he must have recollected something or whatever, but he never
13 really explained it to me.

14 Q. Speaking of that, was there ever a review of your prior
15 record?

16 A. No, sir.

17 Q. With Mr. Wehman?

18 A. No, sir.

19 Q. Did he ever go over the record with you to show you how
20 the State claimed you were facing third or second offenses
21 on these charges?

22 A. No, he did not.

23 Q. Before going to court for the guilty plea, you were in
24 court for another hearing about a month prior to the plea.
25 Is that right?

1 A. Correct. Actually, it was the day before my birthday.

2 Q. Okay. So what date was that?

3 A. March 6th.

4 Q. And what was that hearing for?

5 A. Possession with intent to distribute marijuana, which
6 they reduced to possession and gave me time served.

7 Q. Other than that conviction for marijuana, do you have
8 any other marijuana conviction -- forgive me. Let me reword
9 it. That conviction of marijuana, and was there a
10 conviction that we're talking about today for marijuana?

11 A. I didn't understand the question.

12 Q. Forgive me. That was inartfully put. Other than what
13 we're complaining about today.

14 A. Okay.

15 Q. You just mentioned a prior time-served marijuana
16 conviction; right? I need you to answer out loud.

17 A. Yes, sir.

18 Q. Is there any other marijuana conviction on your record?

19 A. Not -- if it is, it's not recent.

20 Q. Now, you were in court for a bond hearing about a month
21 before your guilty plea. Do you recall that?

22 A. Yes, sir.

23 Q. Okay. At that hearing, do you recall a discussion
24 about an offer to resolve these five charges?

25 A. Yes. The solicitor stated that he would drop the

Direct Examination of Mr. Jacobs by Mr. Davis

17

1 charges and allow me to plead from third offenses to second
2 offenses from a range of 20 to 25 years.

3 MR. DAVIS: And, Judge, may I ask? I know I've
4 obtained transcripts of that hearing into this is case quite
5 a bit from the attorney general's office. Do you have that
6 as a part of your packet?

7 THE COURT: I've already read it.

8 MR. DAVIS: Okay. Thank you, Your Honor. So, Judge,
9 on that, just for the record, would be page six at the
10 bottom is when the solicitor indicates the offer that the
11 State intended to convey.

12 Q. Did Mr. Wehman make -- did he give you an opinion on
13 whether he thought you should go to trial or plead guilty?

14 A. I mentioned it to him. But after he told me that my
15 mother could be facing the charges and I could face life, I
16 didn't ask him anything else about it.

17 Q. So did he advise you to go to trial or did he advise
18 you to plead guilty?

19 A. He advised me to plead guilty.

20 Q. And, again, what was your understanding if you had gone
21 to trial and been convicted? What was the potential
22 sentence you were facing based on your conversation with Mr.
23 Wehman?

24 A. Multiple life sentences.

25 Q. You referenced it just a bit ago, but just to be clear

1 to the judge, your mother was also charged similar to you
2 for the contraband that was found?

3 A. Yes. They only charged her with the stuff that was in
4 the residence.

5 Q. And so what impact did her charges have on your
6 decision to go forward on trial or plead guilty?

7 A. You mean like what did she receive?

8 THE COURT: How did it affect you?

9 A. I mean, I feel like I had no choice. I mean, you know,
10 but . . .

11 Q. After the bond hearing where the solicitor stated the
12 offer they intended to make, did you have any follow-up
13 discussions with your attorney?

14 A. Just prior to the plea. And he never mentioned
15 anything else any different to me.

16 Q. Just prior to the plea, where you would have signed the
17 sentencing sheets; correct?

18 A. Yes.

19 Q. How long do you think the meeting lasted when you
20 signed up on the sentencing sheets?

21 A. I probably sat back there for about ten, 15 minutes
22 maybe.

23 Q. And is that the final meeting of the three or four
24 meetings?

25 A. Yes, it was.

1 Q. In reviewing the sentencing sheets, other than showing
2 you where you needed to sign, what else did Mr. Wehman
3 discuss on the sheets with you?

4 A. He didn't discuss anything else with me. He just --
5 only told me -- I just kept asking him about trying to get a
6 20-year sentence. He didn't guarantee me anything, so . . .

7 Q. Did he ever discuss with you the fact that the
8 trafficking cocaine charge was a strike?

9 A. No, he did not.

10 Q. Did he ever discuss with you that the trafficking
11 cocaine charge is a no parole offense?

12 A. No, he did not.

13 Q. Or did he phrase it another way? Did he tell you that
14 it was an 85 percent offense?

15 A. No, he did not. In fact, the judge asked me about it
16 and I mentioned it to her.

17 Q. When you came into court on December -- well, you pled
18 guilty on December 8th, you were sentenced on December 9th;
19 correct?

20 A. That's correct.

21 Q. That was to have your family be able to be there at
22 sentencing. Is that right?

23 A. Correct.

24 Q. On the 8th when you pled guilty. When you signed the
25 sheets and you're walking into the courtroom, what was your

1 understanding to the two charges you were pleading guilty
2 to?

3 A. I thought I pled guilty to second offenses.

4 Q. At any time during the guilty plea on the 8th or the
5 sentencing on the 9th, did your attorney ever object to the
6 charges in which were pleading guilty to?

7 A. No, he did not.

8 Q. Was there ever any discussion leading up to the plea
9 about your right to appeal?

10 A. I asked him about appeal after the fact. He told ---

11 Q. Okay. So let's go back, though. Leading up to the
12 guilty plea, was there any discussions about a potential
13 appeal?

14 A. No.

15 Q. Okay. Now, after the guilty plea, what, if any,
16 discussions did y'all have about an appeal?

17 A. I asked him about an appeal. But he told me that an
18 appeal wouldn't have been in my best interest. That my best
19 bet was to file for another PCR since I was ready familiar
20 with the PCR process.

21 MR. DAVIS: Your Honor, if we could have just a moment.

22 (Brief pause.)

23 Q. Mr. Jacobs, if Mr. Wehman had told you ahead of time
24 that the trafficking conviction was a strike setting up
25 potential life without parole in the future, would you have

1 pled guilty to trafficking or would you have asked for a
2 jury trial?

3 A. I would have asked to go to trial.

4 Q. If you had been advised that -- I didn't ask this
5 awhile ago. Were there any discussions about the fact that
6 possession with intent to distribute marijuana, third
7 offense, is also a no-parole offense?

8 A. No, there was not.

9 Q. Or called an 85 percent offense?

10 A. No, he did not.

11 Q. On either of the trafficking or the possession with
12 intent to distribute marijuana, if you had been told those
13 were no-parole offenses or 85 percent offenses, would you
14 have pled guilty or gone to trial?

15 A. I would've went to trial.

16 Q. I'll ask this a little more open-ended. If Mr. Wehman
17 had made it clear that on the marijuana sentencing sheet
18 that it lists you're pleading guilty to possession, intent
19 to distribute marijuana, third or subsequent, if he had told
20 you that before you signed it, what would you have done?

21 A. I would've asked him what happened with the original
22 deal, the second offenses.

23 Q. Did the State -- prior to the guilty plea, did the
24 State ever serve on you what is called a Life Without Parole
25 Notice paperwork?

1 A. No, sir.

2 Q. If you had known that you were facing -- I believe we
3 added it up a while ago -- a 140 years but not a life
4 sentence and certainly not multiple life sentences, would
5 you have pled guilty or gone to trial?

6 A. I still would've went to trial.

7 Q. The judge explained this. But there were never any
8 discussions about you going to trial; right?

9 A. There wasn't. I brought it up -- I brought it to his
10 attention.

11 Q. What, if anything, had Mr. Wehman done to make you
12 believe that he was prepared to go to trial if had asked for
13 it?

14 A. He didn't do anything.

15 Q. And how did that influence your decision whether to
16 actually go to trial or plead guilty?

17 A. I mean, it made me decide to take this plea because I
18 didn't know if he was going to defend me properly or not.

19 Q. A few more specific questions, Mr. Jacobs. Had he
20 discussed with you at a trial his ability to try to suppress
21 evidence that was seized, would you have gone to trial or
22 would you have pled guilty?

23 A. I would've went to trial.

24 Q. If he had discussed with you his ability to try to
25 raise issues about the credibility or believability of the

Direct Examination of Mr. Jacobs by Mr. Davis

23

1 confidential informant involved in this case, would you have
2 gone to trial on those issues or pled guilty?

3 A. I would have went to trial.

4 Q. Now, you heard the judge earlier and we've discussed
5 about this, the potential remedies at the end of a PCR case.
6 Certainly, vacating your convictions and starting over is an
7 option. Is there another option you would like the judge to
8 consider?

9 A. What are my other options?

10 Q. Well, I'll ask it this way.

11 A. If I may ask.

12 Q. Was there an offer by the State -- did the State live
13 up to its offer that they stated on the record?

14 A. Oh, the 20-year offer?

15 Q. Do you recall what the State told . . .

16 A. Oh, you're talking about the second offense?

17 Q. Judge Harrington back in November, about a month before
18 your guilty plea. Do you recall what offer was stated on
19 the record?

20 A. Second offenses and 20 to 25 years.

21 Q. But in fact, the case that was presented at your guilty
22 plea was one second and one third. Isn't that right?

23 A. That's correct.

24 Q. Mr. Jacobs, I think we've covered everything you want
25 to complain about. Is there any other complaints you want

1 the judge to know about before I finish my questions?

2 A. Not that I can think of.

3 MR. DAVIS: Okay. The attorney general will have some
4 questions for you then. Thank you, sir.

5 THE WITNESS: Thank you.

6 CROSS-EXAMINATION

7 BY MR. NEELY:

8 Q. How are you doing, Mr. Jacobs?

9 A. I'm fine. How are you doing?

10 Q. Doing good. I just wanted to call your attention -- do
11 you remember your guilty plea?

12 A. I remember pleading guilty. Yes, I do.

13 Q. I'm saying, like, do you remember, like, the events of
14 what happened that day?

15 A. Yes, I do.

16 Q. Okay. And do you remember being sworn just like you
17 were sworn here today?

18 A. Yes, I do.

19 Q. And you recall something earlier, that I think was very
20 interesting -- do you remember the judge asking you if you
21 understood that you're pleading to a violent and serious
22 offense?

23 A. Yes, I do.

24 Q. And the judge asked you if you understood what that
25 means. You remember asking that?

1 A. Yes, I do.

2 Q. And then you actually gave a pretty good explanation.
3 You said I know a violent offense, a violent serious
4 offense, 85 percent, and I have to complete 85 percent of
5 that time for release.

6 A. Same thing I stated to him.

7 Q. Right.

8 A. It's the same thing.

9 Q. You told the judge, kind of, exactly what it was going
10 to be; right?

11 A. Yeah. That's what I told him. But my lawyer did not
12 explain that to me.

13 Q. But you knew that?

14 A. I mean, from past experience, yes.

15 Q. Okay. And then the Court actually, after you explained
16 that to the Court, the Court said, well, you need to treat
17 it like it every time you get sentenced it's day for day.
18 It's because you don't know what SCDC is going to do.
19 Didn't she say that?

20 A. Yes, she did.

21 Q. And she said even knowing that, you still want to plead
22 guilty, and you said yes; right?

23 A. Yes, I did.

24 Q. And the third offense that Mr. Davis is talking about
25 was the marijuana offense. Isn't that right?

1 A. That's correct.

2 Q. And the marijuana offense, I believe the maximum
3 penalty for the marijuana offense is 20 years?

4 A. That's correct.

5 Q. Right. And the plea deal that the solicitor put on the
6 record for you was a negotiated plea with a range of 20 to
7 25 years. Is that right?

8 A. That's correct.

9 Q. Okay. And what I'm hearing and what I'm understand you
10 say, you're not really challenging the fact that you're
11 guilty of these offenses; right?

12 A. Well, I mean ---

13 MR. DAVIS: Objection, Your Honor. Relevance of the
14 PCR hearing.

15 THE COURT: Overruled.

16 A. Well, if counsel would've advised me that I had these
17 other avenues, I would not have pled guilty anyway. I was
18 trying to go to trial. I mean, you know, but he never did
19 that. So how would I know that?

20 Q. And what are the other avenues that you're talking
21 about?

22 A. Like as far as, like, challenging the evidence and
23 things like that. He never told me that. I mean, so I
24 never had that option.

25 Q. And the other charges that the State dropped against

1 you, those were like the CI buys and the State alleged that
2 they had bought crack from you?

3 A. No. That was -- there was the CI buys as well as the
4 evidence.

5 Q. Okay.

6 A. Because some of the evidence was seized in the
7 apartment.

8 Q. Okay. And there were -- I believe the State alleged
9 that there were three different CI buys that they had
10 against you?

11 A. Yes.

12 Q. And that's what they used to get a search warrant?

13 A. One of them.

14 Q. They used one of them to get a search warrant?

15 A. Yes, sir.

16 Q. Okay. And you were living with your mom?

17 A. No. I was not living with her.

18 Q. Okay.

19 THE COURT: Did you just say you were not living in the
20 house where the search took place?

21 THE WITNESS: No, I was not.

22 THE COURT: Okay.

23 Q. Sorry, go ahead.

24 A. No, I was about to show you -- I had a picture of the
25 address where I was, on my ID, where I was staying at.

1 Q. Okay. And then the judge actually went over the fact
2 what a strike meant for you?

3 A. Yes. She explained that to me.

4 Q. Okay. So you knew what it meant because the judge
5 explained it to you?

6 A. Yeah. After she explained that to me, I knew what it
7 was. But before that, I did not.

8 Q. Okay. And when the judge asked you whether you were
9 satisfied with the services of your attorney, you said that
10 you were and that you had spoken with him on several
11 occasions?

12 A. Well, she asked me if I was satisfied and I told her to
13 my -- right then and there, I was. But, I mean, it was
14 nothing else that I could see that he could do. I mean, if
15 he would have brought other things to my attention, I
16 would've asked him to try to those avenues, you know.

17 Q. Okay. And the judge did go over the fact that you had
18 a right to appeal within ten days?

19 A. Yes, she did.

20 Q. And you didn't appeal in the ten days?

21 A. I asked him about the appeal, and he told me that an
22 appeal would not be in my best interest. That my best
23 interest was to file another PCR.

24 Q. And you said earlier it's because you have more
25 experience with a PCR. What did you mean by that?

1 A. Because my last, my prior conviction, I had a PCR. And
2 that's why I'm familiar with the 85 percent ordeal because
3 that's the same thing I challenged last time.

4 Q. Okay. So did your other attorney go over that stuff
5 with you before?

6 A. No. Because I didn't even meet with that attorney
7 until the day of court, PCR court.

8 Q. Okay. So did the judge go over it with you then too?

9 A. No. I mean, I had people in prison that was telling me
10 about it.

11 Q. Okay. But you knew whenever you were at the plea that
12 it was negotiated. It could only be from 20 to 25 years;
13 right?

14 A. Yeah. I mean, he mentioned that. I mean, that's what
15 mostly what he was stressing, you know, the 20 to 25. But I
16 was asking him about the 20 years. I mean, because that's
17 what I thought that he was trying to fight for me for. But
18 I didn't -- the third offense and the second offense he
19 never stated, you know. He never mentioned to me anything
20 about that.

21 Q. Okay. But it's understanding that the range is 20, 25
22 years, and your defense attorney was trying to get 20 years?

23 A. Yes. He was trying to get 20 years, but, I mean . . .

24 Q. That's what you wanted?

25 A. That's what I told him, if he could get me 20 years,

1 that's what I would take, you know.

2 Q. Okay.

3 MR. NEELY: I think that's all the questions I have.

4 MR. DAVIS: Just two things, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q. Number one, was there any discussion at any time
8 talking about in the middle the plea that you could stop it
9 or you could withdraw it. Did you know about that when you
10 were doing the plea?

11 A. The judge mentioned that I could withdraw it, but I
12 don't know what to withdraw to. I mean, you know, it's hard
13 to know. It's to withdraw something that you don't know
14 what to withdraw from, you know, to, I mean . . .

15 Q. And I think you probably made this clear for the judge.
16 But are there things that you received from your attorney
17 after your plea that you didn't have before?

18 A. Yes.

19 MR. DAVIS: Thank you. No other questions, Your Honor.

20 MR. NEELY: Nothing from the State, Your Honor.

21 THE COURT: You may step down. Call your next witness.

22 MR. DAVIS: Your Honor, that would be the Applicant's
23 presentation.

24 THE COURT: All right.

25 MR. NEELY: The State would call Mr. Wehman.

Direct Examination of Mr. Wehman by Mr. Neely

31

1 (PIERCE L. WEHMAN, was duly sworn and provided the
2 following testimony.)

3 DIRECT EXAMINATION

4 BY MR. NEELY:

5 Q. How are you doing, Mr. Wehman?

6 A. Doing well. How are you?

7 Q. Doing well. Did you represent Antonio Jacobs?

8 A. I did.

9 Q. Do you recall the representation?

10 A. I do.

11 Q. Do you recall how many times you met with him?

12 A. I have my file. I can give you exact dates. I met
13 with Mr. Jacobs on September 10th of 2014. That was before
14 a prelim that he had on the 17th. I met with him on
15 October 2nd. I met with him on November 5th. That was
16 before a bond hearing that he had. I met with him on
17 November 13th, December 5th, and then his plea was on
18 December 8th.

19 Q. And about how long were your discussions, each date,
20 with him?

21 A. Towards the beginning, it was introductory
22 conversations. The longest discussion that we had was on
23 December 5th and that was a Friday. I believe his plea was
24 on a Monday. And that was when we were discussing
25 everything that would go into the plea and what his options

1 were.

2 Q. And did you discuss the elements of each of his charges
3 with him?

4 A. I don't recall specifically. It's something I
5 typically would do. The distributions were fairly straight
6 forward. The trafficking, we did discuss the weight and how
7 that played into it, PWID versus traffic.

8 Q. And did you go over the evidence with him?

9 A. We did. He had access to all of the discovery. I have
10 noted that we sent him additional discovery on October 25th.
11 I was not the initial attorney appointed, but it's practiced
12 in our office that when we receive discovery, we send it.

13 Q. Is October 25th before his plea?

14 A. That's correct.

15 Q. Okay. And is it your general practice to go over all
16 the rights your client has?

17 A. Yes. In fact, before this plea, I actually had a sheet
18 that I went over with him that he signed that discussed all
19 of the trial rights. It discusses the penalty, maximum
20 sentence, what the negotiation was, and has kind of the
21 colloquy that goes on between the judge and himself
22 involving his rights.

23 Q. Do you have a copy of that?

24 A. I do.

25 MR. NEELY: State would enter this as State's 1.

Direct Examination of Mr. Wehman by Mr. Neely

33

1 (Brief pause.)

2 THE WITNESS: And when you're ready, I can explain the
3 handwriting. Obviously, Mr. Davis needs to look at, but . .
4 .

5 (Brief pause.)

6 MR. DAVIS: No objection, Your Honor.

7 THE COURT: Number one admitted without objection.

8 (State's Exhibit No. 1, Plea Document, was received
9 into evidence.)

10 Q. And is it your common practice to have one of these
11 sheets for your clients?

12 A. It is not. For a serious situations or pleas that have
13 a significant amount of time, I usually bring something like
14 that in just to make sure we go over everything. The
15 handwriting is mine. It is from my notes. The signature
16 was his after we went over everything.

17 Q. You did go over the 85 percent, serious and violent
18 offense with him?

19 A. I specifically remember going over the violent and
20 serious. That is on the sheet. I don't specifically
21 remember talking about the parole eligibility date. That is
22 typically something that I do. But I don't specifically
23 remember in this case.

24 Q. Okay. And do you recall there being discussions of
25 pleading down to a second offense?

1 A. Sure. So the plea offer came out of a bond hearing as
2 you've heard. The plea offer was for a trafficking, second
3 offense, and a distribution, second offense, of cocaine I
4 believe. Both of those would've been strikes. And the
5 maximum possible penalty for both of those would have been
6 the 30 years. Before we were able to get this plea worked
7 out, I did go to the solicitor who did indicate -- plea to
8 PWID marijuana. But for a third offense, which to my
9 understanding was not a strike, and had a maximum possible
10 penalty of 20 years. So he would've gotten the benefit in
11 that plea.

12 Q. So the plea he actually pled to was better than the
13 original deal?

14 A. In my opinion, yes.

15 Q. Okay. Because it only carried one strike?

16 A. The distribution of cocaine would've been a strike.
17 The PWID marijuana was not. And, additionally, I knew I
18 would get at least one sentence of 20 years when that was the
19 bottom of the range that I had.

20 Q. And were there discussions about you had tried to get
21 him 20 years?

22 A. Sure. The range that we had was 20 to 25. The
23 discussions were that I would do everything I could to get
24 the 20-year sentence, which was the best we could have under
25 that plea negotiation.

1 Q. And do you recall him speaking about his mother's
2 charges to you?

3 A. We did talk about it. That was -- she was a
4 codefendant. If we had gone to trial, she would have most
5 likely been called as a defendant and it would have been a
6 joint trial. That was my understanding.

7 Q. Okay. Was that the -- the solicitor or just what you
8 thought?

9 A. The solicitor did mention that if it was a trial, he
10 intended to try them both. They both had connections to
11 that apartment. I believe it was her apartment that the
12 stuff was found in.

13 Q. Okay.

14 MR. NEELY: Beg the Court's indulgence.

15 Q. And did you speak with your client about credibility or
16 believability of a CI?

17 A. We talked about that only because the videos in this
18 case were poor based on the preliminary hearing we had and
19 discussions with the solicitor. The videos were
20 nonexistent, essentially. They didn't record. So we
21 would've had to have -- it would have been completely the
22 credibility of that CI. They didn't have a video to go by.

23 Q. And the credibility of a CI combined with a search
24 warrant?

25 A. Sure. We did talk about the search warrant and that

1 the fact that the video was not recorded didn't null the
2 search warrant. But that it was possible that the CI would
3 have to be called for the search warrant if we tried to
4 suppress it at trial.

5 Q. Okay. But the strength of the case wasn't in the audio
6 and video?

7 A. Correct. The strength was the search warrant,
8 everything got through the search warrant.

9 MR. NEELY: That's all the questions I have.

10 MR. DAVIS: Just one moment, Your Honor.

11 (Brief pause.)

12 CROSS-EXAMINATION

13 BY MR. DAVIS:

14 Q. Do you have -- Mr. Wehman, do you have a date on the
15 discussion you would've had with the solicitor following
16 bond court where you asked about altering the offer?

17 A. I believe you're referencing an e-mail that you had. I
18 do not. I was looking through my files. I don't have the
19 date of the conversation. It would've been about the time
20 that e-mail came through.

21 Q. Okay. Do you have a copy of the e-mail or no?

22 A. I can't find one through my file.

23 Q. Okay.

24 MR. DAVIS: May I have this marked, Your Honor?

25 THE COURT: Sure.

1 (Plaintiff's Exhibit No. 1, E-mail, was marked for
2 identification.)

3 Q. I'm gonna show you what's been marked as Plaintiff's
4 Exhibit Number 1. Take a look and see if that is the e-mail
5 in question.

6 A. Correct. So that e-mail came through, and as a result
7 of that, I would've gotten in contact with the solicitor
8 shortly after. And I don't know exactly the date, but it
9 would've been in response to this.

10 Q. Because that e-mail actually still talks about a
11 trafficking and cocaine and a distribution of cocaine. Is
12 that right?

13 A. Correct. Cocaine base.

14 Q. Okay. And what's the date of that e-mail?

15 A. The date of that would be November 7, 2014.

16 Q. Okay. And so it's your testimony that following that
17 e-mail is when you had discussions with the solicitor about
18 changing the possession from cocaine or crack-cocaine to
19 marijuana?

20 A. Correct. The dissolution of cocaine base to possession
21 with intent to distribute marijuana.

22 Q. That was of you own volition not after having met with
23 Mr. Jacobs in the interim; correct?

24 A. Correct. I would've replied and tried to get an
25 approved offer to take to him.

1 Q. And, again, your thinking was that the offer that's on
2 the e-mail consists of two strikes?

3 A. So it consists of two strikes. The maximum possible
4 penalty of the distribution would've been 30 years. The
5 maximum possible penalty of the PWID, third offense, is
6 actually 20 years, which was the bottom of the range we were
7 trying to get. The strike, I thought, was a benefit also.
8 I knew that the judge would be writing down at least one
9 20-year sentence. That was the thinking behind it.

10 Q. And the State would've then, when they agreed to that,
11 that's when they presented you with the proposed sentencing
12 sheets?

13 A. Correct. We actually got the proposed sentencing
14 sheets the day of the plea. That's when we typically get
15 those.

16 Q. Did you recall discussing with Mr. Jacobs the risks of
17 going to trial?

18 A. I remember this -- so I was actually appointed to
19 represent him, I want to say, it was in August, middle of
20 August. It was transferred to me. And up until that bond
21 hearing in November, we were working on a bond. We weren't
22 even talking about trial. It was getting the discovery. So
23 everything kind of came together on December 5th and
24 November 13th would be -- anything we talked about trial
25 would have been one of those two dates.

1 Q. And on State's Exhibit Number 1, can you tell by
2 looking at State's Exhibit Number 1 when you completed that
3 form?

4 A. It does not have a date on it. This would have been,
5 though, at the courthouse. The day of the plea is when I
6 bring these to do that.

7 Q. December 8, 2014?

8 A. Correct.

9 Q. You advised Mr. Jacobs he should plea guilty rather
10 than go to trial; correct?

11 A. I advised him of the risks of going to trial. The
12 solicitor had threatened if he were to try this case, to
13 break it up: distribution, distribution, distribution, and
14 then everything from the search warrant. And that his
15 intent would be once he acquired the number of strikes, to
16 serve him with an LWOP notice. That was the threat.

17 Q. And how was that conveyed to Mr. Jacobs?

18 A. We talked. That would've probably had been, like I
19 said, November 13th or December 5th, one of those two
20 meetings. We discussed the fact that the solicitor was
21 threatening to LWOP him at some point if he decided to go to
22 trial. But he was not LWOP eligible at the time of his
23 plea.

24 Q. So you've testified that you talked to him about the
25 risk of going to trial versus the plea offer. But,

1 ultimately, did you give him your opinion on whether he
2 should accept the offer or not?

3 A. I believe I advised him to take the offer. The -- I'm
4 sorry. Part of the reasoning would be the trafficking that
5 he was indicted for, the mandatory minimum was 25 on that.
6 And this would at least guarantee him some benefit as to
7 that.

8 Q. Factually, Mr. Jacobs, on the trafficking charge, was
9 not arrested at the residence where the drugs where found.
10 Isn't that correct?

11 A. Correct.

12 Q. And during your discussions with Mr. Jacobs, he
13 would've indicated to you that he had a different residence;
14 right?

15 A. Correct. Well, he at least said that he didn't live
16 there.

17 Q. Fair enough. And during your discussions with
18 Mr. Jacobs, he indicated to you he didn't even have a key to
19 his mother's residence. Isn't that right?

20 A. I don't recall that specifically.

21 Q. Okay. Well, at least to the first two, despite the
22 fact that he was addressed at a different location indicated
23 he did not reside at the location where they found the
24 drugs, still your advice that he should accept this plea?

25 A. They found his mail inside, so. And also they had

1 officer testimony or they would've had officer testimony and
2 CI testimony that he sold from that residence. One of buys
3 is alleged to have taken place, I believe, at the door of
4 that residence where they had police surveillance. And also
5 you have the risk of the confidential informant coming in
6 and testifying to that as well.

7 Q. Without the benefit of a video -- buys?

8 A. Sure. That was my understanding.

9 Q. Mr. Wehman, did you review Mr. Jacobs's prior record
10 with him?

11 A. We did go over it.

12 Q. Did you review it before signing these sentencing
13 sheets for the guilty plea?

14 A. I did.

15 Q. Can you tell the Court what in his record allows the
16 State to go forward on a third marijuana conviction?

17 A. Through our review and discussion with the solicitor,
18 he had -- and, again, this is based on public index. I
19 don't know if all of this is necessarily from the rap sheet.
20 But a conviction for possession of marijuana, and that
21 would've been March 6th of 2014. I believe that's what
22 shows up as the PWID that he got times served for a
23 possession on that I think he referenced in his testimony.
24 And, also, out of the Charleston County, a conviction on
25 January 25, 2011, for possession of marijuana. And I

1 believe there's also a 1998 conviction for possession of
2 marijuana, but these two were certainly within the five
3 years before this plea.

4 Q. Do you have a copy of the sheet you reviewed with him
5 in your file?

6 A. Of the sheet that I reviewed with him? I reviewed the
7 rap sheet that you are in possession of.

8 Q. Are you aware that I requested a copy of your file in
9 disc form from the public defender's office, one of the
10 PCRs?

11 A. I am.

12 Q. Okay. And your office was kind enough to burn me a
13 disc with all the relevant documents; correct?

14 A. Correct.

15 Q. Okay. I'm going to show you what's been marked as
16 Plaintiff's Exhibit Number 2. It's a multipage rap sheet
17 but it also has some notations. Can you look and see if
18 these are your notations to the rap sheet.

19 (Plaintiff's Exhibit No. 2, Rap Sheet, was marked for
20 identification.)

21 A. (Witness complies.)

22 MR. DAVIS: While he's looking at that, Your Honor,
23 written notations of course has been highlighted, I would've
24 made the highlights on it, but as far as the written notes
25 and margins.

1 A. So there are two sets of markings. There's a black set
2 of markings, black ink. That would be not have been me. I
3 believe that's either the solicitor or somebody at the jail
4 maybe when they review these. Everything in blue ink, I
5 believe there's an indication for time served. There are
6 checks by convictions and a notation acknowledging we talked
7 about the PCR where he had something reversed. Those would
8 be mine. So everything in blue would be me.

9 Q. So does that look familiar as to the rap sheet you
10 would've been provided by the state?

11 A. That is.

12 Q. Okay. Take your time on that. But other than a July,
13 I believe it's 2012, time served marijuana conviction, do
14 you see another marijuana conviction on that rap sheet?

15 A. I do not. I have reviewed the rap sheet before today.
16 I do not believe that there is an indication on the rap
17 sheet for the prior marijuana convictions. Those would've
18 come up in discussions with the solicitor's office when we
19 were trying to get this negotiation and we were going back
20 and forth with possibilities. But they're not on the rap
21 sheet. The other one, certainly not the 1998 one, and I
22 don't believe the 2013 one is.

23 Q. So what proof were you provided of these two other
24 potential marijuana convictions?

25 A. I was told about them, and I looked at them -- I mean,

1 they're on the public Index. But, no, they're not on his
2 official rap sheet.

3 Q. And so, it's for the record, when you say public index,
4 you're talking about an online website for the Clerk of
5 Court for Dorchester County?

6 A. And Charleston County, correct.

7 Q. And Charleston County. You would not have printed
8 anything from those websites when you reviewed them with
9 your client, would you?

10 A. I do not believe Mr. Jacobs saw those.

11 MR. DAVIS: May I have just a moment.

12 (Brief pause.)

13 Q. Mr. Wehman, just one final thing back to influencing
14 your advice whether to go to trial or not. There were
15 alleged three different buys; correct?

16 A. Correct.

17 Q. And the final one that led to the search warrant was
18 alleged to have occurred the day that the search warrant was
19 executed. Do you recall that?

20 A. I'd have to look back. If you say that's what the
21 discovery says, I mean, I have no reason to doubt you. But
22 I know it was close in time to when the search warrant was
23 sworn out.

24 Q. Well, let me rephrase it this way. Was the
25 final purchased alleged to have occurred the same day that

1 Mr. Jacobs was arrested. Do you recall that?

2 A. I do not specifically recall the date of the buy when
3 he was arrested.

4 Q. Do you recall, however -- he was arrested in the
5 vehicle; correct?

6 A. Correct.

7 Q. Do you recall that there was no buy money seized from
8 Mr. Jacobs?

9 A. Correct. That's correct.

10 Q. And despite the information, again, your advice based
11 on the offer was for him to accept the offer, not go to
12 trial on these charges?

13 A. Based on the charges all stemming from the search of
14 the home, yes.

15 Q. Okay.

16 A. And those distributions were dismissed.

17 Q. As part of the plea?

18 A. Correct.

19 Q. Okay.

20 MR. DAVIS: Thank you, Your Honor. That's all the
21 questions we have.

22 MR. NEELY: Nothing further from the State, Your Honor.

23 THE COURT: Anything else?

24 MR. NEELY: The State rests.

25 MR. DAVIS: If I could have just one moment.

1 (Brief pause.)

2 MR. DAVIS: Thank you very much, Your Honor. Judge,
3 with the State resting, if I could make just a brief
4 summation?

5 THE COURT: You may.

6 MR. DAVIS: Judge, we would argue that there were
7 crucial issues that were not discussed with Mr. Jacobs by
8 his attorney leading up to this guilty plea. We would argue
9 that the omissions equal ineffective assistance of counsel.
10 And that those, he's testified directly, that those
11 omissions led to his decision to plead guilty rather than go
12 to trial. We would also argue that his conduct by
13 Mr. Wehman was also was inappropriate and, therefore, led to
14 ineffective assistance and influenced Mr. Jacobs's decision
15 to plead guilty. I will not rehash the entire testimony.
16 You've paid attention to the testimony on that. But most
17 importantly, Judge, is that Mr. Jacobs has sworn to you to
18 about the number of meetings and length of meetings, and the
19 discussions at the meetings. And we would argue on five
20 charges of the serious nature, that is not sufficient time;
21 and the discussions, the content of those discussions, were
22 not sufficient to lead to effective assistance. As we
23 discussed in the beginning, if you find in our favor, you
24 certainly have the opportunity to vacate all of the
25 convictions and remand for new prosecution.

1 I, on my client's behalf, did tell him I would make one
2 final argument. Despite Smith, we would argue that under
3 Boan, B-o-a-n, versus State, which is 695 Southeast 2nd 850,
4 that the court can tailor the remedy of post-conviction
5 relief hearing to fix the precise prejudice. And in this
6 case, we would argue a couple of things on that. We would
7 argue that the initial offer that was made that this would
8 be guilty pleas to second offenses, which is what Mr. Jacobs
9 was aware of in court because he heard the State say that.
10 Other discussions happened, if they happened, happened
11 outside his presence, and he was not aware of it. It was
12 his thought process when he came to court on December 8th
13 that he was pleading guilty to second offense. And that was
14 not maintained by the State. And we think that's an error.

15 Finally, Judge, we would argue that based on what's
16 been presented, what's part of the record, is that pleading
17 Mr. Jacobs to possession with intent to distribute
18 marijuana, third offense, while his attorney explained the
19 potential benefit of that, we don't believe his prior record
20 supports that charge. And, therefore, that was ineffective
21 assistance. And you can remedy -- you can make specific
22 remedy as to that charge by simply remanding for
23 resentencing on that. That it could not have been marijuana
24 third; that at most, it was a marijuana second. And, Judge,
25 the benefit to Mr. Jacobs on that would be instead of five

1 to 20, it's zero to ten. And it's not a strike on the
2 marijuana charge. So we would ask you to grant us relief on
3 what you deem appropriate. We would argue you have either
4 or. Thank you so much, Your Honor.

5 THE COURT: Mr. Neely?

6 MR. NEELY: State would just ask Your Honor to find the
7 State's witness, the attorney in this case -- I believe his
8 testimony directly contradicted the applicant's testimony on
9 the crucial points. In fact, he went to the extent of
10 providing a sheet where he delineated all of the things that
11 he did talk about with the defendant. Further, he received
12 a better deal than he thought he was gonna get, and that's
13 what the marijuana charge is -- plea to two strikes, and he
14 pled to one strike. Maximum charge was 20 years on the
15 marijuana. He received 22 on the crime charged.

16 THE COURT: All right. I just want to say two things
17 for the record before I rule. Number one, it makes complete
18 and total perfect sense that a defense attorney would want a
19 judge in a range of 20 to 25 to have to write down 20 on one
20 of the sheets. Because that would've been the maximum
21 possible under the statutory authority of the plea in the
22 minimum in the negotiation. Number two, this was a
23 negotiated plea with an extremely sophisticated defendant
24 who had been through the system for years upon years upon
25 years. Number three, the defendant had absolutely no

1 constitutional right to challenge the search in any way,
2 shape, or form because he did not live in the residence and
3 had no standing. The application for post-conviction relief
4 is hereby denied. The State has 60 days to prepare an
5 order. Good luck.

6 (The proceeding concluded at 1:57 p.m.)

7 - - - - -

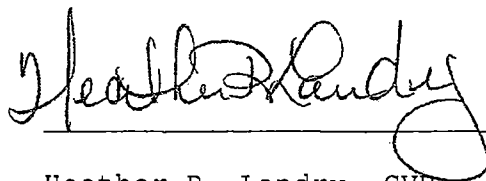
8 (End of Record)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) CERTIFICATE OF REPORTER
3

4 I, HEATHER R. LANDRY, Official Court Reporter for the
5 Judicial Department of the State of South Carolina, do
6 hereby certify that the foregoing is a true, accurate and
7 complete Transcript of Record of the proceedings had in the
8 hearing of the captioned case, in the Court of Common Pleas
9 for Dorchester County, South Carolina, on the 27th day(s) of
10 February 2017.

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

13
14 September 12, 2017

15
16 
17

18 Heather R. Landry, CVR
19 Official Court Reporter
20

21 This is a certified copy of the Transcript of Record
22 requested by and provided to the following party: South
23 Carolina Commission on Indigent Defense
24
25

Case No: 2015-CP-18-2086STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

EXHIBITS

Plaintiff(s): Antonio Jacobs

vs

Defendant(s): State State's

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 E-mail	1 Plea Document	1
2 Rap sheet	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
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Court Reporter: Heather GandyClerk of Court: StepheneDate: 2/27/17

INDICTMENT#

DEFENSE ATTORNEY

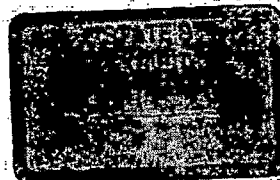
WENHAW

SOLICITOR

SOLANSON

The Defendant avers that the Defendant desires to plead guilty to
 DWID MAA 2nd ~~1st~~ and certifies to the Court that the
 answers to the following are true:

1. The Penalty(ies) for my charge(s) are:
 20-25 Years ~~negotiable~~
 (V) offense; SERIOUS OFFENSE 1 STRIKE
2. The maximum sentence I could get is:
25 years
3. Has anyone threatened you or put any pressure on you to get you to plead guilty? NO. If so, who and what?
4. Has the State agreed to recommend a sentence to the Judge?
 a. If so, what is that recommendation? Range of 20-25
NEGOTIATED
 b. If so, has anyone promised you anything else to get you to plead guilty or assured you as to a particular sentence?
 c. If not, has anyone promised you anything to get you to plead guilty?
5. Are you under the influence of any drugs or alcohol today?
 If yes, explain NO
6. If your charge(s) has/have not been presented to the Grand Jury, do you understand that you give up that right when you plead guilty? N/A
7. Do you understand that if you plead NOT GUILTY you have the right to have the help of a lawyer at all stages of the proceedings, even if you cannot afford to pay a lawyer, and that a lawyer will be appointed to represent you if you cannot afford to employ one? YES ✓
 NO _____
8. Do you understand that when you plead guilty you give up your right to a jury trial? yes
9. Do you understand that if you plead NOT GUILTY YOU will be presumed to be innocent until the State has proved you to be guilty beyond a reasonable doubt and all jurors unanimously agree on your guilt? YES ✓
 NO _____
10. Has your lawyer explained your right to a presentence investigation and do you wish to specifically waive this right. YES ✓ NO _____
11. Do you understand that if you plead NOT GUILTY you have the right to see and hear all witnesses called to testify against you and to confront cross examination and question them? YES ✓ NO _____



12. Do you understand that if you plead NOT GUILTY you have the right to take the witness stand and testify or not to take the witness stand as you choose, and that you cannot be required to take the witness stand? YES ✓ NO
13. Do you understand that if you plead NOT GUILTY and that if you do not take the witness stand, the jury cannot take that as evidence against you? YES ✓ NO
14. Do you understand that if you plead NOT GUILTY you have a right to use the subpoena power of the Court to get the attendance of any witnesses on your behalf, whether they want to come or not? YES ✓ NO
15. Do you know that if you plead GUILTY you will be found guilty without a trial and you will have given up all the rights mentioned in questions (8) to (13) along with your right to present any defense(s)? YES ✓ NO
16. Have you made any statements(s) in which you admitted all or any part of the crime(s) to which you want to plead guilty? YES NO X
If yes, would you plead guilty if you knew the statement(s) could not be used against you? YES NO X
17. If you are on Parole or Probation, do you know this plea could result if a revocation? Yes N/A NO
18. Has your lawyer gone over your rights and all circumstances of the charge(s) with you? YES ✓ NO
19. Are you satisfied with your lawyer? YES NO
20. Do you understand what you are doing and all the rights that you are giving up? YES NO
21. Are you pleading guilty freely and voluntarily? YES ✓ NO
22. Are you pleading guilty because you are guilty? YES NO
23. I consent to the transfer of my case to Magistrate Court. YES NO

Antion J. [Signature]
DEFENDANT'S SIGNATURE

DATE:

From: Donald Sorenson [dsorenson@scsolicitor1.org]
To: Pierce Wehman
Cc:
Subject: State v. Antonio Jacobs
Attachments:

<https://ml-sbs-srvr/exchange/pwehman/Inbox/State%20v.%20Antonio%20Jacobs.EML?C...> 11/7/2014

--[Response: DORS0028 -]--
 TO: DORS0028-123 20140414 16:10:10 003F00FAF3
 FROM: SCCH-64243 20140414 16:10:10 2739000062
 ICHS/QH INQUIRY OF SCLED CCH FILES USING:
 ATN-DET MARTIN
 ORI-SC0180000 PUR-C
 NAM-[REDACTED]
 SEX-F RAC-B DOB-[REDACTED]

DATE-04/14/2014 TIME-16:08 PAGE-01 OF 01
 ORI-SC0180000
 SCLED IDENT RESPONSE TO ICHS/QH INQUIRY
 THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
 MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-[REDACTED] SEX-F RACE-B
 HEIGHT-505 WEIGHT-200 EYES-BRO HAIR-BLK SKIN- BORN-SC
 FPC: HENRY-18 L 1 U OOI 12 NCIC-18131210121611091111
 M 1 U OII
 SID-SC01193915 FBI-629184HB9
 PHOTOGRAPH AVAILABLE
 1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS
 DATE RECORD ENTERED--06/19/1998 DATE OF LAST UPDATE--04/10/2014

BIRTH DATES-[REDACTED]

SOC SEC NUMBERS-[REDACTED]
 SCLED CJIS CCH FILE INDICATES SUBJECT HAS NO OUT-OF-STATE ARRESTS

 INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
 PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
 CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
 THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
 FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
 DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** END OF IDENT **

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 ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL
 ** END OF MESSAGE **

TO: DORS0028-124 20140414 16:10:14 003501888F
 FROM: III-101263 20140414 16:10:14 2739000063
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THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
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F B 505 200 BRO BLK N

BIRTH PLACE
SOUTH CAROLINA

FINGERPRINT CLASS PATTERN CLASS
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SOCIAL SECURITY

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THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

SOUTH CAROLINA - STATE ID/SC01193915

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

TO: DORS0028-125 20140414 16:11:12 003F00FAFB
FROM: SCCH-64251 20140414 16:11:12 2739000064

ICHR REQUEST FOR RAP SHEET
ORI-SC0180000 FBI-629184HB9 PUR-C
ATN-DET MARTIN

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-04/14/2014 TIME-16:09:33
REQ ORI-SC0180000 DORCHESTER CNTY SO
SID-SC01193915 FBI-629184HB9

NAME- SEX-F RACE-B
HEIGHT-505 WEIGHT-200 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC-18131210121611091111 HENRY-18 L 1 U OOI 12
M 1 U OII

PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFS

DATE RECORD ENTERED--06/19/1998 DATE OF LAST UPDATE--04/10/2014

ADDITIONAL IDENTIFIERS BIRTH
NAME DATES MARKS SOC SEC MISC NUM

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

04/22/1998

SC0180000 DORCHESTER CNTY SO
CASE-97019722
WARR-F568596

ARREST CHARGE 01-FORGERY
OFFENSE DATE-06/30/1997
PHOTOGRAPH AVAILABLE

CIT-16-13-10(B)(2) FELONY
DOC-98GS1800751
WARR-F568596

COURT CHARGE 01-FORGERY,
VALUE LESS THAN \$5,000
COURT DISP-CONVICTED;5 YEARS
SUSP 5 YEARS PROB
COURT DATE-12/07/1998

03/22/2002

SC0180200 SUMMERVILLE PD
CASE-02009210
ATN-
WARR-837558U
CIT-56-/-80(F)-MISDEMEANOR

ARREST CHARGE 01-FAILURE TO
APPEAR
OFFENSE DATE-03/08/2002
PHOTOGRAPH AVAILABLE

04/10/2014

SC0180200 SUMMERVILLE PD
CASE-14007165
ATN-18C200003819
WARR-2013B1820500532
CIT-56-25-40(B)-MISDEMEANOR

ARREST CHARGE 01-FAIL TO
APPEAR FOR UNIFORM TRAFFIC
CITATION
OFFENSE DATE-07/16/2013

WARR-20140410 @
CIT-44-53-375(B)(1)-FELONY

ARREST CHARGE 02-DRUGS/MAN, DI
ST, ETC OF COCAINE BASE 1ST
OFFENSE DATE-04/10/2014

WARR-20140410 @
CIT-44-53-370(E2)(A1)-FELONY

ARREST CHARGE 03-TRAFFICKING
COCAINE/10G OR MORE LESS
28G 1ST
OFFENSE DATE-04/10/2014

WARR-20140410 @
CIT-44-53-375(C)(A)-FELONY

ARREST CHARGE 04-TRAFFICKING
ICE, CRANK, CRACK, >10G BUT <2
BG-1ST
OFFENSE DATE-04/10/2014

WARR-20140410 @
CIT-44-53-370(B)(2)-FELONY

ARREST CHARGE 05-MANUFT, POSSE
SS OTHER SUB SCH I, II, III
WITD-1ST
OFFENSE DATE-04/10/2014

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/629184HB9
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **

TO: DORS0028-126 20140414 16:11:17 0006047BB0
FROM: NC2K-293808 20140414 16:11:17 2739000065
1L0127390000652QWA
SC0180000

NO NCIC WANT FBI/629184HB9

NO NCIC WANT SOC/

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.

--[Response: DORSO006 -]--

TO: DORSO006-2565 20140124 16:10:17 001E16BD63
 FROM: DMV-1490275 20140124 16:10:11 2711000420
 TXREF SC01800002711000420
 XREF
 ID NO 0007750546
 JACOBS, ANTONIO TERRELL
 [REDACTED] FOREST CIR LOT 91
 SUMMERVILLE SC 294832851 DORC CNTY
 SEX M HGT 5 09 WGT 185 BIRTH [REDACTED]/1978
 SSN ***-**- [REDACTED] RACE BLACK
 STATUS-DL: SUSPENDED CDL: DISQUALIFIED
 **** IDENTIFICATION ONLY **** ISSUED 04/01/2013
 DRIVER LICENSE CLASS D ISSUED 02/06/2012
 ** MORE **

TO: DORSO006-2566 20140124 16:10:18 001E16BD64
 FROM: DMV-1490276 20140124 16:10:11 2711000420
 TXREF SC01800002711000420
 XREF

OLN = 0007750546

SUSP FR Accident	BEG 11/15/2012	END INDEFINITE	CAU 05/12/2012
SUSP Cancellation of Insurance	BEG 06/21/2012	END INDEFINITE	CAU 05/14/2012
SUSP Controlled Substance Violation	BEG 01/25/2011	END 07/25/2011	CAU 12/02/2010
SUSP Driving Under Suspension - FTP	BEG 02/25/2010	END 05/25/2010	CAU 11/08/2009
SUSP Failure to Pay Property Tax	BEG 11/03/2009	END 11/09/2009	CAU 10/14/2009
SUSP Driving Under Suspension	BEG 07/23/2007	END 07/23/2008	CAU 02/26/2004
SUSP Controlled Substance Violation	BEG 07/22/2006	END 07/22/2007	CAU 06/10/2004
SUSP Driving Under Suspension	BEG 07/21/2005	END 07/21/2006	CAU 08/15/2003
SUSP Controlled Substance Violation	BEG 07/20/2004	END 07/20/2005	CAU 02/19/2003
SUSP Controlled Substance Violation	BEG 07/19/2003	END 07/19/2004	CAU 01/27/2003
SUSP Controlled Substance Violation	BEG 07/18/2002	END 07/18/2003	CAU 10/03/2001

TO: DORSO006-2567 20140124 16:10:18 001E16BD65
 FROM: DMV-1490277 20140124 16:10:11 2711000420
 TXREF SC01800002711000420
 XREF

OLN = 0007750546

SUSP Failure to Maintain Proof of F	BEG 03/07/2002	END 11/24/2008	CAU 02/25/2002
SUSP Failure to Pay Traffic Ticket	BEG 11/01/2001	END 12/18/2008	CAU 11/06/2000
SUSP Operating or Allowing Operatio	BEG 02/02/2001	END 03/03/2001	CAU 01/19/1999
SUSP Driving Under Suspension	BEG 02/02/2000	END 02/02/2001	CAU 09/18/1999
SUSP Controlled Substance Violation	BEG 02/02/1999	END 02/02/2000	CAU 10/10/1998
SUSP Controlled Substance Violation	BEG 02/02/1999	END 08/02/1999	CAU 10/10/1998
SUSP Alcohol Violation	BEG 07/23/1998	END 10/20/1998	CAU 04/29/1998

** END OF INQUIRY **

--(Response: DORS0006 -)--

TO: DORS0006-2583 20140124 16:12:35 003F03BF3F
 FROM: SCCH-245567 20140124 16:12:35 2711000424
 ICHS/QH INQUIRY OF SCLED CCH FILES USING:
 ATN-MANNING, CRYSTAL
 ORI-SC0180000 PUR-C
 NAM-JACOBS, ANTONIO TERRELL
 SEX-M RAC-B DOB-1978

DATE-01/24/2014 TIME-16:09 PAGE-01 OF 01

ORI-SC0180000

SCLED IDENT RESPONSE TO ICHS/QH INQUIRY

THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
 MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-JACOBS, ANTONIO TERRELL SEX-M RACE-B
 HEIGHT-509 WEIGHT-145 EYES-BRO HAIR-BLK SKIN- BORN-SC
 FPC: HENRY- 4 1 T 7 NCIC-04TT060907TT01TT0809
 1TUT--

SID-SC01078201 FBI-214988DB0

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--09/11/1996 DATE OF LAST UPDATE--08/17/2013

ALIAS NAMES-JACOBS, TONY JACOBS, ANTONIO TERRELL
 SIMMONS, TONY JACOBS, ANTONIO T
 JACOBS, ANTONIO TERRELL

BIRTH DATES- /1978 /1978 /1976

SOC SEC NUMBERS-

SCLED CJIS CCH FILE INDICATES SUBJECT HAS NO OUT-OF-STATE ARRESTS

 INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
 PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
 CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
 THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
 FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
 DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES MAY OCCUR DAILY, A NEW INQUIRY
 SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED.

FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR
 FBI NUMBER.

REQUEST FORWARDED TO NCIC

ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL

** END OF MESSAGE **

TO: DORS0006-2584 20140124 16:12:39 00350609C9
 FROM: III-395721 20140124 16:12:39 2711000425
 7L0127110004252QH

SC0180000

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/JACOBS,ANTONIO TERRELL SEX/M RAC/B DOB/1978/ PUR/C

NAME	FBI NO.	INQUIRY DATE
JACOBS,ANTONIO TERRELL	214988DB0	2014/01/24

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
M	B	1978/	509	145	BRO	BLK	Y

BIRTH PLACE
SOUTH CAROLINA

FINGERPRINT CLASS	PATTERN CLASS
04 TT 06 09 07	UC UC UC UC UC UC UC UC UC UC
TT 01 TT 08 09	UC UC UC UC UC UC UC UC UC UC
	UC UC UC UC UC UC UC UC UC UC

ALIAS NAMES

JACOBS,ANTONIO	JACOBS,ANTONIO T
JACOBS,ANTONIO TERRELL	JACOBS,ANTONIO TERREL
JACOBS,TONY	SIMMONS,TONY

OTHER SCARS-MARKS-

BIRTH DATES	TATTOOS	SOCIAL SECURITY
1978/	TAT BACK	
1976/	TAT L ARM	
	TAT R ARM	

IDENTIFICATION DATA UPDATED 2013/08/17

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

SOUTH CAROLINA - STATE ID/SC01078201

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

--[Response: DORS0006 -]--

TO: DORS0006-2586 20140124 16:13:25 003F03BF42
FROM: SCCH-245570 20140124 16:13:25 2711000426

ICHR REQUEST FOR RAP SHEET
ORI-SC0180000 FBI-214988DB0 PUR-C
ATN-MANNING, CRYSTAL

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-01/24/2014 TIME-16:09:54
REQ ORI-SC0180000 DORCHESTER CNTY SO
SID-SC01078201 FBI-214988DB0
NAME-JACOBS, ANTONIO TERRELL SEX-M RACE-B
HEIGHT-509 WEIGHT-145 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC-04TT060907TT01TT0809 HENRY- 4 1 T 7
1TUT--

PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--09/11/1996 DATE OF LAST UPDATE--08/17/2013

ADDITIONAL IDENTIFIERS	BIRTH	DATES	MARKS	SOC SEC	MISC NUM
NAME					
		1978			
		1976			
		1978			
JACOBS, TONY					
JACOBS, ANTONIO TERELL					
SIMMONS, TONY					
JACOBS, ANTONIO T					
JACOBS, ANTONIO TERREL					

CONTRIBUTOR/SUBJECT	DOA/RCVD CHARGE/DISPOSITION/ETC
JACOBS, ANTONIO TERRELL	08/01/1996
SC0100000 CHARLESTON CNTY SO	
CASE-96061667B	

DOC-10
WARR-68066AI

ARREST CHARGE 01-FALSE INFORM
ATION TO POLICE
OFFENSE DATE-08/01/1996
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-GIVING FALSE
INFORMATION
COURT DISP-CONVICTED; BW 30
DYS JL OR \$376.00
COURT DATE-11/26/1996

JACOBS, ANTONIO TERELL
SC0100000 CHARLESTON CNTY SO
CASE-97052807B
WARR-77394AO

06/22/1997

DOC-10

ARREST CHARGE 01-CRIMINAL
DOMESTIC VIOLENCE
OFFENSE DATE-06/22/1997
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-COURT CHARGE

WARR-77394AO

NOT SUBMITTED
COURT DISP-CONVICTED;\$1025
FINE SUS TO 30 DY JAIL
COURT DATE-07/17/1997

JACOBS, ANTONIO TERRELL
SC0100600 LINCOLNVILLE PD
CASE-98034396L
WARR-54614AP

04/29/1998

ARREST CHARGE 01-CARLELESS
DRIVING
OFFENSE DATE-04/29/1998
PHOTOGRAPH AVAILABLE

WARR-54615AP

ARREST CHARGE 02-FAIL TO
CHANGE ADDRESS
OFFENSE DATE-04/29/1998

WARR-54616AP

ARREST CHARGE 03-DISORDERLY
CONDUCT
OFFENSE DATE-04/29/1998

WARR-54618AP

ARREST CHARGE 04-MINOR IN
POSS OF BEER
OFFENSE DATE-04/29/1998

JACOBS, ANTONIO TERRELL
SC0180000 DORCHESTER CNTY SO
CASE-98033049
WARR-E091078

10/11/1998

ARREST CHARGE 01-POSSESSION
W/I TO DISTRIBUTE
OFFENSE DATE-10/11/1998

WARR-55758AW

ARREST CHARGE 02-SIMPLE POSSE
SSION OF MARIJUANA
OFFENSE DATE-10/11/1998

CIT-44-53-375(A) FELONY
DOC-98GS1801212
WARR-E091078

COURT CHARGE 01-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED;YOA 5C
SUSP 2 YEARS PROB
COURT DATE-01/20/1999

JACOBS, ANTONIO TERRELL
SC0180200 SUMMERVILLE PD
CASE-01038755
ATN-

10/03/2001

ARREST CHARGE 01-POSSESSION
WITH INTENT TO DIST CRACK
COCAINE
OFFENSE DATE-10/03/2001
PHOTOGRAPH AVAILABLE

CIT-44-53-375(A) FELONY
DOC-01GS1801165
WARR-G372347

COURT CHARGE 01-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED;5 YRS

*PHD Creek
Conviction*

SUSP 3 YRS PROB
COURT DATE-07/18/2002

ATN-

JACOBS, ANTONIO TERRELL
SC0100000 CHARLESTON CNTY SO
CASE-02019014B
ATN-
WARR-55659CG
CIT-16-25-20-MISDEMEANOR

08/09/2002

ARREST CHARGE 01-CRIMINAL
DOMESTIC VIOLENCE 2ND
OFFENSE
OFFENSE DATE-08/09/2002
PHOTOGRAPH AVAILABLE

JACOBS, ANTONIO TERRELL
SC0100000 CHARLESTON CNTY SO
CASE-03001144B
ATN-
WARR-H302120
CIT-44-53-375(B) (1) -FELONY

02/19/2003

ARREST CHARGE 01-MANUF, DISTRI
B, ETC, ICE/CRANK/CRACK
COCAINE-1ST
OFFENSE DATE-02/19/2003
PHOTOGRAPH AVAILABLE

WARR-H302121
CIT-44-53-375(B) (1) -FELONY

ARREST CHARGE 02-MANUF, DISTRI
B, ETC, ICE/CRANK/CRACK
COCAINE-1ST
OFFENSE DATE-02/19/2003

WARR-H302122
CIT-44-53-445(B) (2) -FELONY

ARREST CHARGE 03-DIST, SELL, ET
C, CRACK COCAINE, OR PWID,
NR SCHOOL
OFFENSE DATE-02/19/2003

WARR-H302123
CIT-44-53-445(B) (2) -FELONY

ARREST CHARGE 04-DIST, SELL, ET
C, CRACK COCAINE, OR PWID,
NR SCHOOL
OFFENSE DATE-02/19/2003

WARR-H302420
CIT-44-53-375(C) (2) -FELONY

ARREST CHARGE 05-TRAFF ICE, CR
ANK, CRACK COCAINE>28G
BUT<100G-1ST

WARR-H302421
CIT-44-53-445(B) (2) -FELONY

ARREST CHARGE 06-DIST, SELL, ET
C, CRACK COCAINE, OR PWID,
NR SCHOOL

CIT-44-53-370(B) (1) -FELONY
DOC-03GS1002858
WARR-H302120

COURT CHARGE 01-MDP, DRUGS
SCH I B, C, LSD AND SCH
II, COCAINE-1ST

COURT DISP-CONVICTED; 2 YEARS
 SUS WHILE ON PROB/CONSECUT
 IVE TO 01-1165
 COURT DATE-07/16/2003
 ATN-

CIT-44-53-375 (B) (1) -FELONY
 DOC-03GS1002859
 WARR-H302121

COURT CHARGE 02-MANUF, DISTRIB
 , ETC, ICE/CRANK/CRACK COCAI
 NE-1ST
 COURT DISP-NON-CONVICTION;
 NOLLE PROSSED
 COURT DATE-07/16/2003

CIT-44-53-445 (B) (2) -FELONY
 DOC-03GS1002860
 WARR-H302122

COURT CHARGE 03-DIST, SELL, ETC
 , CRACK COCAINE, OR PWID,
 NR SCHOOL
 COURT DISP-NON-CONVICTION;
 NOLLE PROSSED
 COURT DATE-07/16/2003

CIT-44-53-445 (B) (2) -FELONY
 DOC-03GS1002861
 WARR-H302123

COURT CHARGE 04-DIST, SELL, ETC
 , CRACK COCAINE, OR PWID,
 NR SCHOOL
 COURT DISP-NON-CONVICTION;
 NOLLE PROSSED
 COURT DATE-07/16/2003

CIT-44-53-370 (B) (1) -FELONY
 DOC-03GS1002862
 WARR-H302420

COURT CHARGE 05-MDP, DRUGS
 SCH I B, C, LSD AND SCH
 II, COCAINE-1ST
 COURT DISP-CONVICTED; 2 YEARS/
 CONSECUTIVE TO 02-2858
 COURT DATE-07/16/2003

CIT-44-53-445 (B) (2) -FELONY
 DOC-03GS1002863
 WARR-H302421

COURT CHARGE 06-DIST, SELL, ETC
 , CRACK COCAINE, OR PWID,
 NR SCHOOL
 COURT DISP-NON-CONVICTION;
 NOLLE PROSSED
 COURT DATE-07/16/2003

JACOBS, ANTONIO TERRELL
 SC0180200 SUMMERVILLE PD
 CASE-03039359
 ATN-
 WARR-32177CJ
 CIT-56-1-460-MISDEMEANOR

08/15/2003

WARR-32178CJ
 CIT-N/A-MISDEMEANOR

ARREST CHARGE 01-DUS (LICENSE
 NOT SUSP DUI)-2ND
 OFFENSE DATE-08/15/2003
 PHOTOGRAPH AVAILABLE

ARREST CHARGE 02-CARELESS
 OPERATION OF MOTOR VEHICLE
 OFFENSE DATE-08/15/2003

END OF PAGE

01 - PAGE 02 TO FOLLOW

TO: DORS0006-2588 20140124 16:13:27 003F03BF43
FROM: SCCH-245571 20140124 16:13:27 2711000426

PAGE-02 DATE-01/24/2014 TIME-16:09:54
REQ ORI-SC0180000 DORCHESTER CNTY SO
SID-SC01078201 FBI-214988DB0

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

JACOBS, ANTONIO TERRELL 02/26/2004
SC0180200 SUMMERVILLE PD
CASE-04011027
ATN-
WARR-73695CS
CIT-56-1-460-MISDEMEANOR

ARREST CHARGE 01-DUS (LICENSE
NOT SUSP DUI)-2ND
OFFENSE DATE-02/26/2004
PHOTOGRAPH AVAILABLE

CIT-56-1-460-MISDEMEANOR
DOC-R84
WARR-73695CS

COURT CHARGE 01-DUS (LICENSE
NOT SUSP DUI)-2ND
COURT DISP-CONVICTED;TIA,
\$1270
COURT DATE-06/24/2005
ATN-

JACOBS, ANTONIO TERRELL
SC0180200 SUMMERVILLE PD
CASE-04 026704
ATN-
WARR-H574394
CIT-44-53-375(B)(1)-FELONY

07/27/2004

→ PCR

ARREST CHARGE 01-MANUF, DISTRI
B, ETC, ICE/CRANK/CRACK
COCAINE-1ST
OFFENSE DATE-06/10/2004
PHOTOGRAPH AVAILABLE

WARR-H574395
CIT-44-53-375(B)(1)-FELONY

ARREST CHARGE 02-MANUF, DISTRI
B, ETC, ICE/CRANK/CRACK
COCAINE-1ST
OFFENSE DATE-06/10/2004

WARR-H574396
CIT-44-53-375(B)(1)-FELONY

ARREST CHARGE 03-MANUF, DISTRI
B, ETC, ICE/CRANK/CRACK
COCAINE-1ST
OFFENSE DATE-06/10/2004

CIT-44-53-375(B)(2)-FELONY
DOC-04GS1800977
WARR-H574396

COURT CHARGE 01-MANUF, DISTRI
B, ETC, ICE/CRANK/CRACK COCAI
NE-2ND
COURT DISP-CONVICTED; 7 YEARS
COURT DATE-12/13/2004
ATN-

CIT-44-53-375(B)(1)-FELONY

*Distributed
Convicted
2nd*

DOC-04GS1800979
WARR-H574394

COURT CHARGE 02-MANUF,DISTRIB
,ETC,ICE/CRANK/CRACK COCAI
NE-1ST
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-12/13/2004

CIT-44-53-375 (B) (1)-FELONY
DOC-04GS1800978
WARR-H574395

COURT CHARGE 03-MANUF,DISTRIB
,ETC,ICE/CRANK/CRACK COCAI
NE-1ST
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-12/13/2004

SC040015C SC DEPT CORRECTIONS 01/06/2005 CUSTODY STATUS-RECEIVED
CASE-200501 START DATE-01/06/2005
CIT-44-53-375 (B) (2)-FELONY

COURT CHARGE 01-MANUF,DISTRIB
,ETC,ICE/CRANK/CRACK COCAI
NE-2ND
COURT DISP-CONVICTED;7 YRS CC
COURT DATE-01/06/2005
ATN-500200040310

CIT-44-53-375 (B) (1)-FELONY

COURT CHARGE 02-MANUF,DISTRIB
,ETC,ICE/CRANK/CRACK COCAI
NE-1ST
COURT DISP-CONVICTED;5 YRS CC
COURT DATE-01/06/2005

CIT-44-53-370 (B) (1)-FELONY

COURT CHARGE 03-MDP,DRUGS
SCH I B,C,LSA AND SCH
II,COCAINE-1ST
COURT DISP-CONVICTED;2 CTS 2
YRS CC
COURT DATE-01/06/2005

SC040015C SC DEPT CORRECTIONS 06/23/2008 CUSTODY STATUS-RECEIVED
CASE-062320 START DATE-06/23/2008
CIT-44-53-375 (A)-MISDEMEANOR

COURT CHARGE 01-POSS < 1GRAM
OF METH OR COCAINE BASE
1ST
COURT DISP-CONVICTED;7 YRS
COURT DATE-06/23/2008
ATN-500300046930

JACOBS, ANTONIO TERRELL
SC0180200 SUMMERVILLE PD
CASE-12050813
ATN-18C200000360
WARR-PENDING @
CIT-44-53-370 (B) (2)-FELONY

07/24/2012

ARREST CHARGE 01-MANUFT,POSSE
SS OTHER SUB SCH I,II,III
WITD-1ST
OFFENSE DATE-07/24/2012

JACOBS, ANTONIO TERRELL

08/17/2013

*Distribution
2nd
Conviction*

*Distribution
1st Conviction*

*Poss
Conviction*

TS

SC0100000 CHARLESTON CNTY SO
 CASE-2013012221
 ATN-10D100727682
 WARR-2013A1010204514
 CIT-44-53-375(A) -MISDEMEANOR

ARREST CHARGE 01-POSS < 1GRAM
 OF METH OR COCAINE BASE
 1ST
 OFFENSE DATE-08/17/2013
 PHOTOGRAPH AVAILABLE
 PALM PRINTS AVAILABLE

Dismissed

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/214988DB0
 REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

 INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
 PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
 CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
 THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
 FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
 DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **

TO: DORSO006-2589 20140124 16:13:30 0006121EF4
 FROM: NC2K-1187572 20140124 16:13:30 2711000427
 1L0127110004272QWA
 SC0180000

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.

MKE/WANTED PERSON - CAUTION

CMC/05 - VIOLENT TENDENCIES

CMC/01 - OTHER

EXL/D - NO EXTRADITION

ORI/SC0100000 NAM/JACOBS, ANTONIO TERRELL SEX/M RAC/B POB/SC

DOB/1978 HGT/509 WGT/185 EYE/BRO HAI/BLK FBI/214988DB0

SMT/TAT BACK

FPC/04TT060907TT01TT0809 MNJ/OA-SC01078201 SOC

OLN/0007750546 OLS/SC OLY/2018

OFF/CONTEMPT OF COURT - SEE MIS - CONTEMPT OF COURT

OOC/TRAFFIC OFFENSE

DOW/20130926 OCA/2013013391B

WNO/2013B1010500133

MIS/CAUTION - HISTORY OF CRIMINAL DOMESTIC VIOLENCE AND GIVING FALSE INFORMATION

MIS/ - SUBJECT HAS AN ACTIVE MAGISTRATE COURT BENCH WARRANT FOR OPEN CONTAINER

MIS/OF ALCOHOL IN MOTOR VEHICLE AND ORDERED TO BE BROUGHT BEFORE THE COURT FOR

MIS/SENTENCING - EXTRADITION IN SOUTH CAROLINA ONLY

DNA/N

ORI IS CHARLESTON CO SO CHARLESTON 843 202-1700

Warrant For Charleston County

DOB/19761010

DOB/1978

AKA/JACOBS, ANTONIO

AKA/JACOBS, ANTONIO T

AKA/JACOBS, ANTONIO TERELL

AKA/JACOBS, ANTONIO TERREL

AKA/JACOBS, TONY

AKA/SIMMONS, TONY

SMT/TAT L ARM

SMT/TAT R ARM

NIC/W658502883 DTE/20131010 1309 EDT DLU/20131011 0845 EDT

IMMED CONFIRM WARRANT AND EXTRADITION WITH ORI

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

Antonio Jacobs, #306881)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2015-CP-18-2086

ORDER OF DISMISSAL

2017 JUL 10 PM 4:09
 CERTIFIED COPY
 Clerk of Court
 DORCHESTER COUNTY

This matter comes before the Court through a post-conviction relief (PCR) application filed by Applicant on October 29, 2015. This Court convened an evidentiary hearing into this matter on February 27, 2017, at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel, Pierce Wehman, Esquire ("Counsel"), was present and testified. This Court had the opportunity to listen to the testimony of Applicant and counsel. This Court had before it a copy of the plea transcript, the records of the Dorchester County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted during the October 2014 term Dorchester County Grand Jury for two counts of possession with intent to distribute marijuana third offense (2014-GS-18-0498; 0499) and trafficking cocaine 10g-28g third offense (2014-GS-18-0500). On December 8, 2014, Applicant pleaded guilty to possession with intent to distribute marijuana third offense and trafficking cocaine 10g-28g third offense. On December 9, 2014, Applicant was sentenced to twenty-two years' incarceration for trafficking cocaine 10g-28g third offense and twenty years'

per

concurrent incarceration for possession with intent to distribute marijuana third offense by the Honorable Kristi L. Harrington. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

Applicant alleged the following grounds in his original application:

1. Ineffective assistance of counsel.
 - a. Advice
 - i. Counsel was deficient for advising Applicant to plead without seeing audio/video evidence
 - ii. Failed to advise Applicant that he had the right to have his indictment presented to a grand jury.
 - b. Discovery
 - i. Failed to request cell phone records and unproduced evidence
 - ii. Failed to request the audio/video recordings of the controlled drug purchases
 - iii. Failed to request photos of alleged crime scene
 - iv. Failed to raise trial defenses
 - v. Failed to utilize evidence favorable to the defense
 - vi. Failed to attack credibility of confidential informant
 - vii. Failed to attack search warrant
 - viii. Failed to make state present all the evidence it had against Applicant
 - ix. Failed to subject prosecution's case to meaningful adversarial testing
 - x. Failed to request continuance to prepare for case
 - xi. Failed to argue that Applicant had not been indicted within 90 days
 - xii. Failed to argue that indictment did not state the enhancement level of the offense
 - ii. Failed to make the State present all the evidence it had of guilt
2. Preliminary hearing
 - a. Counsel failed to inform the court at preliminary hearing that he did not receive mail or have his name on the utility bills at the address on the search warrant
 - b. Counsel failed to attack law enforcement's supplementary report at the preliminary hearing
3. Subject matter jurisdiction
 - a. Court lacked subject matter jurisdiction because the charge was unindicted and counsel never informed Applicant of his right to waive presentment to the Grand Jury
 - b. Possession with intent to distribute marijuana indictment failed to state the enhancement level of the offense
4. Counsel failed to perfect appeal on Applicant's behalf



At the evidentiary hearing, Applicant proceeded forward on the grounds of:

1. Failure to Properly Advise Client
 - a. Failure to Advise
 - i. Counsel failed to advise Applicant of the consequences of his guilty plea
 - ii. Counsel failed to advise discuss potential defenses and elements of charges
 - iii. Counsel failed to advise Applicant on the evidence against Applicant
 - b. Failure to Adequately Prepare for Trial
2. Involuntary guilty plea
 - a. Plea was involuntarily entered due to Applicant's concerns that his mother would be charged if he didn't plead guilty

At the evidentiary hearing, Applicant proceeded only on allegations "a" through "f" listed in paragraph 4. Applicant waived her allegations in paragraphs 1-3 by presenting no evidence at the hearing as to those allegations.

III. SUMMARY OF FACTS

On January 24, 2014, law enforcement utilized a confidential informant, equipped with audio and video recording equipment, to purchase over half a gram of cocaine from Applicant. Subsequently, on February 5, 2014, law enforcement used the same method to purchase half a gram of cocaine from Applicant. On April 10, 2014, law enforcement used the same method to purchase half a gram of cocaine from Applicant at a house. Based on that last drug purchase, law enforcement obtained a search warrant for that house. Law enforcement conducted a search of the house and found around 20 grams of cocaine along with a quantity of marijuana. Applicant's criminal history contained multiple drug convictions including: 1998 - possession of crack cocaine; 2001 - possession of crack cocaine; 2003 - two counts of possession with intent to distribute crack cocaine; 2004 - possession of crack cocaine.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. 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). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

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. 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. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969).

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Counsel

This Court finds that Applicant has failed to satisfy his burden to prove that counsel was deficient or that he was prejudiced by counsel's alleged deficiencies.

Here, counsel articulated valid reasons for his recommendation to Applicant that he plead guilty. The plea judge's colloquy was appropriate and complete. Counsel's advice to Applicant and trial preparation was competent and complete. This Court finds Counsel's testimony persuasive and credible and Applicant's testimony lacked credibility. This Court finds that Counsel sufficiently advised Applicant concerning the consequences of Applicant's choice to plead guilty. For the reasons set out below, this Court finds counsel was not ineffective.

1. Failure to Advise

Applicant's testimony at his guilty plea proceeding severely undermines the credibility of his testimony at the PCR evidentiary hearing. At the evidentiary hearing, Applicant testified he would not have pleaded guilty if he had understood the consequences of pleading guilty. He claimed he did not know he was facing one hundred and forty years in jail and not life without parole sentences. He also claimed he was not told that the charges he pleaded to were violent and required incarceration for 85% his sentence. Applicant testified he met with Counsel three or four times, less than ten minutes at each meeting. Applicant testified Counsel never discussed the

elements of his crimes, potential defenses, strikes on his record, or his prior criminal history. Counsel testified he went over all of the consequences with Applicant. Counsel's testimony is supported by the record at Applicant's plea proceedings.

At Applicant's plea proceedings, Applicant stated he understood strikes, the defenses he was giving up, and the collateral consequences of his guilty plea. Tr. p. 7. The plea court even had Applicant explain the collateral consequences. In Applicant's words, "I know a violent offense is -- a violent serious offense is eighty-five percent and I would have to do -- I would have to complete eighty-five percent of that time, and upon release, what, two years supervision I think." Tr. p. 8. Applicant's testimony shows he fully understood the consequences of his plea and Counsel had clearly explained those consequences to Applicant before his plea.

Applicant also testified that he wanted a twenty-year sentence, which was the bottom of Applicant's negotiated range in his plea deal. Applicant's plea deal was a negotiated sentencing range of twenty to twenty-five years' incarceration. The Honorable Carmen Mullen sentenced Applicant to twenty-two years' incarceration. Applicant's discontent regarding his sentence is not grounds for collateral attack on his sentence. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

Applicant failed to satisfy his burden to prove that Counsel was deficient. Based on the answers given by Applicant at the guilty plea and Counsel's testimony at the evidentiary hearing, Counsel's advice was within the range of competence demanded of attorneys. 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. At his guilty

plea, Applicant testified that he understood the sentencing range was twenty to twenty-five years. Tr. p. 4. Applicant indicated his understanding of the collateral consequences by describing the 85% and violent collateral consequences of his guilty plea to the Judge. Statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). Applicant has failed to show why he should be allowed to depart from his testimony at his guilty plea.

Counsel testified that he went over the elements of the charged offenses, potential defenses, and discovery with Applicant. Counsel's credible testimony refuted Applicant's statements that Counsel failed to discuss those matters with him. Similarly, Applicant acknowledged he was giving up his right to any trial defenses. Tr. p. 6. Applicant also agreed with the facts the State cited, which supported the elements of Applicant's charges. Tr. p. 12.

Applicant testified that he would have gone to trial, but for the fact that Counsel was not prepared for trial. At his guilty plea, Applicant waived his right to have Counsel present his defenses and attack the validity of the State's evidence against him. Tr. p. 7. Counsel testified he was prepared to go to trial if Applicant wanted to proceed to trial. Counsel also testified he would have asserted each of Applicant's applicable defenses if Applicant had chosen to proceed to trial. However, the evidence against Applicant was overwhelming and Applicant's decision to plead guilty and negotiate a plea deal was in his best interest.

Applicant failed to satisfy his burden to prove that counsel's advice concerning his charges was deficient. Counsel testified that he discussed the elements and defenses of the charges with Applicant and Applicant's statements at his guilty plea evinced those discussions. This Court finds Counsel's advice was within the range of competence demanded of attorneys.

Therefore, the allegation that Counsel failed to advise Applicant of his charges' elements and defenses is denied and dismissed.

This Court finds Applicant has failed to satisfy his burden to prove that Counsel failed to advise him of the consequences of his guilty plea. Therefore, the allegation that Counsel failed to advise Applicant of his consequences is denied and dismissed.

This Court finds Counsel's preparation of Applicant's case was within the range of competence demanded of attorneys. 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. This Court finds Applicant has failed to prove Counsel's preparation was deficient. Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation. Therefore, the allegation that Counsel failed to adequately prepare for trial on Applicant's charges is denied and dismissed.

To prove prejudice, Applicant must show a reasonable probability that he would not have pleaded guilty, but insisted on a trial based on Counsel's deficiency. An Applicant must show a "reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417. Applicant's statement at the evidentiary hearing, that he wanted a twenty-year incarceration sentence, indicates he would not have proceeded to trial, but only wanted a better sentence than he received. Therefore, Applicant has failed to prove he was prejudiced by any alleged deficiency of Counsel.

Furthermore, Counsel provided competent representation in light of the overwhelming evidence against Applicant. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). Law

enforcement used a confidential informant, equipped with audio and video recording equipment, to purchase cocaine from Applicant on three separate occasions. Law enforcement then served a search warrant on Applicant's home, where they had purchased drugs from him on prior occasions, and found trafficking quantities of cocaine. Applicant failed to prove that Counsel's alleged deficiencies would have resulted in Applicant proceeding to trial instead of pleading guilty.

B. Involuntary Guilty Plea

Applicant asserts that his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)). The Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Id. An applicant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy, 339 S.C. at 34, 528 S.E.2d at 421. "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874. 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. at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the plea transcript and testimony provided at the evidentiary hearing, the Court denies Applicant's request for post-conviction relief. From a review of the entire record, this Court finds plea counsel were effective in their representation of Applicant, and Applicant, therefore, has failed to meet her burden of proving ineffective assistance of counsel. Applicant admitted his guilt to the

plea court. Tr. pp. 4, 12. Applicant agreed with the State's statement of the evidence and that he did those acts. Tr. p. 7. Applicant acknowledged he was satisfied with his attorney. Tr. p. 9.

At the evidentiary hearing, Applicant claimed he pleaded guilty only because he was afraid his mother would be prosecuted with the crime. Counsel claimed that Applicant was concerned about his mother's case, but that the ultimate decision to plead guilty was Applicant's. The record reflects Applicant's awareness of his plea negotiations and the knowing, intelligent, and voluntary nature of his guilty plea. There was no credible evidence that the State threatened Applicant with the prosecution of his mother to induce a guilty plea.

This Court finds Applicant has failed to prove that his guilty plea was involuntary. Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation. Therefore, the allegation that Applicant's plea was not voluntarily is denied and dismissed.

To prove prejudice, Applicant must show a reasonable probability that he would not have pleaded guilty, but insisted on a trial based. An Applicant must show a "reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417. Applicant's statement at the evidentiary hearing, that he wanted a twenty-year incarceration sentence, indicates he would not have proceeded to trial, but only wanted a better sentence than he received. Therefore, Applicant has failed to prove he was prejudiced by any alleged deficiency of Counsel.

Furthermore, Counsel provided competent representation in light of the overwhelming evidence against Applicant. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). Law enforcement used a confidential informant, equipped with audio and video recording equipment,

to purchase cocaine from Applicant on three separate occasions. Law enforcement then served a search warrant on Applicant's home, where they had purchased drugs from him on prior occasions, and found trafficking quantities of cocaine. Applicant failed to prove that his guilty plea was involuntary would have resulted in Applicant proceeding to trial instead of pleading guilty.

VI. CONCLUSION

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

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

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 3 day of July, 2017.

Robert E. Hood

ROBERT E. HOOD
Presiding Judge
1st Judicial Circuit

Columbia, South Carolina

October 13, 2014 WITNESSES

A Martin

2015 OCT 29 PM 4:43
DORCHESTER COUNTY SHERIFF
14-007165

ARREST WARRANT NUMBER

2014A1820500228

Arrested: April 11, 2014

ACTION OF GRAND JURY

TRUE BILL

Rachel H. H.
Foreperson of Grand Jury
Date: October 9, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS180498

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

October 13, 2014 TERM

THE STATE
vs.

Antonio Terrell Jacobs

Indictment for

Possession with Intent to Distribute
Marijuana

SC Code: 44-53-370(b)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2014 OCT -9 PM 2:25
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT

CERTIFIED COPY 2014GS180498
2015 OCT 29 PM 4:43

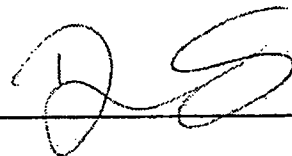
As a Court of General Sessions, convened on October 9, 2014 the Grand Jurors of DORCHESTER County present upon their oath:

CLERK OF COURT
DORCHESTER COUNTY

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

That in Dorchester County, South Carolina, on or about April 10, 2014, the Defendant, Antonio Terrell Jacobs, did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to do the same, or possess with the intent to distribute, dispense, or deliver, a quantity of Marijuana. This offense in violation of Section 44-53-370 of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor

October 13, 2104WITNESSES

A Martin

ARREST WARRANT NUMBER

2014A1820500230

Arrested: April 11, 2014

ACTION OF GRAND JURY

TRUE BILL

Kathleen O'Leary
Foreperson of Grand Jury
Date: October 9, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS180500

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

October 13, 2104 TERM

THE STATE
vs.

Antonio Terrell Jacobs

Indictment for

Trafficking in Cocaine, 10G or More, But
Less than 28G - 3rd or sub. offense

SC Code: 44-53-370(e)

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CLERK OF COURT
DORCHESTER COUNTY
21 OCT -9 PM 2:26

STATE OF SOUTH CAROLINA

CERTIFIED COPY

2015 OCT 29 PM 4:44

INDICTMENT

COUNTY OF DORCHESTER

2014GS180500

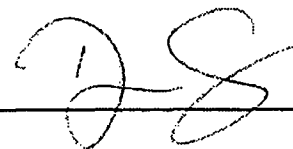
CLERK OF COURT
DORCHESTER COUNTY

As a Court of General Sessions, convened on October 9, 2014 the Grand Jurors of DORCHESTER County present upon their oath:

**TRAFFICKING IN COCAINE, 10G OR MORE, BUT LESS THAN 28G - 3RD OR SUB.
OFFENSE**

That in Dorchester County, South Carolina, on or about April 10, 2014, the Defendant, Antonio Terrell Jacobs, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of more than 10 grams of Cocaine. This offense in violation of Section 44-53-370 of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor