

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

FILED
AUG 01 2018
S.C. SUPREME COURT

Certiorari to Spartanburg County
Robin B. Stilwell, Circuit Court Judge

WILLIE J. PALMER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000153

APPENDIX

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1 STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS
) COURT OF THE SEVENTH
 2 COUNTY OF SPARTANBURG) JUDICIAL CIRCUIT
)
 3)
)
 4 STATE OF SOUTH CAROLINA,)
)
 5 Plaintiff,) TRANSCRIPT OF RECORD
) 2016-GS-42-1405
 6 vs.)
)
 7 WILLIE J. PALMER, III)
)
 8 Defendant.)
)

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June 23, 2016
 Spartanburg, South Carolina

B E F O R E:
 HONORABLE R. KEITH KELLEY, Judge.

A P P E A R A N C E S:
 JAMES EDWARD HUNTER, SOLICITOR
 For Plaintiff
 STEPHEN S. WILSON, ESQUIRE
 For Defendant

Also present: Andrea Manigault
 Probation

Julie A. Ashbrook,
 Circuit Court Reporter
 Seventh Judicial Circuit

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EXHIBITS

MARKED ENTERED

NO EXHIBITS PROFFERED

1 THE STATE OF SOUTH CAROLINA VS. WILLIE J. PALMER

2 THE COURT: Solicitor.

3 MR. HUNTER: Thank you, Your Honor. Standing
4 before you today is William J. Palmer, III, with his
5 attorney Steve Wilson. He's here on a true bill
6 indictment 2016-1405, true bill for trafficking and
7 cocaine base 10 to 28 grams second offense. He's
8 pleading to it as a first offense, Your Honor. The
9 recommendation is three years of active time and a
10 \$25,000 fine.

11 THE CLERK: Raise your right hand, please.

12 Do you solemnly swear that the testimony you're
13 about to give will be the truth, the whole truth and
14 nothing but the truth so help you God?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Sir, you are Willie J. Palmer, III?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Palmer, you are not in custody.
19 Have you taken any substance that affects your thinking
20 ability?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you know what you're doing here
23 today?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Palmer, the government says in

1 2016-1405 that you did in Spartanburg County, South
2 Carolina on or about June 19th of last year, knowingly
3 sell, manufacture, deliver, purchase or bring into this
4 state or did provide financial assistance or otherwise
5 aid, abet, attempt or conspire to sell, manufacture,
6 deliver, purchase or bring into this state or knowingly,
7 actively or constructively possess or knowingly attempt
8 to actively or constructively possess more than 10 grams
9 of cocaine base and/or crack cocaine, a schedule II
10 controlled substance in violation of state law.

11 That matter was presented to the grand jury and a
12 true bill was returned. It is my understanding you're
13 pleading as indicted. It is violent for future
14 sentencing purposes and it is also serious for future
15 sentencing purposes. It carries from three years up to
16 ten years with it and a fine of \$25,000. There is a
17 recommendation by the government of a sentence of three
18 years and \$25,000. Do you understand what I told you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is he on probation?

21 MR. WILSON: Yes, sir.

22 MS. MANIGAULT: Yes, Your Honor.

23 THE COURT: Okay. Sir, there are certain rights
24 you have to waive and give up in order to plead guilty.
25 You have the right to a trial by jury. Do you give up

1 that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You have the right to call and
4 confront witnesses. Do you give up that right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You have the right to remain silent.
7 Do you give up that right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Palmer, how do you plead to the
10 indictment, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: Do you plead guilty because you are
13 guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you plead guilty freely,
16 intelligently and voluntarily?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did anyone force you, threaten you,
19 make you come here today to plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Did anyone talk you into it?

22 THE DEFENDANT: No, sir.

23 THE COURT: Well, how about family or friends,
24 did anybody put any pressure on you there to plead
25 guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Would it be your decision and only
3 your decision to plead guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has Mr. Wilson answered all of your
6 questions?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has he gone over that pretty thick
9 file he has?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any defenses to this
12 charge?

13 THE DEFENDANT: (Indicating.)

14 THE COURT: Do you have any defenses?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. Well, are you satisfied with
17 his services?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Well, sir, every once in a while we
20 have this thing called postconviction relief hearings,
21 known as PCR. You might have heard about them. And
22 people come up here and they swear, as they point at
23 their lawyer, that they did something wrong. Let me ask
24 you, did Mr. Wilson do anything wrong on your case?

25 THE DEFENDANT: No, sir.

1 THE COURT: Did he do everything you asked him to
2 do?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did he do anything you did not want
5 him to do?

6 THE DEFENDANT: No, sir.

7 THE COURT: Did he refuse to do anything you
8 wanted him to do?

9 THE DEFENDANT: No, sir.

10 THE COURT: Well, would it be true you are
11 completely satisfied with his legal representation?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any complaints? I need
14 to hear them today.

15 THE DEFENDANT: No, sir, I have no complaints.

16 THE COURT: Okay. Sir, you have ten days to
17 appeal your sentence or the plea. If you do so, you
18 must do it in writing with the Clerk of Court. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Please listen to the Solicitor.

22 MR. HUNTER: Your Honor, as you stated before,
23 this happened on June 19th, 2015, at 222 Broad View
24 Drive here in the city and county of Spartanburg. At
25 that time officers with the city police department

1 executed a search warrant at the residence. The
2 defendant was found in the bathtub. He was allowed to
3 put his shorts on. Was searching the shorts for
4 marijuana in the shorts that he claimed.

5 He was Mirandized. And during his Miranda --
6 after his Miranda rights were given to him, they
7 interviewed him. He said the back bedroom was his.
8 During a search of the house, 10.15 grams of crack
9 cocaine were located in the back bedroom, Your Honor.
10 He gave a written statement claiming the marijuana and
11 the crack. We are dismissing the rest of his charges
12 from the search warrant, Your Honor.

13 His rap sheet is a 2004 burglary third times
14 three, grand larceny times two, and petit larceny. And
15 then, Your Honor, this incident occurred on June 19th.
16 On May 19th of 2015 he pled guilty to possession with
17 intent to distribute crack. That's what he's on
18 probation for. So this incident occurred one month
19 after he had pled guilty to another drug offense, Your
20 Honor.

21 THE COURT: Sir, did you hear what the solicitor
22 told me?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is that true?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: The Court accepts your plea as being
2 freely, intelligently and voluntarily given with the
3 sound advice of an excellent lawyer with whom you say
4 you're satisfied.

5 Mr. Wilson?

6 MR. WILSON: Your Honor, Mr. Palmer is 30 years
7 old. When this, when this incident happened, the
8 officers executed a search warrant of this residence. A
9 few days before they had sent someone to that residence
10 and somebody at that residence, not Mr. Palmer, the
11 informant made a buy or control buy from someone else.
12 And they had the search warrant looking for this someone
13 else.

14 When they get there, Mr. Palmer and three other
15 people are there in the house. The officers talked with
16 him. The officers asked him to help them on some other
17 things with these other people still there in the house
18 listening to everything. There was no way anything
19 could be done then. It just could not be a confidential
20 decision. And so Mr. Palmer, you know, he came to me
21 and said, you know, I can't do anything, I've got to
22 plead guilty to this, so that's what we've done.

23 Since then, Your Honor, you know, I'm not gonna
24 sit here and tell somebody that, that he's changed his
25 life completely, but he has gotten a job. He's worked

1 at the Addidas warehouse. I've got some documents that
2 indicate what he's getting paid and how many hours he's
3 worked. I've got a statement from Katie Corn with
4 Addidas warehouse about he's been a very good employee.
5 He was even -- he's even going to get a promotion before
6 this, you know, before we had to be here today.

7 So it took him leaving that situation, leaving
8 those people for him to figure out the best way for him
9 to live his life is doing it the right way. He's
10 working. He's got a girlfriend who is here with him
11 today. If you'll stand up.

12 (Whereupon, female stands up in gallery.)

13 You know, I'm not gonna also be a person who
14 stands here and tell you he'll never be back before you,
15 but he knows now what he has to do to not come back
16 before you. And so he's done it on a consistent basis
17 since this time.

18 As far as his probation, it's my understanding
19 that every time he has tested negative. He's paid all
20 his fees with that probation, as I understand it. And
21 it's my understanding his probation is probably supposed
22 to end I think in August or September.

23 I would ask Your Honor to accept the
24 recommendation. I told Mr. Palmer that I would ask you
25 to consider letting him do the three years on home

1 detention, which I'm going to ask you to consider. And
2 if something has to be done with the probation, I would
3 like for you to consider anything that is revoked that
4 it run concurrent.

5 He's shown, you know, he's not somebody who's
6 just been waiting for 18 months to do nothing. He's
7 gone to work and he's worked every day. He's been here
8 every time I've asked him to be here. As a matter of
9 fact, the last two times we were scheduled to do this
10 are the days that someone called in a bomb threat and he
11 was here both days ready to go. So I think there are
12 some reasons to believe that he's not gonna be back
13 here. He knows what he's got to do to live the right
14 life and I think he's shown that he can do it.

15 THE COURT: Agent?

16 MS. MANIGAULT: Your Honor, may it please the
17 Court. Mr. Palmer went before Judge Hayes on May 19th
18 of 2015 for the offense of PWID cocaine base first
19 offense. And the conditions of probation was random
20 drug testing. Your Honor, he was tested back in
21 September and he was positive for marijuana at that
22 time. In consequences of the plea today that would be a
23 violation of his probation.

24 THE COURT: It's a violation now, I've accepted
25 the plea. What's his ---

1 MS. MANIGAULT: Your Honor, it was five years
2 suspended to 18 months probation.

3 THE COURT: Mr. Palmer, the plea today is a
4 violation of probation in addition to the positive drug
5 test. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. I'd like to hear from you if
8 you'd like to speak.

9 THE DEFENDANT: Judge, I would like to apologize
10 for -- can I ask the agent a question, sir?

11 THE COURT: Talk to your ---

12 THE DEFENDANT: Am I allowed?

13 THE COURT: Talk to your lawyer.

14 (Whereupon, off-the-record discussion occurred
15 between counsel and defendant.)

16 MR. WILSON: Was that the first drug test he was
17 ever given that he tested positive?

18 MS. MANIGAULT: No, he's been on probation four
19 times. I can go back and look and see.

20 MR. WILSON: No, I'm talking about this one.

21 MS. MANIGAULT: That's it.

22 MR. WILSON: Yeah, he believes that was his
23 initial test he tested positive.

24 THE COURT: Okay.

25 MR. WILSON: But since then he's tested ---

1 THE COURT: Okay. The initial one. Okay, I've
2 got it. Go ahead.

3 THE DEFENDANT: Yes, sir. Your Honor, I'd like
4 to apologize for being in your face right now. I ain't
5 coming trying to shoot you no nonsense or play you, be
6 like everybody else. I want to apologize. The only
7 thing -- everything that changed for me, Your Honor, was
8 once I moved out of that house. That's when my life
9 dramatic changed (sic). I just want to say I'm a
10 changed man because it was the atmosphere and the
11 environment that I was living in and all that was going
12 on. At the time and place that's where I had to live.
13 That's where I was living at.

14 But as soon as I got out of there and got my own
15 house, got a better job making more money, my life just
16 went skyrocketing up high. And if you don't believe me,
17 Your Honor, you can ask my fiance behind me, she'll tell
18 you everything.

19 I ain't trying to shoot you no nonsense. And
20 ever since I did get out of the house, I got to see my
21 girls and everything because wasn't nobody gonna let me
22 see my kids when I stayed in a drug infested house. And
23 that's why I'm here today because I was living in a drug
24 infested house.

25 THE COURT: Well, sir, you've been, you've been

1 saying this for a long time. I mean, you've got --
2 you're 30 years old and you've got a criminal history
3 that goes back to 2004.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you've been on probation four
8 times.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Well, we're fresh out of
11 probation now. We're fresh out. Do you understand?

12 THE DEFENDANT: I understand, sir.

13 THE COURT: You got a good deal when you got that
14 lawyer right there because I guarantee you I would be on
15 the high end of this sentence right here. 2016-1405,
16 sir, you're confined to the state Department of
17 Corrections for the three years and pay a fine of
18 \$25,000. Give you credit for any time that you did
19 serve. Probation is revoked in full and it is
20 consecutive one to the other. Good luck to you, sir.

21 MR. WILSON: Thank you.

22 (Whereupon, hearing concluded at 9:34 a.m.)

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24

--- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Ashbrook, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record to the best of my ability of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the General Sessions Court for Spartanburg County, South Carolina, on the 23rd day of June, 2016.

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

s/Julie A. Ashbrook.
Julie A. Ashbrook
Circuit Court Reporter
Seventh Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

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

Willie J Palmer III #316284)
v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-42-3561

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Waterloo Corr. Inst P.O. Box 189 Pembert, SC 2912
2. Name and location of Court which imposed sentence Spartanburg County 180 Magnolia St
Spartanburg, SC 29306
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015A4210201963
 - (b) 2015A4210201964
 - (c) 2015A4210201965-66
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 23, 2016 - 8 years
 - (b) June 23, 2016 - 3 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes guilty Plea
- (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. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Plea Counsel did not advise me to appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

10-111-32-000-002

see attachment
see attachment

- (a) Forgery/Breach of contract
- (b) Unlawful detainer/False testimony
- (c) Violation of United States Constitution/Judicial Session

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

- (a) _____
- (b) _____
- (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? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A

2016 SEP 23 11:10

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

N/A

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) N/A

(c) N/A

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

yes

2015 SEP 26 PM 1:00

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (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? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- Andrea Price 366 N. Church St Spartanburg, SC 29303
 - Appointed attorney who failed to adequately represent the Applicant at any stage of the proceeding (Fire) Stephen S. Wilson
 - 302 S. Pine St P.O. Box 1011 Spartanburg SC 29304
- (b) the proceedings at which each such attorney represented you:
- Stephen S. Wilson - Guilty Plea that occurred after the commencement of the trial. Counsel represented me at plea hearing.
 - Andrea Price - supposedly represent me at preliminary hearing. Result ineffective. Wave my preliminary hearing.
19. State clearly the relief you seek in filing this application:
New trial / resentencing / New evidentiary hearing
20. Are you now under sentence from any other court that you have not challenged?
~~NO~~ NO

2016 SEP 26 PM 11:00

Page 10 to PCA See attachment

- A The Applicant would show that he was denied effective assistance of counsel at trial and during his guilty plea in violation of the Six Amendment to the United States Constitution.
- B The Applicant would show that his counsel failed entirely to subject the state case meaningful adversarial testing, see *Ozmin v. Nance*, 543 U.S. 1043 (2005) and *Nance v. Fredrick*, 367, S.C. 547, 553, 626 S.E. 2d 878, 881 (2006)
- C The Applicant would show that he is being held in custody unlawfully due to state of South Carolina failure to abide by the Sixth Amendment to the United States Constitution
- D. Ineffective assistance of counsel failure to offer to solicitor a plea negotiation
- E Ineffective assistance of Trial or Plea to properly investigate

Page 11 questions PCR See attachment

1. My defense attorney fail to effectively challenge the arrest and seizure of Applicant.
2. My defense attorney fail to act as my diligent, conscientious advocate.
3. My defense attorney failed to give me his complete loyalty.
4. My defense attorney did not have my best interest in mind while he supposed to be investigating and preparing my case.
5. My defense attorney did not do the necessary factual investigations on my behalf.
6. My defense attorney did not do the necessary legal research.
7. My defense attorney did not conscientiously gather any information to protect my rights.
8. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issue that were involved in my case.

- 9. My defense attorney never informed me of any of the defense that were available to me.
- 10. My defense attorney never intended to offer any defense to the Court on my behalf.
- 11. My defense attorney never explained to me or discussed with me any kind of defense strategy.
- ~~12. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both law and the facts~~
- 13. My defense attorney did not subject the prosecution's case to any adversarial testing.

2015 SEP 26 PM 1:10

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

I, Willie, 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.

Willie Palmer

SWORN to and subscribed before me this 21st
day of September, 2016.

Ramona Dittfield (L.S.)
Notary Public

My Commission Expires: 3/16/2021

2016 SEP 26 PM 1:30

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

I, Willie, 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.

Willie Palma
Applicant

SWORN or affirmed to and subscribed before me this

21st day of September, 2021

Ramek D Hatfield
Notary Public

My Commission Expires: 3/16/2024

2015 SEP 26 11:10

State of South Carolina
County of spartanburg
State of South Carolina
V.
Willie Palmer #316284

In the Court of Common Pleas
Case # 2016-CP-42-3561
7th Judicial Circuit
Amend to PCR

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 DEC -7 AM 9:25

M. HOPE BLACKLEY

I Willie J Palmer 3rd want advise the
courts and clerk court the relief I'm ^{seeking} on
my Post Conviction relief is Emergency motion
relief. Court violated law regarding preliminary.
South Carolina Code of law violation 22-5-360, 17-23-162
22-5-320, and Code 1962 § 43-232 and others. Violation
of fair and speedy trial regarding preliminary and
also due process. A substantive due process violation
exists were rights are violated no matter what process
precedes, accompanies, or follows the unconstitutional/
action. Const! Please accept this motion that I'm
sending to the court & clerk court.

Nov 28, 2016
Clerk Court of
Spartanburg

Yours Truly
Willie J Palmer

State of South Carolina

In the Court of Common Pleas

The State

Case# 2016-CP-42-3561

-vs-

Motion of Relief from Judgement

Willie J Palmer 316284

Rule 12 + Rule 40 E 2

Defendant

Amend to PCR

Filing Status: Prose

I Willie J Palmer is filing this motion for relief on the grounds of Violation of due process, South Carolina Code of law 22-5-320, 22-5-35 Forgery, Breach of Contract, Violation of preliminary hearing, 22-5-360, ~~lying under oath~~, ~~False testimony~~, 17-23-130, 17-23-140, 43-232 Const 1 § 11, 17-23-162, ~~§ 17-23-160~~, 17-23-160, 17-13-150 and 16-9-10. Please amend to PCR. As of now until some other issue comes up I'm done writing.

Clerk of Court of Spartanburg

Dec 19, 2016

Time: 9:00 am

CLERK OF COURT
 SPARTANBURG COUNTY
 2017 JAN -5 AM 9:06
 M. HOPE BLACKLEY

Clerk of Court

SPARTANBURG COUNTY

2017 JAN 15 AM 9:06

General Session had no jurisdiction to try me because Andrea Price ^{M. HOPE BLACKKEY} ~~illegally~~ waive my preliminary hearing alone with the state. Rule 12 B Lack of Jurisdiction. Magistrate had Jurisdiction because it was the issuing court. Magistrate is to obtain Jurisdiction ~~with~~ until after the preliminary has been had not waive require by statute 22-5-320 & 43-232 Const 1811 were indeed violated. I demanded my hearing way before an indictment came out. Which I didn't find out about the indictment of Grand Jury until Nov 9, 2016 of this year. This indictment was not presented at my hearing before the trial Judge. ^{Presiding Judge} My lawyer Stephen S Wilson never mentioned a Grand Jury indictment & never told me that's what I'm to plead to. 22-5-350 require all documents be report to the clerk of court. All documents were not reported to clerk of court. Basic on the facts that the Grand Jury indictment was not sign by me nor presented before the presiding Judge and that it wasn't acknowledge for me to know and because the signature is not legibly that the Grand Jury indictment was presented to ~~the~~ Grand Jury but either way statute 17-23-130 & 140 were violated by the state. I'm gang by the documents that were mail to me 17-23-162 was also violate - Presense of a affiat or arresting officer to testify at preliminary hearing. The listed affiat on arrest warrant or Chief investistins MUST be one... 1 of 2

the preliminary hearing to testify of person
 arrest pursuant to the warrant. That never
 happen because the State of Andros Price. I show
 up but none of the didn't. Lets not for get
 that my hearing was waive on Sep 3, 2015
 but I was told it was reschedule for Oct.
 2015. That was another day no one was
 there and the day Andros Price call me
 in a back room and told me the police
 had probable cause which was not her
 call which violates my 6th amend and that
 was the Judge call and order. Andros Price
 abuse her power. (Misconduct of Justice 1. Did
 not protect my right to make ~~sure~~ sure I get
 equal protection of the Law. 17-23-160 violated
 to the facts it was requested and I'm entitle to a
 prelim by this state. 16-9-10 was also violated
 the probation agent gave a false misleading
 statement in court. The Solicitor did not charge
 me with with a probation violation @ James E
 Hunter said nothing of that nature against me.
 In the court of law is the Solicitor Job
 to bring charges against you. Not the Judge
 who out of the blue said what about mr
 Palmer Probation. Why would a Judge ask
 about something that wasn't said nor talk
 about? Could be consider as a conflict of interest?
Statue 17-13-150 requires that Person
 served search warrant & supporting affidavit
 did not happen in my case. I did see the

CLEARANCE
 SPARTANBURG COUNTY

2017 JAN - 5 AM 5-03
 IN HOPE BLACKLEY

~~conceal~~ but did not see the arrest warrant until
 Nov 9, 2015. I even had my family to see if any
 warrants were in my name & they were told no but
 all of sudden there is. Why was these warrants hidden
 for so long. I even ask when I was out because as
 I sit in the county no warrant were issue and
 when I bonded out. What is the problem with that
 issue. After an arrest the police have 72 hours to issue
 a warrant or court well I was arrest on June 19, 2015
 at 16:45:00 the warrants as I look at them were
 issued on June 23, 2015 4 days later. ^{M. HOPE DEACREY} must
 raise every issue in my PCR. I say this ²⁰¹⁵ the
 fact of how long it took for these warrants and
 Grand Jury documents show up. These are issues
 my lawyers fail to discover & shows you they never
 investigated my case. Never did an independent invest
 ion. These are violation and grounds. The relief I seek
 is vacated & dismiss. There is no waiver from showing &
 sign by me of my preliminary hearing being waive.
 Violation of due process and the suppression of
 evidence. To why all of sudden this come out
 a year & 5 months later remains unknow. These
 violations would have if known at the time change
 a lot. For one I would have not pleaded if known.
 Yet I still being held against my will which is a
 violation as well. Unknow detainer. To be exact my
 case should have not went pass my prelim. Docum
 are missing. Documents never made it to clerks of Court.
 To much was hidden or conceal which could be consider
 as well. Breach of contract another

Violation because that is not my ~~Whinnup~~
Handrock. I can prove that by 100%.

Forgery is another violation that alone
kills the plea agreement. What I need to
know is why did Solicitor James E Hunter
suppress the indictments. Why didn't he present
them in court. Why didn't I get to sign
them. Why am I still illegally in prison.

I say this to the fact of the illegal issues
in my case. 17-23-130 - Immediate disposition
of certain misdemeanors or felonies; waiver of
presentment by Grand Jury and plea of Guilty

17-23-140 - upon the defendant signing the
waiver of presentment and the plea of guilty

the clerk of court shall deliver the indictment to
the sheriff it shall be to appear before the
resident judge of circuit or presiding judge
therein at some convenient time and place

having with him the defendant and upon the
defendant acknowledging his plea before the
judge shall sentence the ~~defendant~~ defendant as
though had been presented by the Grand Jury.

~~None of this ever took place. Not one of my~~
lawyers ever spoke of indictments. Not one
has a legible signature. How can you say it was
submitted to Grand Jury. This to happen in open
court not in a judge chamber. Statute 14-17-260

requires all clerks shall issue all processes & sign all
judgements.

2011 JAN -5 AM 9:00
M. JON B. BLACKLEY
CLERK OF COURT
SPLIN

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
)
 William J. Palmer, III,)
 S.C.D.C. No. 316234,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-42-3561

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on September 26, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the March 2016 term of the Spartanburg County Grand Jury for Trafficking in Cocaine Base, 10 to 28 grams, Second Offense (2016-GS-42-1405). Stephen S. Wilson, Esquire, represented Applicant. On June 23, 2016, Applicant pleaded guilty to Trafficking in Cocaine Base, 10 to 28 grams, First Offense, before the Honorable R. Keith Kelley. Pursuant to the State's recommendation, Judge Kelley sentenced Applicant to a term of imprisonment for three years and a fine of \$25,000. At the time of his plea hearing, Applicant was also on probation for a prior drug charge. Judge Kelley revoked Applicant's probation in full and ordered that Applicant serve these sentences consecutively. Applicant did not appeal his plea or his sentence.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the transcript from

Applicant's plea, Applicant's records from the Department of Corrections, and the records of this action. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel
 - a. "I pleaded guilty to the understanding that my lawyer gave that I would only get 3 years. No more than 3 and no less than 3."
 - b. "I was not advised in open court that I would be facing a probation violation. The Solicitor never brought that charge against me or said it at the proceeding of my plea."
 - c. Failure to object to the Solicitor suppressing evidence
 - d. "Violation of my right to a speedy trial"
 - i. Andrea Price "secretly waived" my preliminary hearing. "I never told her to waive my hearing."
 - ii. "I never sign[ed] a waiver of prelim at all"
 - e. Failure to review Discovery with Applicant
 - i. Did not review arrest warrants and indictments with Applicant
 - f. Failure to move to quash the indictment
 - i. "indictments were done 9 months later after my arrest"
 - g. Failure to challenge the arrest warrant
 - h. Failure to file an appeal
2. Due Process Violations
3. Forgery
 - a. "what is on my sentence sheet wasn't sign[ed] by me"
 - b. Dates on the indictment are wrong
4. Prosecutorial Misconduct
 - a. "They try to cover up my preliminary hearing. All this covering up can be consider[ed] as a conspiracy."
 - i. "Why wasn't the waiving of my preliminary hearing not documented."
 - b. Suppressed evidence
 - c. "They are covering up the warrant that was used."
 - d. Solicitor never gave the indictment to the Grand Jury
5. Breach of Contract
 - a. "My plea was nego[tiated] not recommended. I told my lawyer . . . [the] only way I would plea[d] is only [to] a negotiated plea and that's what it was."

III.

Respondent interprets Applicants allegations 1(a) – (h), 3(a), and 5(a) as allegations of ineffective assistance of counsel. Respondent submits these allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, Applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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 the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

V.

Respondent interprets Applicant's allegations 3(a) –(b), 4(a) – (d), and 5(a) as allegations of prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264

S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at the plea hearing or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised these issues on appeal. The failure to do so has waived this allegation as grounds for relief. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Applicant specifically alleges that the State suppressed evidence. In evaluating post-trial Brady¹ claims, the applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375 (1985).

"Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" Bagley, 473 U.S. at 678, 105 S.Ct. at 3381. A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. See Clark, 315 S.C. 385.

Applicant has failed to make a *prima facie* showing that the State withheld any evidence that would have produced a different outcome at his plea hearing. Therefore, Respondent

¹ Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963).

submits this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. 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.

VII.

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

VIII.

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

IX.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

CAITLIN B. HASTINGS
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

Feb. 21st, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 WILLIE J. PALMER, #316284,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2016-CP-42-3561

AFFIDAVIT OF SERVICE BY MAIL

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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

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

DATED this 21st day of February, 2017.


 Ashley Haworth, Paralegal
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 Willie J. Palmer,)
5) TRANSCRIPT OF RECORD
6 Applicant,) 2016-CP-42-3561
7 -vs-)
8)
9 State of SC,)
10)
11) March 21, 2017
12 Respondent.) Spartanburg, South Carolina
13
14
15

11 B E F O R E:

12 HONORABLE ROBIN B. STILWELL, JUDGE
13
14

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

16 RODNEY W. RICHEY, ESQUIRE
17 Attorney for the Applicant

18 ALICIA A. OLIVE, ESQUIRE
19 Attorney for the Respondent
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

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NO EXHIBITS INTRODUCED

MOTIONS AND MATTERS

1 THE COURT: Alright, Ms. Olive, are we, uh, proceeding in
2 the order stated on the docket or are we proceed in some other
3 order?

4 MS. OLIVE: Your Honor, we are beginning with Willie
5 Palmer which is down at the bottom of the ---

6 THE COURT: I got it, Willie Palmer, so we'll call the
7 case, call to bar the case of Willie J. Palmer vs. the State
8 of South Carolina, that is Case Number 2016-CP-42-3561, uh,
9 Ms. Olive, I'd be happy to hear from ya, ma'am.

10 MS. OLIVE: Thank Your Honor, may it please the Court.
11 Mr. Palmer was indicted in March 2016 for trafficking in
12 cocaine base 10 to 28 grams second offense, he was represented
13 by Stephen Wilson on that charge. On June 23rd 2016 he
14 pleaded guilty to trafficking in cocaine base 10 to 28 grams
15 first offense before Judge Kelly, pursuant to the State's
16 recommendation Judge Kelly sentenced him to a term of
17 imprisonment for 3 years, he was also on probation at the time
18 for a prior drug offense, Judge Kelly revoked his probation in
19 full and ordered the sentences to be served consecutively, he
20 did not appeal his conviction of sentence. He filed this
21 application for post-conviction relief on September 26th 2016
22 alleging various allegations of ineffective assistance of
23 counsel, he also alleges allegations of due process, forgery,
24 prosecutorial misconduct, Your Honor. Your Honor, the State
25 would move to dismiss those allegations, um, as improper

WILLIE J. PALMER, III - DIRECT EXAMINATION BY MR. RICHEY

1 claims for PCR. Mr. Palmer is present in the courtroom today
2 and represented by Rodney Richey, I'll turn it over to
3 Mr. Richey at this time. Yes, ma'am. Mr. Richey.

4 MR. RICHEY: Thank you, we call Mr. Palmer, Your Honor.

5 THE COURT: Okay. Alright, Mr. Palmer, will you come up,
6 please.

7 (Whereupon, the Applicant came forward.)

8 THE COURT: To the extent you're capable please, I'd like
9 you to place your left hand on this (indicating) Bible and
10 raise your right hand to be sworn.

11 WILLIE J. PALMER, III, having been
12 first duly sworn, testified as follows:

13 THE COURT: Okay, you have a seat please, sir, and state
14 your full name to the record, please.

15 THE APPLICANT: My full name is Willie J. Palmer the
16 third.

17 DIRECT EXAMINATION BY MR. RICHEY:

18 Q. Mr. Palmer, you're you're in the Department a Corrections
19 right now?

20 A. Correct.

21 Q. And where are you at?

22 A. Wateree Correctional Institution.

23 Q. And were you convict in Spartanburg County?

24 A. Yes, sir.

25 Q. Of what?

WILLIE J. PALMER, III - DIRECT EXAMINATION BY MR. RICHEY

1 A. Of trafficking first.

2 Q. And what type sentence did you receive?

3 A. I received a 3-year sentence.

4 Q. On the traffickin' charge?

5 A. Yes, sir.

6 Q. And that was the minimum, correct?

7 A. Yes, sir.

8 Q. And you got your probation revoked, right?

9 A. Yeah.

10 Q. Okay, and you receive a a sentence on your probation
11 revocation, is that correct?

12 A. Correct.

13 Q. Okay. Um, is it your intent here to ask the judge for a
14 new trial today?

15 A. A new tri -- what -- yeah.

16 Q. Okay. And and you you get out, well you get out for sure
17 in 2021, correct?

18 A. No, 2020.

19 Q. You get out in 2020 and you're eligible for parole next
20 year, correct?

21 A. Yeah, May May, in May, sometime in May.

22 Q. Okay. You, do you understand that you might be outta
23 jail before you have this new trial, you understand that?

24 A. Yes, sir.

25 Q. Okay, you still wanna go forward with this?

1 A. Oh, yes, sir.

2 Q. Okay. Alright, so is it your position that counsel did
3 not effectively represent you when she waived your preliminary
4 hearing?

5 A. Correct.

6 Q. Okay, you believe that you had absolute right to have
7 your hearing?

8 A. Yes, sir.

9 Q. And you do not believe that the co -- client, uh,
10 represented you in in your best interest ---

11 A. Right.

12 Q. --- and 'cause you believe that counsel should, um, have
13 also checked indictments and all that, correct?

14 A. Yes, sir.

15 Q. And and you believe had they done that you woulda won the
16 case.

17 A. It a been di -- a different outcome, yes.

18 Q. Okay, different outcome. Do you, you understand that you
19 pled guilty, there's a guilty plea transcript, ---

20 A. Yes, sir.

21 Q. --- correct? And you told the lawyers and well the judge
22 that you were satisfied with the lawyer at the guilty plea,
23 correct, ---

24 A. Yes, sir.

25 Q. --- and that you, that you had no problem with your

1 representation, right?

2 A. Right.

3 Q. So can you tell me why you said all that ---

4 A. I said ---

5 Q. --- if you had ---

6 A. --- after that I pleaded on advice of my attorney that
7 was the best thing to do.

8 Q. Okay, so so at the time that you did all this you were
9 satisfied with your lawyer.

10 A. Yes, sir, 'cause I was told I just was gonna get 3 years.

11 Q. Okay, so at what point you did not, did you become not
12 satisfied with the lawyer?

13 A. After after I gave, after I properly investigated my own
14 case that's when I found out everything went, somethin'
15 weren't right.

16 Q. So you investigated your case not before you were
17 sentenced but after you were sentenced.

18 A. Correct.

19 Q. Okay, and can you tell me why you investigated after and
20 not before?

21 A. Um, 'cause when I came into court when Judge Kelly said
22 3 years then he changed that to 8 and when I got down to, um,
23 Department of Correction I started lookin' up stuff myself.

24 Q. And and are you saying, on on this traffickin' charge
25 that you got the minimum sentence, are you sayin' -- you're

WILLIE J. PALMER, III - DIRECT EXAMINATION BY MR. RICHEY

1 sayin' that had you known all this then you woulda went to
2 trial and been acquitted.

3 A. My intent was to go to trial at first, it was on the
4 trial docket, trial docket at first.

5 Q. Okay, and so so let me get this straight where we
6 understand all this. Your main beef is with this preliminary
7 hearin', correct?

8 A. Yes, sir 'cause I, 'cause I, um, requested it.

9 Q. Okay, and is your position that the lawyer waived it,
10 right, didn't have it ---

11 A. Right.

12 Q. --- and had she had it you you believe that the outcome
13 a your guilty plea been different.

14 A. Way different.

15 Q. Okay. Um, and you also believe that you were not
16 properly indicted, correct, ---

17 A. Correct.

18 Q. --- that you, it's your position that that indi -- the
19 indictments were not signed by the grand juror.

20 A. Correct and to the fact that, uh, if if you have it in
21 your possession a paper, I can show the, I can show the Judge
22 the ---

23 Q. Well go -- oh, just tell us what you're talkin' about,
24 just tell us ---

25 A. Um, at the -- they said I was indicted on March the 25th

1 2016 but the case history record shows on 4/8/16 case pending
2 not indicted.

3 Q. Okay, and so so you're sayin' when you stood up to plea,
4 pled guilty that that had you known there'd been a different
5 outcome.

6 A. Correct.

7 Q. Okay. Uh, those those are your beefs that you have with
8 this lawyer, correct, ---

9 A. Well, ---

10 Q. --- problems that you have with the lawyer, correct?

11 A. Correct, but Ms. uh, Ms. Andrea, that's the one
12 represented me at the, um, was supposed to have represented me
13 at the preliminary hearing.

14 Q. Okay, and it was waived, correct?

15 A. Correct.

16 Q. Okay, thank you, answer the question attorney general
17 have for ya.

18 CROSS-EXAMINATION BY MS. OLIVE:

19 Q. Morning, Mr. Palmer.

20 A. Good morning.

21 Q. So Ms. Price, Andrea Price represented you prior to your
22 guilty plea.

23 A. Right, yes, ma'am.

24 Q. She represented you at the time that a preliminary
25 hearing woulda been held?

1 A. Yes, ma'am.

2 Q. And ultimately you came to be represented by Mr. Wilson?

3 A. Yes, ma'am.

4 Q. Okay, and he represented you at your guilty plea?

5 A. Yes, ma'am.

6 Q. Now you ultimately chose to plead guilty despite your
7 concerns about your preliminary hearing?

8 A. See, at the time I did not know what happened at their
9 preliminary hearin', they didn't tell me anything about what
10 happened, what went wrong or nothin' like that, I didn't find
11 out that it was waived until I actually got sentenced and I
12 pled guilty.

13 Q. So your testimony today is that if you would had a
14 preliminary hearing you would not have pleaded guilty but you
15 would have gone to trial?

16 A. Correct.

17 Q. Okay. Weren't you also indicted with several other
18 charges: possession with intent to distribute marijuana
19 within a half mile of a school?

20 A. They never s -- they never told, they never told me that,
21 only thing they told me was traffickin', that's it.

22 Q. You actually have four charges that were dismissed as a
23 result of your guilty plea, did you not?

24 A. Yes, ma'am, I find that out after I, um, got sentenced.

25 Q. You found that out at your guilty plea hearing?

WILLIE J. PALMER, III - CROSS-EXAMINATION BY MS. OLIVE

1 A. No, ma'am, I found that out after I went down the road
2 that that nol-pros, however you say that word.

3 Q. That they have been dismissed?

4 A. Yes, ma'am.

5 Q. Do you understand if you go back to trial you'll be
6 facing all of these charges not just the charge that you
7 pleaded guilty on?

8 A. Yes, ma'am.

9 Q. Do you understand that you would be facing the potential
10 of receiving consecutive sentences on those if you were to go
11 to trial and be convicted?

12 A. Oh, yeah, I understand that now, yes, ma'am.

13 Q. Okay, and also you're indicted for trafficking in cocaine
14 base second offense, is that right?

15 A. Now yeah, you say that, I didn't know nuttin' about that
16 either.

17 Q. Okay, but you --- beg the Court's indulgence a minute.

18 (Pause.)

19 Mr. Palmer, you were present at your guilty plea, right?

20 A. Yes, ma'am.

21 Q. Okay. Okay, and do you recall the solicitor telling the
22 judge that you had been indicted for trafficking in cocaine
23 base 10 to 28 grams second offense and that you were pleading
24 to it as a first offense?

25 A. No, ma'am, uh, only thing that came out his mouth was

1 first offense, I never knew anything about a second offense
2 period.

3 Q. Okay, so you did not discuss with your attorney
4 Mr. Wilson, you did not discuss with him pursuing a guilty
5 plea in this case?

6 A. Yes, ma'am. Um, but I told the, I say around in May
7 that's when we we said, when he told me that was the best
8 thing do around May, that it's best to plead guilty than to go
9 proceed to trial.

10 Q. Oh, okay. Did you ask your attorney to pursue a
11 negotiated plea?

12 A. It's, that that was from the, um, when I hired him, that
13 was pose -- yeah, I was supposed to go, yeah.

14 Q. Okay, and you understand, that is it your testimony today
15 that you did not understand that you were indicted for a
16 second offense of trafficking?

17 A. What? There was never indictment mentioned.

18 Q. Okay. May I approach the witness, Your Honor?

19 THE COURT: Yes, ma'am.

20 (Whereupon, counsel approached the witness.)

21 Oh, sorry, let the record reflect I'm showing this to
22 Mr. Richey.

23 (Whereupon, a discussion was held off the record.)

24 Mr. Palmer, have you seen this (indicating) document
25 before?

WILLIE J. PALMER, III - CROSS-EXAMINATION BY MS. OLIVE

1 (Whereupon, the Applicant examined the document.)

2 A. Oh, yeah, I seen it on twe -- that that's that's the one
3 on 21st.

4 Q. Okay, is that (indicating) your signature?

5 A. Yes, ma'am, ---

6 Q. Okay.

7 A. --- that's the one on 21st, I went to court on 23rd, I
8 s -- other one, he aint showin' you the other, what the other
9 one said negotiated plea, ---

10 Q. Okay.

11 A. --- that's the one on 21st, I went to Court on 23rd, we
12 didn't go to court that day.

13 Q. But this was provided to you on June 21st of 2016, is
14 that right?

15 A. Yes, the the day we was in the courtroom, in cour -- this
16 same courtroom.

17 Q. And you signed this document?

18 A. Yes, ma'am.

19 Q. Okay. And this docket -- did you -- is it still your
20 testimony that you did not understand you were indicted for a
21 second offense of trafficking cocaine?

22 A. It didn't even say anything 'bout no indictment.

23 Q. Let me rephrase.

24 A. Oh, okay.

25 Q. Is it still your understanding you were not charged with

WILLIE J. PALMER, III - CROSS-EXAMINATION BY MS. OLIVE

1 trafficking in cocaine second offense 10 to 28 grams? Did you
2 understand that you were facing 5 to 30 years on the offense
3 that you were originally charged with?

4 A. They never said that that was the original char -- that
5 what I got understandin' was the original charge was
6 trafficking first point blank, period, that's just there were
7 never a second, talkin' about a second, look, you can look at
8 this, ---

9 Q. Did your ---

10 THE COURT: Ms. Olive, ---

11 A. --- I got record ---

12 THE COURT: --- you can move on and I'll state for the
13 record that his representation that he didn't have any
14 knowledge of additional indictments for the second offense is
15 completely and wholly without credibility, ---

16 MS. OLIVE: Thank Your Honor.

17 THE COURT: --- you can go to your next question.

18 BY MS. OLIVE:

19 Q. Mr. Palmer, when you pleaded guilty do you recall the
20 judge reviewing with you your constitutional rights, your
21 constitutional right to a jury trial? Did you waive your
22 constitutional rights by pleading guilty: ---

23 A. Uh, ---

24 Q. --- your constitutional right to a jury trial, your right
25 to confront your accusers and your right to remain silent?

1 A. Uh, I -- yeah, I say yeah I think.

2 Q. And you told the judge that you were satisfied with your
3 attorney?

4 A. Yes, ma'am.

5 Q. Okay, and you acknowledge that you had no defenses to
6 these charges?

7 A. I had no defenses because nothin' was ever given for to
8 us.

9 Q. But your attorney went over the discovery with you, did
10 he not?

11 A. That he -- part of.

12 Q. Your attorney went over the evidence against you?

13 A. Part of.

14 Q. Okay.

15 A. There's more to it's, there's more than just, it's a lot
16 more to this.

17 Q. You testified that you pleaded guilty because you were
18 told that you were gonna get three years?

19 A. Yes, ma'am, that's why, that's why I pled guilty, I was
20 advised that I could get 3 years, no more, no less.

21 Q. Okay, and you did get 3 years.

22 A. No, I got 8.

23 Q. Because your guilty plea was a violation of your
24 probation, right?

25 A. Yeah, that's what they told me but my probation wasn't

1 even talked about and I told you that my probation officer
2 told me I ain't have to worry about that, my probation office
3 at the, uh, probation at and he know I told him all that.

4 Q. And the judge asked you at your guilty plea if you
5 understood that your plea that day was a violation of your
6 probation?

7 A. You asked me did he say that?

8 Q. Right.

9 A. All I can tell you right there is at the end of, at the
10 end of when he's 'bout to, uh, hit his gravel [sic], that's
11 when he asked about my probat -- she asked about it toward the
12 end even though that the transcript said he asked about it the
13 beginnin' but at the beginning he never said anything 'bout no
14 probation, he said sumtin' 'bout probation at the end of
15 court.

16 Q. Okay, but you did not ask to withdraw your guilty plea at
17 that time?

18 A. No, ma'am, I didn't. I, see, I don't know nuttin' 'bout
19 withdrawin' or object, I don't know nuttin' 'bout all that.

20 Q. Did you tell your attorney that you wanted to withdraw
21 your guilty plea after the judge told you it was gonna be a
22 violation of your probation?

23 A. Uh, no, ma'am.

24 Q. Thank you, that's all the questions that I have.

25 THE COURT: Redirect?

ANDREA PRICE - DIRECT EXAMINATION BY MR. RICHEY

1 MR. RICHEY: No questions.

2 THE COURT: Alright, thank you, Mr. Palmer, you can step
3 down.

4 THE APPLICANT: Alright.

5 (Whereupon, the Applicant left the stand.)

6 THE COURT: Anything further from the Applicant?

7 MR. RICHEY: We call Ms. Price.

8 THE COURT: Okay.

9 (Whereupon, the witness came forward.)

10 ANDREA PRICE, having been first
11 duly sworn, testified as follows:

12 THE COURT: Okay, please take the stand and state your
13 full name for the record.

14 THE WITNESS: Andrea Price, P-R-I-C-E.

15 DIRECT EXAMINATION BY MR. RICHEY:

16 Q. Ms. Price, um, did you, um, did you represent Mr. Palmer
17 through the public defender's office?

18 A. I did. Um, I first re -- started representing Mr. Palmer
19 in 2014, um, and he picked up some additional charges in 2015
20 and our office policy is if we already have an open file on a
21 client and they get additional charges, we get those as
22 well.

23 Q. So you were assigned initially and then he retained a
24 lawyer while you were represent him, correct?

25 A. He did, that was in late 2015, December I believe.

ANDREA PRICE - DIRECT EXAMINATION BY MR. RICHEY

1 Q. And and the issue that he's raised that's about this
2 preliminary hearing did, um, you were aware that he had
3 requested one, is that correct?

4 A. Yes, sir, um, when clients come in or or we pick them up
5 in the jail, we, uh, routinely file two things: notice of
6 appearance request for discovery under Rule 5 and then we also
7 file a request for a preliminary hearing as well. Uh,
8 preliminary hearing I believe he's speaking about is the one
9 on his second set of charges that he picked up in 2015.

10 Q. Okay, and do you know whether that hearing was waived or
11 not?

12 A. Uh, yes, sir, um, if you'll -- beg the Court's indulgence
13 to look in my file for just a moment.

14 (Pause.)

15 Uh, yes, uh, Mr. Palmer had a preliminary hearing
16 scheduled and we sent out a copy of his notice, uh, to his
17 home address, um, he had, his newer charges are the ones, uh,
18 that the planning girls schedule it all for September the 3rd
19 2015. Um, let's see, I had him on one, two, three, four
20 charges. Um, I -- my notes indicate that I spoke with
21 Mr. Palmer on that day, went over his discovery with him and
22 the hearing was waived.

23 Q. So you went over discovery with him and so therefore you
24 didn't have that hearing, that's that's what you're sayin'?

25 A. I'm sorry, sir?

ANDREA PRICE - CROSS-EXAMINATION BY MS. OLIVE

1 Q. You went over the discovery with him ---

2 A. Yes.

3 Q. --- and in lieu of a hearing ya'll talked about the
4 discovery.

5 A. That's right.

6 Q. Okay. And and did you have, you had a conversation with
7 him, is that what your notes reflect?

8 A. My notes do reflect that, yes.

9 Q. Okay. One moment, Your Honor, please.

10 (Pause.)

11 No other questions, thank you.

12 A. Thank you.

13 CROSS-EXAMINATION BY MS. OLIVE:

14 Q. Ms. Pa -- Ms., 'scuse me, Ms. Price, the preliminary --
15 was there a preliminary hearing held on the trafficking
16 cocaine base second offense?

17 A. Do you have a warrant number on that?

18 Q. Yes. Sorry, just a minute, some papers are stuck to it.

19 A. Believe it's, uh, Warrant 1965.

20 Q. Well I have 1963.

21 A. Okay, that it's, those are the four charges that were
22 grouped together in the second set so, yes.

23 Q. Okay.

24 A. Um, that that, I I have an indication that was waived.

25 Q. Okay. So Mr. Palmer waived that preliminary hearing?

1 A. Yes. Um, typically I advise my cli -- after I go over
2 discovery with them I advise them that ninety-nine times out
3 of a hundred a preliminary hearing, uh, they will find
4 probable cause in this case because the standard of evidence
5 is so low but I have never, um, so most a the time I, and
6 after I speak with my clients I advise them not to have one,
7 uh, because of that evidentiary standard but, um, I have never
8 denied a client a preliminary hearing that was just dead set
9 on having one.

10 Q. So you advised Mr. Palmer to waive the preliminary
11 hearing?

12 A. Yes.

13 Q. Do you have any reason to believe in this case that
14 probable cause would not have been found?

15 A. Uh, no.

16 Q. Did that factor into your advice to Mr. Palmer?

17 A. Yes.

18 Q. Thank you, that's all the questions I have.

19 THE COURT: Any redirect, Mr. Richey?

20 MR. RICHEY: No questions. Can we call, uh, Mr. ---

21 THE COURT: Thank you, ---

22 MR. RICHEY: --- Wilson?

23 THE COURT: --- you step down. Okay.

24 (Whereupon, the witness left the stand.)

25 (Whereupon, the witness came forward.)

STEPHEN S. WILSON - DIRECT EXAMINATION BY MR. RICHEY

1 THE COURT: Place your left hand on the Bible, raise your
2 right, please, sir.

3 STEPHEN S. WILSON, having
4 been first duly sworn, testified as follows:

5 THE COURT: Alright, thank you, sir, you may sit down.
6 State your full name for the record.

7 THE WITNESS: My name is Steve or Stephen S. Wilson.

8 DIRECT EXAMINATION BY MR. RICHEY:

9 Q. Mr. Wilson, you were retained to represent Mr. Palmer
10 after Mrs. Price was initially appoint to represent him,
11 correct?

12 A. That's correct.

13 Q. And and during your representation, um, is it -- let me
14 ask a question: how long you been practicin' law?

15 A. Uh, as of now it's thirty-eight years.

16 Q. And and where where is this practice located?

17 A. In Spartanburg.

18 Q. And how long has it been in Spartanburg?

19 A. For the entire thirty-eight years.

20 Q. Okay, and and you maintain a criminal practice, is that
21 correct?

22 A. Uh, I I represent criminal defendants, um, a lotta
23 personal injury cases, worker's comp. cases, family court
24 cases.

25 Q. Mis -- in Mr. Palmer's case and and it, did you go over

1 discovery with him?

2 A. On numerous occasions.

3 Q. Okay, and and do you believe he understood discovery?

4 A. Oh, there's no question.

5 Q. Did did you and him have any conversation about his
6 preliminary hearing, I know at that point had been waived but
7 did you and him have a discussions about that?

8 A. I I don't think we had any about his complaints about it
9 bein' waived, um, I -- that later when we started gettin'
10 these letters about this I I saw he was complainin' that it
11 been waived.

12 Q. When you said "later," was that after the plea or before?

13 A. After, after.

14 Q. Okay, and and this this plea, do you believe this guilty
15 plea was beneficial to him?

16 A. There's no question in my mind that he did the right
17 thing.

18 Q. And and if he -- and do you believe that if he had a new
19 trial that the outcome be different, do you believe that?

20 A. Yeah, he was granted relief in this action, uh, it's my
21 understanding he would be sent back and the original charges
22 which is trafficking of cocaine in second offense plus these
23 other drug charges which would be back on on the record and if
24 they wanted to try him for that and not not offer him this
25 plea deal then he'd be facin' a sentence of no less than

STEPHEN S. WILSON - DIRECT EXAMINATION BY MR. RICHEY

1 5 years and possibly 30 years. He had been on probation for
2 one month when these offenses occurred and so I I advised him
3 that in my opinion he would most likely face a much harsher
4 sentence.

5 Q. And you went over all these questions a the transcript
6 with Mr. Palmer?

7 A. Oh, yes.

8 Q. And and did did did you believe that he understood
9 them?

10 A. No question he understood them.

11 Q. Okay. Did did he express any, did he express to you he
12 did not wanna plead guilty?

13 A. No, uh, I would say we we had discussions about the, uh,
14 discovery numerous occasions until probably sometime in May I,
15 probably he's right about May, he said to see what I could do
16 about negotiating a sentence and so we did. I told him what
17 that was, told him that his other charges would be dismissed
18 if he pled guilty to trafficking cocaine first offense and the
19 recommendation was gonna be made of a minimum of 3 years and
20 that if he didn't accept that they were gonna try him for the
21 second offense. I also told him that this, you know, this
22 would re -- result in him being presented for revocation of
23 his probation, that, uh, you know, we would certainly try to
24 argue to the Court to run any revocation concurrent or partial
25 revocation and so that's what we did.

STEPHEN S. WILSON - CROSS-EXAMINATION BY MS. OLIVE

1 Q. So so he saw the full discovery, is that your
2 testimony?

3 A. Oh, yes.

4 Q. Okay, thank you, answer any question attorney general has
5 for you.

6 CROSS-EXAMINATION BY MS. OLIVE:

7 Q. Morning, Mr. Wilson. The discovery that you reviewed
8 with Mr. Palmer was that the result -- did you obtain that
9 from your own discovery motions or was that, well were those
10 responses to previous motions made by Ms. Price?

11 A. Uh, I I received from Ms. Price the discovery she had
12 received and then I received from the solicitor's office
13 another set so I I had two sets same thing.

14 Q. Oh. Do you recall how many times you met with
15 Mr. Palmer?

16 A. Well, it it be a an estimate, lots of times Mr. Palmer
17 would just come come by the office without an appointment, I
18 would say we met in my office at least seven or eight times.

19 Q. So then he was out on bond ---

20 A. Yes.

21 Q. --- pending these charges? Did you discuss with
22 Mr. Palmer the State's evidence?

23 A. Yes, I did. We had the, uh, search warrant, we had a
24 number a photographs that were taken when the search warrant
25 was executed, uh, we had a statement that Mr. Palmer gave to

STEPHEN S. WILSON - CROSS-EXAMINATION BY MS. OLIVE

1 the officers in which he claimed, uh, approximately 6 grams of
2 marijuana that was in his pocket and approximately 14 grams of
3 cocaine that was in his bedroom.

4 Q. Did Mr. Palmer tell you everything that he knew about the
5 facts a this case?

6 A. Well I thought he did.

7 Q. Did you discuss with him any possible defenses?

8 A. When we first began talkin' about this, Mr. Palmer had a
9 bunch of complaints about the search warrant so that's what we
10 were basically lookin' at and finally after my investigation I
11 I had to inform him that I thought any, uh, claim that it was
12 an illegal search was not gonna, uh, be successful and would
13 only result in in his not getting a negotiated deal.

14 Q. Did you discuss with Mr. Palmer the possibility of going
15 to trial?

16 A. Uh, until about, uh, well until we negotiated a deal, we
17 we talked about that many times and even when we were
18 preparing for the, for the plea I went over with it at, with
19 that, uh, I went over a trial with him again and he said no,
20 he wanted to accept the the offer.

21 Q. Did he ask you to pursue a a plea offer on his behalf?

22 A. Yes.

23 Q. Okay. Did Mr. Palmer have any other charges that were
24 dismissed as a result of this plea negotiation?

25 A. Yes, he had, I may be wrong, but he had I believe at

1 least three other charges, I think they were possession a
2 marijuana with intent to distribute and possession a marijuana
3 with intent to distribute within 5 miles of school and and
4 another charge, I can't remember right now.

5 Q. And again, that was part of your plea negotiations with
6 the State?

7 A. Yes.

8 Q. And you testified that you discussed with Mr. Palmer that
9 he was going to be violating his probation?

10 A. Yes, uh, we even, look, we even went and Mr. Palmer had
11 gotten a job not too long before his plea and we got a
12 statement from his employer, uh, that we could use to argue to
13 the Court that hopefully he turned his life around, that we
14 could use that hopefully to argue to the Court that a
15 revocation be run concurrent or it be a partial revocation,
16 that's what we were tryin' to do.

17 Q. Did you ever make any promises to Mr. Palmer about his
18 probation revocation?

19 A. No.

20 Q. Did you discuss with Mr. Palmer the constitutional rights
21 he was gonna be waiving by pleading guilty?

22 A. Yes.

23 Q. Was it his decision to plead guilty?

24 A. Absolutely.

25 Q. Did he at any time during his guilty plea indicate to you

MOTIONS AND MATTERS

1 that he wished to withdraw his plea?

2 A. No, he did not.

3 Q. Thank you, Mr. Wilson, that's all the questions I have.

4 A. Thank you.

5 THE COURT: Any redirect?

6 MR. RICHEY: No questions, that's all Your Honor.

7 THE COURT: Thank you, Mr. Wilson, I appreciate it.

8 (Whereupon, the witness left the stand.)

9 THE COURT: Alright, Mr. Richey, anything additional from
10 the Applicant?

11 MR. RICHEY: No, sir.

12 THE COURT: Okay, anything from the State?

13 MS. OLIVE: Nothing from the State, Your Honor.

14 THE COURT: Okay, alright. Okay, um, any arguments that
15 either of ya need to place on the record I'd be happy to
16 entertain the same.

17 MR. RICHEY: None from me, Your Honor.

18 THE COURT: Okay, from the State?

19 MS. OLIVE: We just rest on the record, Your Honor.

20 THE COURT: Okay, alright. Okay, Mr. Palmer, I'm I'm
21 gonna respectfully deny your post-conviction relief
22 application, um, and, you know, I think it it it serves both
23 you and me well, that is, you and the Court well for me to
24 give you an explanation and not just say denied, okay. In
25 order for you to be afforded post-conviction relief, you have

MOTIONS AND MATTERS

1 to demonstrate that your counsel was deficient and and that's
2 in accordance and relative to the normal professional, uh,
3 standards that are applied and then also that you were
4 prejudiced as a consequence of that deficiency, um, I can't
5 find based on the record that your, uh, that your attorneys
6 were deficient. Whether or not a preliminary, uh, hearing was
7 waived or not that happens very often and if you demonstrate
8 that that was deficient in some way, shape or form then you
9 have to provide the so what of the, of the deficiency, that is
10 how are you prejudiced by it. Um, you you weren't prejudiced
11 by it because subsequent to, um, a, uh, subsequent to the, uh,
12 preliminary hearing it appears that there was a true bill of
13 the indictment by the grand jury which really obviates or
14 makes the preliminary hearing not, uh, not relevant, um, and,
15 Mr. Palmer, I don't, I don't blame ya for, uh, askin' for
16 post-conviction relief, that's that's your right, um, and and
17 I'm not mad at ya for comin' in and asking for post-conviction
18 relief today but I will tell ya this is one of the worst
19 applications I've seen in my career, okay, um, you don't just
20 get do-overs, okay. This record is pretty airtight, you can't
21 just come in after the fact and say I didn't know various
22 things like I had other charges outstanding, that's just,
23 that's just not not credible, okay, and also, and I'll also
24 tell ya that if I were mad at ya, if I were mad at ya, I'd
25 grant your post-conviction relief because just to put it in

MOTIONS AND MATTERS

1 layman's terms that would really screw you, okay, I'm not
2 gonna grant your post-conviction relief. You should, as you
3 walk out this courtroom, you should look at, uh, Mr. Wilson
4 and Ms. Price and say thank you 'cause you got a pretty good
5 deal. Um, they don't have any control over the, what the
6 judge decides to do on a probation revocation, judge has
7 absolute discretion to do whatever he or she, uh, feels is
8 appropriate but that three years was a good deal, no question
9 'bout that it was good deal, particularly, I read the
10 transcript based on your prior record, based on what happened,
11 based on the fact that you had just gone on probation, um,
12 that was a good deal, um, and, uh, I think that you should be
13 thankful that ya got it frankly, um, relative to what you
14 coulda gotten, okay, relative to what you coulda gotten,
15 alright, so, Mr. Palmer, I wish you good luck, I, um, and I
16 hope ya, I hope ya get out soon and when ya get out I hope ya
17 do the right thing. Okay, good luck to ya, sir.

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on Marcy 21, 2017 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 29, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

January 8, 2018

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

William J. Palmer, III, #316234,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

2016-CP-42-3561

ORDER OF DISMISSAL
WITH PREJUDICE

2018 JAN 12 PM 1:14
M. HOPE BLACKLEY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed on September 26, 2016. Respondent made its Return requesting an evidentiary hearing be convened. An evidentiary hearing into the matter was convened on March 21, 2017, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Alicia A. Olive, Esquire, of the South Carolina Office of the Attorney General, represented Respondent.

Applicant testified on his own behalf. Applicant's original plea counsel, Andrea L. Price, Esquire, testified, as well as Applicant's second plea counsel, Stephen S. Wilson, Esquire, ("Counsel"). This Court had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, the transcript from Applicant's guilty plea, the PCR application, and Respondent's Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the March 2016 term of the Spartanburg County Grand Jury for trafficking in cocaine

AM?

base, 10 to 28 grams, second offense (2016-GS-42-1405), possession with intent to distribute ("PWID") cocaine base within one-half mile of a school or park (2016-GS-42-1406), PWID marijuana (2016-GS-42-1407), PWID marijuana within one-half mile of a school or park (2016-GS-42-1408). Stephen S. Wilson, Esquire, represented Applicant.

On June 23, 2016, Applicant pleaded guilty to trafficking in cocaine base, 10 to 28 grams, *first* offense, before the Honorable R. Keith Kelley. The State dismissed the remaining three charges in exchange for Applicant's plea. Pursuant to the State's recommendation, Judge Kelley sentenced Applicant to a term of imprisonment for three years and a fine of \$25,000. At the time of his plea hearing, Applicant was also on probation for a prior drug charge. Judge Kelley revoked Applicant's probation in full and ordered that Applicant serve these sentences consecutively. Applicant did not appeal his plea or his sentence.

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

1. Ineffective Assistance of Counsel
 - a. "I pleaded guilty to the understanding that my lawyer gave that I would only get 3 years. No more than 3 and no less than 3."
 - b. "I was not advised in open court that I would be facing a probation violation. The Solicitor never brought that charge against me or said it at the proceeding of my plea."
 - c. Failure to object to the Solicitor suppressing evidence
 - d. "Violation of my right to a speedy trial"
 - i. Andrea Price "secretly waived" my preliminary hearing. "I never told her to waive my hearing."
 - ii. "I never sign[ed] a waiver of prelim at all"
 - e. Failure to review Discovery with Applicant
 - i. Did not review arrest warrants and indictments with Applicant
 - f. Failure to move to quash the indictment
 - i. "indictments were done 9 months later after my arrest"
 - g. Failure to challenge the arrest warrant
 - h. Failure to file an appeal
2. Due Process Violations
3. Forgery
 - a. "what is on my sentence sheet wasn't sign[ed] by me"

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2018 JAN 12 PM 1:14
M. HOPE
SOLICITOR
GENERAL

- b. Dates on the indictment are wrong
- 4. Prosecutorial Misconduct
 - a. "They try to cover up my preliminary hearing. All this covering up can be consider[ed] as a conspiracy."
 - i. "Why wasn't the waiving of my preliminary hearing not documented."
 - b. Suppressed evidence
 - c. "They are covering up the warrant that was used."
 - d. Solicitor never gave the indictment to the Grand Jury
- 5. Breach of Contract
 - a. "My plea was nego[tiated] not recommended. I told my lawyer [the] only way I would plea[d] is only [to] a negotiated plea and that's what it was."

2010 JAN 11 PM 1:14
 M. ROBERT ACADEY

SUMMARY OF TESTIMONY

I. Applicant testified to the following:

Applicant testified he received the minimum sentence for the charge to which he pled guilty – three years for trafficking first. At the same time, his probation was revoked. Applicant testified he had an absolute right to a preliminary hearing and that his counsel was ineffective for waiving that hearing. Applicant explained he testified he was satisfied with Counsel at his guilty plea because he believed he was only going to get three years. It was only until he investigated his own case when he felt things were not right. Applicant explained he did not investigate his case prior to pleading guilty because he believed he would get three years and that only when Judge Kelly sentenced him to eight years, he began investigating.

Applicant testified he believes he was not properly indicted because his indictments were not signed by a grand juror. Applicant testified Andrea Price represented him first before Stephen Wilson began representing him. Applicant testified he did not know his preliminary hearing was waived until after he pled guilty. He also testified that had he had his preliminary hearing, he would not have pled guilty. Applicant testified he had four other drug charges that were dismissed as a result of his guilty plea. Applicant denied he ever knew he was originally indicted for trafficking, second offense, and maintained he had always been charged with

trafficking, first offense. Applicant also testified he had no defense to his charges because nothing was ever given to him. He admitted Counsel reviewed discovery with him, but insisted there was more to it.

Applicant expressed dissatisfaction with his sentence. Applicant testified he was supposed to get only three years, but at the very end of the plea, the judge asked him about his probation violation and then gave him eight years. Applicant admitted when the judge informed him of the probation violation, he did not ask to withdraw his guilty plea.

II. Andrea L. Price testified to the following:

Price testified she originally was assigned to Applicant's case through the Public Defender's Office. She had represented him on 2014 charges prior to the new charges. Price recalled Applicant retained Counsel thereafter. Counsel testified that during her representation, she filed a request for discovery and a request for a preliminary hearing. She also met with Applicant and reviewed the discovery with him. Counsel testified she generally advises clients to skip the preliminary hearing because the evidentiary standard is very low and most every time, probable cause will be shown. According to her notes, Applicant waived his preliminary hearing. Counsel testified she would never waive a preliminary if a client insisted on having the hearing.

III. Stephen Wilson ("Counsel") testified to the following:

Counsel testified he's been practicing law for thirty eight years in Spartanburg. Counsel went over Applicant's discovery with him numerous times and had no question Applicant understood it all. Applicant never complained about waiving his preliminary hearing until after he pled guilty. Counsel received letters from Applicant, after his guilty plea, complaining about the preliminary hearing.

Jan 9

2018 JAN 12 PM 1:14
H. HOPE BIRCHLEY

Counsel testified Applicant had been on probation for one month when he committed the current offenses. Counsel testified after reviewing the evidence with Applicant numerous times, about May, Applicant told Counsel to see what deal Counsel could get him. Counsel negotiated a deal and took it back to Applicant. Counsel explained the State would drop the other charges if Applicant pled guilty to trafficking first and they would recommend three years. Counsel also explained if he did not accept the deal, the State would try him for trafficking second. Counsel also explained that this would open him up to a probation revocation, but that he would ask for a concurrent sentence or a partial revocation. However, Counsel never made promises regarding the probation revocation.

Counsel originally focused on the search warrant executed against Applicant to determine if they had a basis to challenge it. After an investigation, Counsel determined that a challenge to the legality of the search would most likely be unsuccessful and only result in a reverse or no negotiated plea offer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every a of counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that counsel was deficient. Applicant has failed to do so.

2018 JAN 12 PM 14
HOPE BLACKLEY

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I. Ineffective Assistance of Counsel

In his amended application filed by PCR counsel, Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the 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 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

1-29-9

This Court finds not credible Applicant's testimony that he was not advised he was indicted for trafficking second, that he was not advised he was facing a probation revocation, that he was not advised of his preliminary hearing nor did he waive it, that his indictments were not signed by the grand jury, that Counsel promised he would only get three years, and that Counsel did not review all of the discovery and evidence with him. The testimony is self-serving and contradicted by the record and the testimony of two credible witnesses, Price and Counsel. This Court can find no other reason for these assertions other than Applicant's attempt at a "do-over." That is not the purpose of post-conviction relief.

The record of Applicant's guilty plea demonstrates a thorough colloquy addressing essentially every issue raised by Applicant now on PCR. Furthermore, Price and Counsel both testified credibly that they reviewed all of the discovery and evidence with Applicant. With regard to Applicant's main contention, the waiver of his preliminary hearing, this Court finds Applicant failed to prove either deficiency or prejudice. It is a common practice to waive preliminary hearings, especially in cases where the grand jury has already true-billed an indictment. As such, Price's advice to Applicant to waive his preliminary hearing was reasonable based on prevailing professional norms. This Court also believes Price waived Applicant's preliminary hearing on his behalf and with his consent, not "secretly" and in collusion with the State, as Applicant alleges in his application. This Court further finds Applicant's assertion that had he had his preliminary hearing, he would not have pled guilty to be unreasonable and wholly without credibility.

Additionally, the records of Applicant's indictments show no irregularities and thus no basis upon which they could be challenged. Applicant failed to meet his burden to prove Counsel was deficient in failing to move to quash or challenge the indictments. Any assertion by

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Applicant that had Counsel done *anything* differently, Applicant would not have pled guilty, but would have insisted on trial is simply unreasonable and not credible. This is especially true in light of the fact Applicant pled to a lesser offense of trafficking second, which requires a mandatory sentence of five years and up to thirty years, was also facing four other drug charges for which Counsel negotiated the dismissals, and only received a three year sentence for the lesser trafficking.

Applicant seems to really only be upset with his consecutive five year sentence resulting from the revocation of his probation. However, this application is not in reference to his prior convictions for which he was serving probation. That sentence was handed down well before the guilty plea in this case in which Applicant was allowed to serve a probationary sentence with a suspended prison sentence. It was in the plea judge's discretion to revoke Applicant's probation in full and require Applicant to serve his suspended sentence in full and consecutive to his new sentence. This Court also believes it was appropriate to do so in light of the fact Applicant was on probation for only one month before committing the instant offenses. Regardless, this Court believes Counsel advised Applicant he was facing the probation revocation and what that would entail while explaining to Applicant he would ask for concurrent time or a partial revocation, which he did on the record. This was reasonable.

Applicant has utterly failed to meet his burden of proving Counsel was deficient in any manner whatsoever. Likewise, he did not meet his burden to prove he was prejudiced by any alleged deficiency by Counsel. To the contrary, this Court finds he received reasonable and competent representation, which resulted in an outstanding deal and benefit to Applicant. It is unfortunate Applicant cannot appreciate the benefit he received from Counsel's representation. The allegations of ineffective assistance of counsel are denied and dismissed with prejudice.

FILED
JAN 12 PM 15
HON. BLAINE

II. Prosecutorial Misconduct

In his application, Applicant alleged prosecutorial misconduct for the destruction of evidence. It is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant has set forth no evidence supporting his allegations of prosecutorial misconduct. Therefore, Applicant has failed to meet his burden to prove prosecutorial misconduct by a preponderance of the evidence. This allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR: An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 253 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

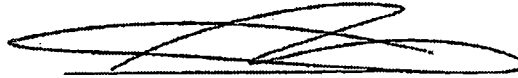
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2018 JUN 12 PM 1:15
 HOSEBERRY

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11 day of Jan, 2018.



ROBIN B. STILWELL
Presiding Judge
Seventh Judicial Circuit

Cherokee, South Carolina

2018 JAN 12 PM 1:15
M. HOPE BLACKEY

WITNESSES

1. SENTENCE MADE

2. REPORT MADE

SPTBG CITY PUBLIC SAFETY

4. IMPROVED

5. OTHER

6. OTHER

7. OTHER

FIRST CLASS MAIL

True Bill

WARRANT VIOLATIONS COPY

ARREST WARRANT NUMBER

2015A4210201963

ACTION OF GRAND JURY

MAR 25 2016

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 18-GS-42-1405

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 28 2016

TERM

THE STATE

vs.

WILLIE J. PALMER, III

Indictment for

TRAFFICKING IN COCAINE BASE

SC Code: 44-53-375

2016 MAR 29 AM 11:21
M. HOPE BLACKLEY

18-GS-42-1405

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03

- WITNESSES**
- 1. SENTENCE MADE
 - 2. REPORT ENDED
 - 3. CARD FILLED
 - 4. INDEXED
 - 5. CHECKED WARRANTS
 - 6. CHECK SIGNATURE
 - 7. ASSESSMENT AND FINE CARD MADE
 - 8.
 - 9. TRAFFIC VIOLATIONS COPY

SPTBG CITY PUBLIC SAFETY

True Bill

ARREST WARRANT NUMBER

2015A4210201964

ACTION OF GRAND JURY

MAR 25 2013

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

16-GS-42-1406
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 28 2016

TERM

THE STATE
vs.

WILLIE JAY PALMER

NP

per agreement
[Signature] JETH
6123/16

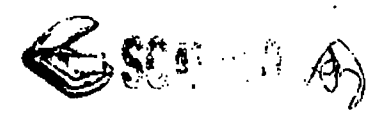
Indictment for

**POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE BASE
WITHIN ONE-HALF MILE**

SC Code: 44-53-445

2016 JUN 27 AM 9:42
M. HOPE BLACKLEY

2016 MAR 29 AM 11:21
M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

MAR 25 2016

At a Court of General Sessions, convened on _____, the

Grand Jurors of County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE BASE WITHIN ONE-HALF MILE

That Willie Jay Palmer, III did in Spartanburg County on June 19, 2015, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Cocaine Base, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Wofford College, under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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


 ASSISTANT SOLICITOR

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WITNESSES

SPARTANBURG CITY PUBLIC SAFETY

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSABLE LAUREL FINE CAKE

8. TRAFFIC VIOLATION COPY

True Bill

ARREST WARRANT NUMBER

2015A4210201965

ACTION OF GRAND JURY

MAR 25 2015

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

16-GS-42-1407

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 28 2016

TERM

THE STATE
vs.

WILLIE JAY PALMER, III

NO

Rec'd by [unclear] 6/23/16

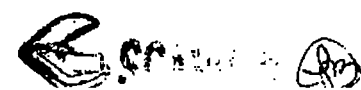
Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SC Code: 44-53-370

2016 JUN 27 AM 9:42
M. HOPE BLACKLEY

2016 MAR 29 AM 11:21
M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

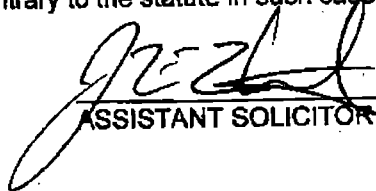
INDICTMENT

At a Court of General Sessions, convened on MAR 25 2016, the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Willie Jay Palmer, III did in Spartanburg County on or about June 19, 2015, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such distribution not having been authorized by law.*

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


ASSISTANT SOLICITOR

87

WITNESSES

SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED
SPTBG CITY PUBLIC SAFETY

4. DENIED

5. CHECKED WARRANTS

6. SIGNATURE

7. ASSIGNMENT AND
FINANCING MADE

8. TRAFFIC VIOL.

True Bill

ARREST WARRANT NUMBER

2015A4210201966

ACTION OF GRAND JURY

MAR 25 2015

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 16-GS-42-1408

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 28 2016

TERM

THE STATE

vs.

WILLIE JAY PALMER, III

NP

per plea agreement
Jett
6/23/16

Indictment for

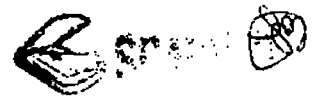
POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA
WITHIN ONE-HALF MILE

SC Code: 44-53-445

2016 JUN 27 AM 9:42

2016 MAR 29 AM 11:21

M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

MAR 25 2016

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

POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA WITHIN ONE-HALF MILE

That Willie Jay Palmer, III did in Spartanburg County on June 19, 2015, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Marijuana, a schedule I controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Woffore College, under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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


 ASSISTANT SOLICITOR