

RECEIVED
JAN 18 2019
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Letitia H. Verdin, Circuit Court Judge

DEMOSSIO MONTAE VALENTINE, PETITIONER

V.

STATE OF SOUTH CAROLINA, RESPONDENT

APPELLATE CASE NO 2018-000996

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRANSCRIPT OF GUILTY PLEA HEARING HELD SEPTEMBER 15, 20181

APPLICATION FOR POST-CONVICTION RELIEF17

RETURN AND MOTION FOR MORE DEFINITE STATEMENT24

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
HELD OCTOBER 25, 201730

ORDER OF DISMISSAL72

INDICTMENT82

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS)	2011-GS-39-02047
)	
)	
)	
)	
)	

STATE OF SOUTH CAROLINA,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
DEMOSSIO MONTAE VALENTINE,)	
DEFENDANT.)	

ORIGINAL

September 15, 2014
Pickens, South Carolina

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE.

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

D. GRAHAM BUCKNER, ESQ.
Assistant Solicitor

JOHN W. DEJONG, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE CLERK: 2011-GS-39-2047, the State v. Demossio Valentine, pleading to distribution of cocaine base third.

Raise your right hand, please.

WHEREUPON,

DEMOSSIO MONTAE VALENTINE,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you

THE COURT: Mr. DeJong do you represent Mr. Valentine on these matters?

MR. DEJONG: I have that pleasure, Your Honor.

THE COURT: Have you discussed with your client the charge pending against him, the possible punishment he faces, and his Constitutional rights?

MR. DEJONG: I have, Your Honor.

THE COURT: Do you believe he understands the discussions you've had with him?

MR. DEJONG: I believe he has understood those discussions, Your Honor.

THE COURT: Have you had an opportunity to review with your client all the State's evidence?

MR. DEJONG: I have, Your Honor.

THE COURT: Based upon your investigation of all the facts and circumstances, do you believe the State could produce sufficient evidence to convince a jury of his

1 guilt beyond any reasonable doubt, and if a trial were to
2 be held, his conviction would be most probable?

3 MR. DEJONG: I think it would be highly probable,
4 Your Honor.

5 THE COURT: Mr. Valentine, how old are you, sir?

6 DEFENDANT VALENTINE: 35, sir.

7 THE COURT: Are you married?

8 DEFENDANT VALENTINE: No, sir. Engaged.

9 THE COURT: Do you have any children?

10 DEFENDANT VALENTINE: Yes, sir.

11 THE COURT: How many children do you have?

12 DEFENDANT VALENTINE: I have five, Your Honor, and
13 one on the way.

14 THE COURT: How old are your children?

15 DEFENDANT VALENTINE: 12, 11, nine, three and two.

16 THE COURT: When is the one coming?

17 DEFENDANT VALENTINE: December, Your Honor.

18 THE COURT: How far did you go in school,
19 Mr. Valentine?

20 DEFENDANT VALENTINE: I got my GED, sir.

21 THE COURT: What grade were you in when you dropped
22 out of school?

23 DEFENDANT VALENTINE: I was in the twelfth.

24 THE COURT: Where did you attend?

25 DEFENDANT VALENTINE: Easley.

1 THE COURT: Since you've been out of school, what
2 type of work have you primarily done?

3 DEFENDANT VALENTINE: I have did construction. I've
4 roofed. I've worked at TNS Brass. That's where I was
5 currently working at before I got locked up.

6 THE COURT: Okay. In the past, Mr. Valentine, have
7 you ever been treated for alcohol or drug abuse?

8 DEFENDANT VALENTINE: No, sir.

9 THE COURT: Do you have any prescriptive drugs, or
10 alcohol, or anything in your system today?

11 DEFENDANT VALENTINE: Oh, no, sir.

12 THE COURT: Have you ever been treated for any mental
13 health issues?

14 DEFENDANT VALENTINE: No, sir.

15 THE COURT: So you're aware of why we're here and
16 what the charge is about?

17 DEFENDANT VALENTINE: Yes, sir.

18 THE COURT: Now, this indictment that I have says
19 that back in November of 2010, around the 23rd of
20 November, you were alleged to have distributed some crack
21 cocaine here in Pickens County. Is that the charge to
22 which you're pleading today?

23 DEFENDANT VALENTINE: Yes, sir.

24 THE COURT: All right. Solicitor, I'll be glad to
25 hear about the background facts.

1 MR. BUCKNER: Thank you, Your Honor.

2 On November 23rd, 2010, in Pickens County within the
3 city limits of Easley, the Defendant sold .19 grams of
4 crack cocaine to a confidential informant working under
5 the supervision and direction of the Easley Police
6 Department. That transaction occurred at McDuffy Trailer
7 Park, Your Honor.

8 Those are the facts, Judge.

9 THE COURT: You heard the facts surrounding this
10 incident, Mr. Valentine, that the Solicitor presented.
11 Are those substantially the facts to which you're pleading
12 today?

13 DEFENDANT VALENTINE: Yes, sir.

14 THE COURT: Now, you understand you don't have to
15 plead guilty. The State would have to prove your guilt if
16 we were to have a trial. We could impanel a jury. The
17 State would have the full burden of proof.

18 You could remain silent and you'd be presumed
19 innocent. The State would offer evidence. You could
20 object to that. You could confront the witnesses against
21 you, let your lawyer examine them under oath. If you
22 wanted to put up a defense, you could call witnesses in
23 your own behalf.

24 You have these and other rights under our
25 Constitution. But you give all of those up by pleading

1 guilty.

2 Do you understand that?

3 DEFENDANT VALENTINE: Yes, sir.

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

5 DEFENDANT VALENTINE: Yes, sir.

6 THE COURT: Now, have you talked with your lawyer as
7 often and as long as you feel necessary?

8 DEFENDANT VALENTINE: Yes, sir.

9 THE COURT: Anything else you feel like you need to
10 ask him?

11 DEFENDANT VALENTINE: No, sir.

12 THE COURT: Have you understood those discussions
13 you've had with him?

14 DEFENDANT VALENTINE: Yes, sir.

15 THE COURT: Do you have any complaints about his
16 representation of you?

17 DEFENDANT VALENTINE: No, sir.

18 THE COURT: Is there any recommendation from the
19 State on this case, Solicitor?

20 MR. BUCKNER: No. There is no recommendation from
21 the State, Your Honor.

22 THE COURT: Mr. Valentine, you understand that this
23 charge carries a minimum of a 10-year sentence and up to
24 30 years in jail?

25 DEFENDANT VALENTINE: Yes, sir.

1 THE COURT: Has anybody promised you anything to get
2 you to plead guilty today?

3 DEFENDANT VALENTINE: No, sir.

4 THE COURT: Has anybody threatened you or coerced you
5 in any way?

6 DEFENDANT VALENTINE: No, sir.

7 THE COURT: Are you pleading guilty then of your own
8 free will?

9 DEFENDANT VALENTINE: Yes, sir.

10 THE COURT: Are you pleading guilty because you are
11 guilty?

12 DEFENDANT VALENTINE: Yes, sir.

13 THE COURT: Have you understood the questions I've
14 asked you?

15 DEFENDANT VALENTINE: Yes, sir.

16 THE COURT: Have you been truthful in your answers to
17 me?

18 DEFENDANT VALENTINE: Yes, sir.

19 THE COURT: If you meet our appellate court rules,
20 the law would allow you to appeal this proceeding within
21 10 days. And if you can't afford an attorney, one could
22 be appointed for you.

23 Do you understand that?

24 DEFENDANT VALENTINE: Yes, sir.

25 THE COURT: I find there is a substantial factual

1 basis for the plea, that it has been freely, voluntarily,
2 knowingly, and intelligently made by Mr. Valentine with
3 the advice of competent legal counsel with whom he's
4 expressed his satisfaction.

5 And I accept your plea, sir.

6 Mr. DeJong, I'll be glad to hear from you and,
7 certainly, from your client.

8 MR. DEJONG: Thank you, Your Honor.

9 May it please the Court.

10 You have gotten a lot of Mr. Valentine's personal
11 information. Obviously, pleading guilty to a charge like
12 this is not an easy thing to do. It becomes more
13 difficult when you have five children, and even more
14 difficult when you have one on the way that is due in
15 December. And, certainly, that all weighed into and
16 weighed heavily on Mr. Valentine in entering this guilty
17 plea.

18 Your Honor, I've known -- I can't say I've known, but
19 I've, certainly, been acquainted with Mr. Valentine for
20 quite sometime. Obviously, this is his third offense.

21 Mr. Valentine is really a pleasure to represent.
22 He's quite intelligent. He can ask very, very probing
23 questions, certainly, involved in his own defense and only
24 up until this morning was it that we were -- had planned
25 on going to trial.

1 He -- I think -- Your Honor, obviously, he is
2 pleading to a third offense. So he's had two priors.
3 They date back a little bit. I think the last one was
4 probably in about 2001 -- 2005 -- okay -- somewhere in
5 there. But since then, Your Honor -- of course, he's had
6 this sale since then.

7 But I shared with Your Honor I think he's really
8 trying to get himself squared away. He's working, as he
9 shared with you. He'd been working at TNS Brass. He's
10 been trying to support his children.

11 I would note, Your Honor, that his mother is in the
12 courtroom here in support of him. He shared that he has a
13 fiancée. He's engaged. She would have been here. She
14 was, indeed, here earlier this morning. She had to go
15 pick up a child from school.

16 In addition to his working, Your Honor, he shares
17 with me that he has been working on his degree online. I
18 don't know exactly where he is in the status of that. But
19 he has been doing that for quite sometime.

20 So I -- and I realize, Your Honor, obviously, this is
21 a third. But I truly believe that Mr. Valentine is making
22 a real effort to try to turn a corner here. I would,
23 certainly, ask the Court to keep the sentence in the range
24 of the minimum somewhere, Your Honor. I really think he
25 can become and will be -- he knows he's got to serve this

1 sentence. But after that, I, certainly, think he can be a
2 productive citizen, and take care of his children, and do
3 what is right, Your Honor.

4 Anything you want to share with the Judge,
5 Mr. Valentine?

6 THE COURT: Mr. Valentine, I'll be glad to hear from
7 you.

8 DEFENDANT VALENTINE: Yes, sir.

9 Like I'm guilty of the charge at hand. And I just
10 want to state, too, like before like the last year like I
11 had a real bad addiction to crack cocaine. You know what
12 I'm saying?

13 And, basically, I want to apologize to those that --
14 you know what I mean -- I've been a burden on for that.
15 But, like DeJong said, for the last year, I really have
16 been trying to turn the corner and get my life together
17 not just for me, but for my kids and for like my mom and
18 do it for God, man.

19 I apologize for my actions for what I did. But, I
20 mean, here I am, Your Honor, you know.

21 THE COURT: When did you first use meth -- or crack
22 cocaine?

23 DEFENDANT VALENTINE: I started using when I was like
24 16.

25 THE COURT: From a friend? A family member? Friend?

1 DEFENDANT VALENTINE: A friend.

2 THE COURT: Where's that friend now? Do you know?

3 DEFENDANT VALENTINE: He's dead.

4 THE COURT: How did he die?

5 DEFENDANT VALENTINE: He got killed.

6 THE COURT: In high school, is that when it was?

7 DEFENDANT VALENTINE: Yes, sir. His name was Rick
8 Stokes.

9 THE COURT: When did you get addicted?

10 DEFENDANT VALENTINE: I think the first time I ever
11 did it. I've never had no treatment for it, or nothing
12 like that. I always did it for myself. But, like I said,
13 for the last year, like I've been clean. I have did no
14 drugs. I mean, the most I did was smoke a cigarette.

15 THE COURT: Did you start using marijuana before you
16 started on crack?

17 DEFENDANT VALENTINE: Yes, sir. I was using
18 marijuana.

19 THE COURT: How old were you when you started using
20 marijuana?

21 DEFENDANT VALENTINE: Like 15.

22 THE COURT: It didn't give you enough buzz?

23 DEFENDANT VALENTINE: I can't answer that. I mean,
24 you know, I really can't answer that.

25 THE COURT: That was many years ago.

1 DEFENDANT VALENTINE: Yes, sir.

2 THE COURT: It's hard to remember back 20 years, I'm
3 sure.

4 DEFENDANT VALENTINE: Yes, sir.

5 THE COURT: What's the prior record, Solicitor?

6 MR. BUCKNER: Judge, 1996, public disorderly conduct,
7 receiving stolen goods; 1997, receiving stolen goods and
8 possession of marijuana; 1998, two counts of petit
9 larceny, and tampering with a motor vehicle; 1999, public
10 disorderly conduct, prostitution; 2000, simple possession
11 of marijuana, open container, resisting arrest,
12 distribution of crack, and possession of crack; 2001,
13 trespassing; 2002, possession of a weapon by a person
14 convicted of a violent crime, resisting arrest with a
15 deadly weapon, and false information to police; 2005;
16 distribution of crack, distribution of crack within
17 proximity to a school, two counts of failure to appear;
18 2010, driving under suspension, DUI. And then there's a
19 probation violation from 2011.

20 MR. DEJONG: And not to interrupt, Your Honor.

21 THE COURT: Yes, sir.

22 MR. DEJONG: But listening to his prior record, I
23 think that, certainly, bears out a lot of what he shared
24 with you about his addiction. Most -- not all, but most
25 of those charges would, certainly, be indicative of

1 somebody that had an addiction problem, in my opinion and
2 my experience.

3 THE COURT: How much time did you spend in jail? How
4 much time did you spend -- did you have a probation
5 violation?

6 DEFENDANT VALENTINE: Yes, sir.

7 THE COURT: Did you go down the road?

8 DEFENDANT VALENTINE: Yes, sir.

9 THE COURT: How long did you stay?

10 DEFENDANT VALENTINE: For my violation?

11 THE COURT: Yeah.

12 DEFENDANT VALENTINE: Are you talking about the last
13 one?

14 THE COURT: Yeah.

15 DEFENDANT VALENTINE: I think a year.

16 THE COURT: You've been down there before, I guess.

17 DEFENDANT VALENTINE: Yes, sir.

18 THE COURT: How long did you stay the first time?

19 DEFENDANT VALENTINE: Five years.

20 And, for the record, sir, that was like the longest
21 that I did off of drugs.

22 THE COURT: Right. I understand.

23 When you got out, you just went back to the drugs?

24 DEFENDANT VALENTINE: Periodically. But I think it
25 was my environment that I was in, around the same people

1 and...

2 THE COURT: You can find those people around wanting
3 to be your friend. You understand that, don't you?

4 DEFENDANT VALENTINE: Yes, sir.

5 THE COURT: Just like your friend that's now dead.

6 DEFENDANT VALENTINE: Yes, sir.

7 THE COURT: Any time served on this particular
8 charge, Solicitor?

9 MR. BUCKNER: Judge, I have 172 days total. And
10 that's been kind of in and out. He served time on a bench
11 warrant for these charges. And he did some initial time
12 before bonding out. Those are three separate stints that
13 add up to 172 days.

14 THE COURT: I'm going to recommend the ATU program
15 while you're incarcerated. I don't know if you've tried
16 that before, but it can give you some long-term help in
17 dealing with drugs when you get out, Mr. Valentine. I
18 sure hope so.

19 This is case 2011-GS-39-2047, the sentence of the
20 Court is the Defendant be committed to the State
21 Department of Corrections for a period of 189 months.

22 I wish you the best, sir.

23 *****END OF TRANSCRIPT OF RECORD*****
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

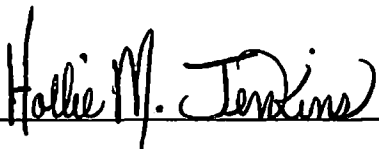
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 15th day of September, 2014.

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

May 11, 2017



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of PICKENS)
)
DEMOSSIO MONTAZ VALENTINE # 244466)
 Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2017-01-11 PM 10:25
 2017-GP-39-00021
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

APPLICATION FOR
 POST-CONVICTION RELIEF

State of South Carolina)

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 LEE Correctional Institution
990 WISACKY Highway Bishopville S.C. 29010
2. Name and location of Court which imposed sentence Pickens County
214 E. MAIN Street
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or number(s) (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-3902047 SALE OF CRACK COCAINE, 3rd
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 15th 2014
 - (b) 189 month's
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty
 - (c) after a plea of nolo contendere

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

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. Pickens County General Sessions Court
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. I with drew my appeal on the
 - iii. date of my sentence

- (c) the date of each such result:
 - i. NONE
 - ii. _____
 - iii. _____

- (d) If known, citations of any written opinion or orders entered pursuant to such results:
 - i. NONE
 - ii. _____
 - iii. _____

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

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Violation of the 6th Amendment on Ineffective
- (b) Assistance of Counsel.
- (c) Violation of the 14th Amendment. DUE PROCESS

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

- (a) Counsel fail to help produce a defence in the case
- (b) which cause me to plead guilty.
- (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? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (b)? No
- (d) any other petitions, motions or applications in this or any other Court? YES

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. Motion for Re-trial
 - ii. _____
 - iii. _____
 - iv. _____

(b) the name and location of the Court in which each was filed:

- i. South Carolina Appellant Court
- ii. _____
- iii. _____
- iv. _____

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

- (a) _____ *No* _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? *YES* _____
- (b) your trial, if any? _____
- (c) your sentencing? *YES* _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? *YES* _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. *John DeJong Attorney Pickens County*
Public Defender Office 214 East Main
Street Pickens S.C. 29671
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. *The arraignment and plea.*
The sentencing.
 - ii. *The appeal*
 - iii. _____

FOR THE SENTENCE AND CONVICTION TO BE VACATED
AND DIRECTED BACK FOR A RETRIAL

Do you wish to challenge the conviction or sentence that you have not challenged?

NO

2017 JAN 11 AM 10 25
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VERIFICATION

County of PICKENS

I, Demossio Valentine

being duly sworn 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 and that in this application; and that the matters and conditions therein are true.

X Demossio Valentine

Sworn or Affirmed to and subscribed before me this 28 day of Dec

2016
Debra Eckhardt
NOTARY PUBLIC

my commission expires 3/3/2020

Do you wish to challenge the conviction or sentence that you have not challenged?

Do you wish to challenge the conviction or sentence that you have not challenged?

STATE OF SOUTH CAROLINA

VERIFICATION

County of _____

I, _____ being duly sworn 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 and that in this application; and that the matters and conditions therein are true.

Application To Proceed Without Payment

OF Costs and Affidavit
In Support of

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

I, Demossio Valentine hereby apply for leave to proceed in this action without payment of fees or costs of 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.

Demossio Valentine
Applicant

SWORN or Affirmed to and subscribed before me this 28 day of Dec., 2014

Debra Eastwood
Notary Public

My Commission expires: 3/3/2016

STATE OF SOUTH CAROLINA)
 COUNTY OF PICKENS)
 Demossio Montae Valentine, #242226,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

2017-CP-39-0021

**RETURN AND MOTION FOR A
 MORE DEFINITE STATEMENT**

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

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. In February 2012, the Pickens County Grand Jury indicted Applicant for distribution of cocaine base (crack cocaine), third offense (2011-GS-39-2047). John W. DeJong, Esquire represented Applicant. Assistant Solicitor D. Graham Buckner, Esquire prosecuted the case. On September 15, 2014, Applicant pleaded guilty as indicted before the Honorable G. Edward Welmaker. Judge Welmaker sentenced Applicant to imprisonment for fifteen years and nine months for distribution of cocaine base (crack cocaine), third offense.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient guilty plea explanation on December 30, 2015. State v. Valentine, Appellate Case No. 2014-001991 (S.C. Ct. App. filed December 30, 2015). The remittitur was returned to the circuit court on February 10, 2016.

Attached to this Return and incorporated by reference are the records of the Pickens County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and Applicant's appellate records. Respondent

reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to help produce a defense in the case which" cause me to plead guilty"
2. "Violation of the 14th amendment Due Process"

III.

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

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

U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV.

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

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to sufficiently set forth any facts to "support each ground" or to explain with any specificity whatsoever

the facts upon which his claims of ineffective assistance of counsel and due process violation are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

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

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and due process violation.

[Signature block on following page]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

June 22, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
)
)
 DEMOSSIO MONTAE VALENTINE, 242226)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2017-CP-39-0021

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 and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

R. Mills Ariail, Jr., Esquire
11 North Irvine Street; Suite 11
Greenville SC 29601

DATED this 22th day of June, 2017.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF PICKENS)	THIRTEENTH JUDICIAL CIRCUIT
)	
Demossio Valentine, Sr.)	Case No(s) : 2017CP3900021
)	
Applicant,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
State of South Carolina,)	
)	
Respondent.)	
)	

October 25, 2017
 Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge..

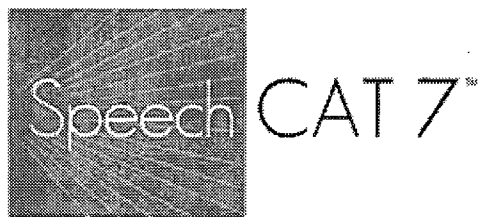
A P P E A R A N C E S:

R. MILLS ARIAIL, Esquire
 Attorney for the Applicant

RASHEDA CLEVELAND, Esquire
 Attorney for the Respondent

Teresa B. Johnson, CVR-M-CM,
 Circuit Court Reporter
 P.O. Box 2812
 Greenville, S.C. 29602

Records are
 taken and
 produced via



I N D E XDIRECT CROSS REDIRECT RECROSS

Demossio Valentine

by Mr. Ariail 5

by Ms. Cleveland 16

John DeJong

by Mr. Ariail 21

by Ms. Cleveland 26

Certificate of Reporter 42

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>
------------	--------------------	---------------------

APPLICANT EXHIBITS

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(Proceedings begin on the 25th day of October,
2017 at approximately 9:56 a.m.)

THE COURT: Yes, ma'am?

MS. CLEVELAND: May it please the Court
Your Honor?

THE COURT: Yes, ma'am.

MS. CLEVELAND: This is the case of
Demossio Valentine versus the State of South
Carolina, docket number 2017-CP-39-0021.
Mr. Valentine was indicted at the February 2012
term of the Pickens County Grand Jury for
Distribution of Crack Cocaine, and this is the
third offense that he received. He was
represented on that charge by John DeJong.

On September 15th, 2014, he pled guilty as
indicted before the Honorable G. Edward
Welmaker. He was sentenced to 15 years and 9
months in prison. He appealed that conviction
and, on December 30th, 2015, the South Carolina
Court of Appeals dismissed the appeal for
failure to provide a sufficient guilty plea
explanation.

On January 11th of 2017, he filed this
post-conviction relief action. He is present

1 today, and represented by Mr. Mills Ariail. I
2 will now turn it over to Mr. Ariail.

3 **THE COURT:** All right. Thank you.

4 Yes, sir.

5 **MR. ARIAIL:** Yes, Your Honor. We are ready
6 to proceed. I've got Ms. Valentine --
7 Ms. Valentine here. I'd call him to the stand as
8 our initial witness.

9 **THE COURT:** All right, sir. If you'll come
10 forward and be sworn.

11 **THE CLERK:** Mr. Valentine, please step
12 over to the witness booth and place your left
13 hand on the Bible and raise your right hand the
14 best you can.

15 **DEMOSSIO VALENTINE**

16 having first been duly sworn, testifies as follows:

17 **THE CLERK:** Thank you. Please state your
18 full name for the record.

19 **THE WITNESS:** Demossio Montae Valentine,
20 Sr.

21 **THE CLERK:** Thank you. You may be seated.

22 **DIRECT EXAMINATION**

23 **BY MR. ARIAIL:**

24 **Q** Mr. Valentine, how are you doing today?

25 **A** All right.

1 **Q** Now, we are here today in regards to the
2 PCR you filed in regards to the charges that
3 Mr. DeJong had represented you on.

4 **A** Right.

5 **Q** Okay. Now, as part of that, Mr. DeJong
6 represented you on these charges you just heard, and
7 I think it was distribution of cocaine base, third
8 offense; is that correct?

9 **A** Correct.

10 **Q** Okay. Now, during your time with him, did
11 you meet with him and go over the facts of the case
12 and the evidence that could be used against you?

13 **A** Yeah, we went over those facts, I think it
14 was, initially, like, three or four days before my
15 trial. I was in the County for some unrelated
16 charges, and he came down and spoke with me, him and
17 -- I think he had, like, a new representative with
18 him or something.

19 **Q** Okay. Now you understand and, I mean, I
20 guess, in talking with him, did he tell you the
21 sentence ranges that you could have for this crime?

22 **A** Actually, yeah, he told me it would be 10
23 to 30. But also, that day, he informed me, because
24 the charges were so old -- the charges went back from
25 2010 -- actually that day, he had informed me that I

1 had an initial plea in 2012 that was for 10 years for
2 -- if I'm not mistaken, it was assault and battery
3 with a high and aggravated nature and this charge
4 here, too, which I never even -- he never even
5 informed me of that plea, until that day. He said the
6 plea came back from August 2012.

7 **Q** Okay. So you went over -- I guess what
8 you're saying now is that you went over your previous
9 charges, which would have made this a distribution
10 third. Did he tell you that?

11 **A** Right. But, like I said, he informed me,
12 like, that date that he spoke with me in the County
13 that it was a previous plea for 10 years and that
14 they -- nobody ever informed me of any of that. I
15 never signed nothing for it. I was in the County in
16 2012, 2013 -- 2012 and '13, so I don't understand why
17 I didn't never get that plea agreement.

18 **Q** Okay. So I guess there was a question --
19 you had a question as to why -- you're saying you had
20 been convicted of something that you didn't go up and
21 plead guilty to. Is that what you're saying?

22 **A** No, what I'm saying is I was already in the
23 County for unrelated charges ---

24 **Q** Okay.

25 **A** --- and they offered me a plea for assault

1 and battery of a high and aggravated nature and
2 distribution second ---

3 Q Okay.

4 A --- for 10 years. I never even seen that
5 plea, never even heard of it until 2014, September
6 the 13th.

7 Q Okay. So I'm trying to figure out, did you
8 -- are you saying there was not two previous
9 convictions that would have made this a distribution
10 third offense?

11 A Yeah, it would have made it a third.

12 Q Okay.

13 A But the plea was for second, and I never
14 even got that plea.

15 Q Maybe I'm just a little confused.

16 A Basically, what I'm saying is, yeah, I
17 spoke with him three days before my trial ---

18 Q Right.

19 A --- him and his -- he had some new -- some
20 new lady working for him. Like I said, he told me
21 that -- he went over my motion.

22 Q Okay.

23 A Basically, it was a plea bargain in there
24 that I never even seen, never heard about or any of
25 that. It was for second offense, which would have

1 made my sentence -- it would have made it 65 percent.
2 But being that when I went to trial and I had no
3 recommendation -- 10 to 30 years, he did tell me
4 that.

5 Q Right. So, I mean, you got -- you got 15
6 years and 9 months.

7 A Right.

8 Q Now, going forward today, you understand
9 that this case is -- if your PCR was granted, you
10 just go back to having distribution third. You could
11 potentially get 30 years. You understand that?

12 A Right.

13 Q Okay. And you still want to proceed forward
14 with that understanding?

15 A Right.

16 Q Now, as part of your representation by
17 Mr. DeJong, tell me other items that we have
18 discussed that you believe he didn't do, or that he
19 was ineffective in doing, that created problems for
20 you?

21 A First of all, I'm not going to sit here and
22 discredit Mr. DeJong. Mr. DeJong, I mean, he's --
23 like I said, I'm kind of law illiterate. You know
24 what I'm saying?

25 Q Right.

1 **A** But dealing with him -- you know what I'm
2 saying? -- he's a good guy -- you know what I'm
3 saying? But at the same time, there was some things
4 that he didn't do as far as my representation. Like,
5 for example, I asked him to subpoena my witnesses to
6 the courthouse that day. That never happened.

7 **Q** Okay.

8 **A** There was also -- the confidential
9 informant in my case, I had a friends and my mama was
10 there that day, and I had asked him, like, "Who in
11 the courtroom?" I said, "Is my confidential informant
12 out there?" He said, "Well, I don't see him."

13 When I was in the back of the holding --
14 when I was in the holding cell waiting to go to
15 trial, the narcotic officer, and also -- you know
16 what I'm saying? -- two narcotic officers, Mr. DeJong
17 and the confidential informant come to my cell. The
18 confidential informant. I mean, me, personally, I was
19 taking it like it was a tactic to scare me up to go
20 ahead and plea because me, personally, like I said, I
21 was a little bit illiterate to the law then.

22 Like I said, I don't know the law language.
23 You know what I'm saying? But at the same time, I
24 pled because, like I said, I didn't know what to do.
25 You know what I'm saying? I didn't want to plea

1 because at the same -- I'm not guilty of this. I
2 didn't want to, but I felt like -- you know what I'm
3 saying? -- when that happened right there, it kind of
4 messed up my options. I think it was, like, a scare
5 tactic.

6 Q Okay. So what -- I want to go back. The
7 witnesses that you say, did you tell Mr. DeJong about
8 those witnesses?

9 A Yeah, I told him about the witnesses, which
10 is Samantha Dodson --

11 Q Right.

12 A -- and my brother, Teddy Valentine.

13 Q Teddy Valentine, and then Randy Smith was
14 another one, correct?

15 A Yeah, but he deceased.

16 Q Okay. But did you tell him about those
17 individuals?

18 A Yeah, I told him about all of those
19 individuals.

20 Q What did you tell him about them, what they
21 would testify to?

22 A Basically -- you know what I mean? -- when
23 that guy did call me on the phone and asked me for a
24 40 -- now, I want you to know that I am a drinker --
25 you know what I'm saying? -- so I'm thinking that's

1 what he was asking me about. So when he get there --
2 you know what I mean? -- basically it was two -- it
3 was two tapes on the thing. The first thing was a
4 tape of him calling me, asking me for a 40. Like I
5 said, I'm a big drinker, so I was thinking that's
6 what he was speaking about, because I deal with this
7 guy. So when he get there -- you know what I'm
8 saying? -- actually get there, it was supposed to be
9 some type of buy. The second tape, you don't really
10 hear anything on it -- you know what I'm saying? --
11 but I never sold him no drugs.

12 **Q** Okay. Those witnesses, were they going --
13 what were they going to testify to?

14 **A** Basically -- you know what I mean? -- that
15 I was there -- me and my brother was there. We both
16 were outside. Like I said, you know, actually, the
17 confidential informant, he informed my mama that if
18 he needed to come up here speak with y'all that he
19 would do so. But like I said, he wasn't even
20 subpoenaed here today. I don't even know why we -- I
21 don't understand this.

22 **Q** We had discussed that, and you were going
23 to give me those addresses for those individuals,
24 correct?

25 **A** I'm not in a current position to even give

1 you any type of address because I'm incarcerated.

2 Q Okay. So, as part of that, did he speak
3 with those witnesses or do you remember him going and
4 talking to him?

5 A No, he didn't speak with them at all.

6 Q He didn't speak with them?

7 A At all.

8 Q Okay. Now, in this case there was a CI and
9 there was some tapes, correct?

10 A Right.

11 Q Okay. And the CI, you indicate, was present
12 on the day of the trial?

13 A Right. On the day of the trial, like I was
14 saying, I was in the back of the holding cell.
15 Basically, like I said, I wasn't going to plea.

16 Q Uh-huh.

17 A And I was sitting in the back of the
18 holding cell. I had asked Mr. DeJong was the CI in
19 court. He said he didn't know. So I told him to ask
20 my mama, because I knew the guy. I told him to ask my
21 mama -- you know what I'm saying? -- for the name. So
22 when he come back, he come got back with a narcotics
23 officer and the CI. Like I said -- and I said
24 something to him about this. I told him, I said,
25 "Man, why did you bring him back here?" Like I said,

1 I'm not saying it was him doing it, but at the same
2 time -- you know what I mean? -- it was kind of,
3 like, a scare tactic, because that kind of scared me
4 up. It really scared me up. When the CI came, he
5 threw his hands up like this, like, "I don't know
6 what they're talking about." It was to the point
7 then, like, I'm not fixing to do no 30 years.

8 Q I guess my question is, what did Mr. DeJong
9 do -- as far as the CI showing up in the back, how
10 was he ineffective, or how did that affect you?

11 A Like I said, basically -- you know what I
12 mean? -- I asked him why did he do that because I
13 ain't -- that -- me, personally, from my
14 understanding, when you got a client and an attorney
15 relationship -- you know what I'm saying? --
16 basically -- you know what I mean? -- you supposed to
17 argue everything that -- you know what I mean? --
18 that the client has going on. I had told him, like,
19 me, personally, why would they bring the CI to my
20 holding cell?

21 Q Okay. But that -- that's -- did Mr. DeJong
22 have anything to do with that?

23 A He was with them.

24 Q Okay.

25 A And he went out there and told them that I

1 wanted to see the CI.

2 **Q** Okay. So you, basically, wanted to see if
3 the CI was there to testify?

4 **A** No, I just asked him was he out there in
5 the thing, to see if he was there to testify. He
6 bought him to my tank.

7 **Q** Okay. All right. Those are the -- all of
8 the items. Do you have anything that you want to
9 present to the Court in regards to this case about
10 what Mr. DeJong was ineffective in regards to?

11 **A** Basically, like I said, I was a little bit
12 ignorant to the law then. Personally -- you know what
13 I mean? -- the biggest -- the biggest thing was that
14 plea bargain that I never seen. And, actually, I was
15 in the County in '13, too. The day before, I had got
16 a bond for some unrelated charges. Mr. Dejong had
17 spoke with me. I was trying to -- they offered me a
18 plea, then, for seven years, first offense. That was
19 strictly for drug charges.

20 **Q** Okay.

21 **A** But he said he was going to get me out of
22 jail that Friday and get me a bond, which he did, and
23 that we would go in front of another judge when we
24 was there in 2014.

25 **Q** Right.

1 **A** But when I went in front of the judge in
2 2014, that's when I got this sentence.

3 **Q** Right. Maybe I just didn't understand you
4 to begin with. You're saying that there was a plea
5 offer on this charge for 10 years that you were
6 given, at some time that you were not aware of?

7 **A** Yeah. Basically, I see that on the 13th of
8 September. The plea bargain was from, I think it
9 might have been August 2012.

10 **Q** Okay. You never got that from Mr. DeJong or
11 heard that from him?

12 **A** I never heard anything about that until
13 that day.

14 **MR. ARIAIL:** Okay. Your Honor, I have no
15 further questions at this time.

16 **THE COURT:** All right. Thank you.
17 Yes, ma'am.

18 **CROSS-EXAMINATION**

19 **BY MS. CLEVELAND:**

20 **Q** Good morning, Mr. Valentine.

21 **A** Good morning.

22 **Q** How are you?

23 **A** All right.

24 **Q** I'm just going to ask you a few questions.
25 Earlier, you testified that you wanted Mr. DeJong to

1 contact your confidential informant, correct?

2 **A** No, I said I asked him if he was in -- in
3 attendance.

4 **Q** Did you want to speak with him?

5 **A** Did I want to speak with my confidential
6 informant?

7 **Q** Yes.

8 **A** For what?

9 **Q** Okay. You did not want to speak with him.
10 Okay. How many times did you meet with your attorney
11 prior to the plea?

12 **A** About this case?

13 **Q** Yes.

14 **A** Three days before my trial.

15 **Q** Did you discuss any possible defenses with
16 Mr. DeJong?

17 **A** Basically, yeah, I did. I discussed the
18 importance of my -- my -- not my confidential
19 informant -- to subpoena witnesses to be there
20 because they were speaking in my behalf. They never
21 came forward.

22 **Q** Okay. Mr. Valentine, do you recall telling
23 the judge that you were, in fact, guilty of the
24 charge?

25 **A** Yeah, I did tell the judge that. Like I

1 said earlier, before, I was illiterate to the law.
2 Basically, I told him that because I did not want to
3 receive that whole sentence, being that I felt like
4 you had to understand. I didn't know what to think,
5 at that time. It seemed like everything was stacked
6 against me, being that they bought the confidential
7 informant to the back.

8 Also, I meant to -- failure to mention
9 this, he had a -- it was a black lady. I don't even
10 remember her name, but I think he work for her
11 office. Before that, we were sitting in the
12 what's-her-name and we was going over my trial. I had
13 never seen her before. I had even asked her -- him to
14 ask her to go ahead and step out because I wasn't
15 comfortable with her, speaking in front of her about
16 my case because she was being judgmental about me and
17 what was going on, basically, like I was already
18 guilty.

19 So that's the reason why I went ahead and
20 pled, to keep from getting that 30 years because I
21 felt like -- I felt like everything was stacked up
22 against me. Like I said, I was a little bit law
23 illiterate then. That's what it is.

24 Q I think you answered my question.
25 Mr. Valentine, you pled guilty freely and

1 voluntarily, correct?

2 **A** Right.

3 **Q** Do you recall when you pled guilty -- do
4 you recall waiving your right to put up a defense, to
5 call witnesses on your behalf, to confront witnesses?

6 **A** Yes, I recall all of that. But I also
7 recall that -- and Mr. DeJong can attest to that --
8 that I didn't want to plead guilty to this charge at
9 all. Actually, they had me in a holding cell at
10 8 o'clock that morning. It was 4 o'clock before I
11 even went -- it was almost 3 o'clock before I even on
12 the stand or even went to court for that. Like I
13 said, I was a little bit law illiterate. I didn't
14 want to plead guilty at all, but I did -- you know
15 what I'm saying? -- for the sake of my kids, to get
16 home back to them early.

17 **Q** Okay. Mr. Valentine, do you recall the
18 judge letting you know that you didn't have to plead
19 guilty, that you could have, in fact, gone to trial,
20 correct?

21 **A** Right, I do recall the judge saying that.
22 But like I said -- like I just stated -- restated, I
23 was a little bit illiterate to the law at that time.
24 You know what I mean? I was thinking that I could go
25 ahead and plead guilty and it wouldn't affect me and

1 I could come back on my direct appeal, because I did
2 appeal it right after.

3 **Q** All right. And you recall telling the judge
4 that you had no complaints about the services that
5 you received from Mr. DeJong, correct?

6 **A** Yeah, I remember that, too. But, like I
7 said, I had to think about it at that time because
8 things was happening so fast that day, you know, like
9 I said, with all the confidential informant, with his
10 coworker, and all the things that we had discussed
11 prior to that, that's why I went ahead and pled
12 guilty.

13 **Q** Okay. One last question. You told the judge
14 that you were being truthful in your answers,
15 correct?

16 **A** Right.

17 **MS. CLEVELAND:** Thank you. I have no
18 further questions for this witness.

19 **THE COURT:** All right. Thank you. Any
20 other questions?

21 **MR. ARIAIL:** No redirect, Your Honor.

22 **THE COURT:** All right, sir. You can step
23 down.

24 **MS. CLEVELAND:** Your Honor, the State will
25 call Mr. John DeJong.

1 **MR. ARIAIL:** I --

2 **THE COURT:** Do you -- are you wanting to
3 call him?

4 **MR. ARIAIL:** I'm going to call him in my
5 case in chief.

6 **THE COURT:** Oh, okay. Okay. Perfect. All
7 right.

8 Mr. DeJong?

9 **MR. DEJONG:** I guess someone is calling
10 me.

11 **THE COURT:** You're being called.

12 **JOHN DEJONG**

13 having first been duly sworn, testifies as follows:

14 **THE CLERK:** Thank you. Please state your
15 full name for the record.

16 **THE WITNESS:** Thank you, ma'am. John,
17 J-o-h-n, William, W-i-l-l-i-a-m, DeJong,
18 D-e-j-o-n-g.

19 **DIRECT EXAMINATION**

20 **BY MR. ARIAIL:**

21 **Q** John, how are you doing today?

22 **A** I am well. Thank you, sir.

23 **Q** Good. You represented Mr. Valentine in this
24 matter, correct?

25 **A** I had that pleasure.

1 **Q** Okay. This is distribution third; is that
2 correct?

3 **A** Yes. I represented him on a number of other
4 charges, as well, but the case we're talking about
5 today is a distribution.

6 **Q** Correct. As part of this, he went and plead
7 guilty and got 15 years and 9 months; is that
8 correct?

9 **A** Ultimately, that is what happened, yes,
10 sir.

11 **Q** Okay. During this case, did you go over, I
12 guess, the evidence that could be used against him at
13 trial?

14 **A** I did. Mr. Valentine was not, particularly,
15 good about keeping appointments. I think he indicated
16 that he was in the Pickens LEC on unrelated charges,
17 probably the most time I had to talk to him.

18 **Q** Okay. As part of this, you went through it
19 and it appears there was a CI involved and some
20 audiotapes that were, I guess, utilized in this. Did
21 you go over those with him and give him what the
22 evidence was against him?

23 **A** We did not have copies of the audiotapes or
24 any videotapes, but I went through all of the written
25 discovery with him.

1 **Q** Did you go to listen to or hear the
2 audiotapes at the Solicitor's Office?

3 **A** I honestly don't recall. I think this was
4 an Easley case. I may have gone to Easley, or I may
5 have gone to the Solicitor's office. I may not have
6 done either.

7 **Q** But you had the information that was in the
8 discovery package that was, I guess, the statements
9 and, I guess, the CI statement; is that correct?

10 **A** Yes, sir.

11 **Q** Did you go over that with him and tell him
12 what the CI was going to say?

13 **A** I did.

14 **Q** As part of this, I know there were -- I
15 guess, normally in CI cases, the question is if
16 they're going to show up and testify. In this case,
17 it appears, from what he said, there was a CI that
18 was available to testify against him; is that
19 correct?

20 **A** Mr. Valentine was very adamant with me that
21 the CI was not going to show up and testify. I think
22 I probably shared with him, like I shared with many
23 of my clients that have told me that, and the CI or
24 complaining witness, or whoever, does show up, "No, I
25 did not see the CI. But that was not unusual, because

1 the Solicitor's office usually keep them cloistered
2 until they call them for the trial." I may have been
3 somewhat instrumental in him seeing his CI, but I
4 thought that was more for his benefit than anybody
5 else, in view of the fact that he was so adamant that
6 the CI was not going to show up to testify.

7 Q Okay. I guess -- so his presentation and
8 understanding on what happened, there was a CI that
9 did, I guess, go and see him while he was
10 incarcerated?

11 A I do -- well, not while he was --

12 Q In jail.

13 A -- well, not at the jail.

14 Q Okay.

15 A He was in a holding cell, Family Court --
16 what I call the Family Court holding cell in Pickens
17 County. Now I don't recall that I went down the
18 hallway with the CI or the narcs. That part, I do not
19 remember. But nonetheless, I am aware that the CI
20 went to the holding cell. Whether they spoke to him
21 or not, I don't know.

22 Q Okay. Now, as part of this, he's indicated
23 that he had witnesses and he just laid them out as
24 who would have testified that he did not sell the
25 drugs on this day?

1 **A** I'm sorry. Would you repeat that, please,
2 sir?

3 **Q** He said he had some witnesses, and he
4 stated them in his examination. I can go back and
5 tell you who they are. He said there were Samantha
6 Dodson, Georgia Burts (phonetic), Tedrick Valentine
7 and Randy Smith that he indicated would testify that
8 he did not sell drugs on this day. Do you remember
9 having a discussion with him about that?

10 **A** I do not.

11 **Q** Do you remember talking with any witnesses
12 who specifically said he didn't sell drugs on this
13 day?

14 **A** I did not.

15 **Q** Okay. So you didn't believe you had anybody
16 that could go to trial with you to be able to
17 substantiate what he was saying?

18 **A** That is correct.

19 **Q** Now, he's indicated that there was a plea
20 offer that he received or something of that nature
21 that was for 10 years. Do you have any recollection
22 of that?

23 **A** I don't. As a matter of fact, once he said
24 that I sat back there in the pew and reviewed my
25 file. I'm not saying that was not a possibility, but

1 I do not and have not, very hurriedly going through
2 my file, found such a plea offer.

3 Q You have anything that shows that you sent
4 him anything about a plea offer for 10 years?

5 A I do not.

6 Q You have anything in your file showing that
7 you got anything or had a discussion with the
8 Solicitor's Office about that?

9 A I do not. There was -- when he mentioned
10 assault and battery of a high and aggravated nature,
11 at one point in time, he was charged with a criminal
12 sexual conduct case. It is possible that there was
13 some kind of plea offer in that. Quite candidly, the
14 allegations of criminal sexual conduct, I wouldn't
15 have advised him to plead to anything on that case.
16 That was a horrible case. It should never have been
17 brought.

18 MR. ARIAIL: Okay. Your Honor, I have no
19 further questions.

20 THE COURT: All right. Yes, ma'am.

21 CROSS-EXAMINATION

22 BY MS. CLEVELAND:

23 Q Good morning, Mr. DeJong.

24 A Good morning.

25 Q How long have you been practicing law?

1 **A** Can't count that high. You do the math.
2 Licensed in 1975. 42, 43 years, something like that.
3 Long time.

4 **Q** How many years of that did you spend
5 practicing criminal law?

6 **A** Let me see. I was on a public defender
7 contract, many moons ago, in Greenville, for about
8 two or three years. I worked for the Solicitor's
9 office for about 12 years. Then, I have been the
10 Public Defender in Pickens County for just a tad over
11 18 years.

12 **Q** Okay. Can you tell me how you became
13 involved in Mr. Valentine's case? Were you retained
14 or were you appointed?

15 **A** We were appointed by the clerk's office.

16 **Q** Prior to the plea, how many times did you
17 meet?

18 **A** I can't honestly say. Again, in reviewing
19 my file, Mr. Valentine was not really good about
20 keeping appointments. We'd have an appointment; he
21 would reschedule; he would not show up. I've got
22 numerous appointments where we sent him appointment
23 letters, and then notes where he had called. Did not
24 keep his appointments. I can't honestly say how many
25 times I actually met with him.

1 **Q** Can you briefly describe the evidence that
2 the State had against Mr. Valentine?

3 **A** Basically, the evidence they had against
4 there was a CI -- CI statement, CI identifying him,
5 the purchase -- for want of a better term, the
6 purchased drugs that went into Property and Evidence
7 that were tested and came back -- I believe it was
8 crack cocaine. I'm not sure if it was crack, but I
9 think that's what it was.

10 **Q** Okay. Would you describe that evidence as
11 strong?

12 **A** As strong as any CI case can be. I've been
13 fascinated over the years. A CI can have a record 10
14 miles long, but when a jury hears their testimony,
15 they suddenly become saints and citizens of the year.

16 **Q** Do you recall discussing any possible
17 defenses with Mr. Valentine?

18 **A** I would have, if there were any. I wasn't
19 sure there were any.

20 **Q** Was it Mr. Valentine's decision to plead
21 guilty?

22 **A** Yes, ma'am, it was. Actually, I think he
23 indicated he was on the trial docket. As memory
24 serves me, I don't remember if we'd actually struck a
25 jury or not.

1 Excuse me, Your Honor. If I may look at one
2 thing real quickly here. (Reviewing.)

3 Looking at the way I normally do witness
4 lists and voir dire --

5 **THE COURT:** Can we break for just one
6 moment? I believe I saw a person in the gallery
7 saying to another person in the gallery
8 something to the effect that she's watching --
9 "I'm watching you" or "I've got my eye on you."
10 I'm concerned about her remaining in the
11 courthouse. I don't know who she was talking to,
12 and I don't know why she was saying it.

13 **THE DEPUTY:** For the time being, I had her
14 sit outside, but I'll be more than glad to have
15 her leave the courthouse.

16 **THE COURT:** Yes, sir. She's speaking to
17 someone -- she's speaking to someone on this
18 side of the room. I sat and watched it for a
19 little while but, now, I can tell she is now
20 mouthing something to someone in the room. Does
21 anybody know? Did anybody see her?

22 **MS. PARKER MCCLAIN:** Your Honor, I saw
23 her. I thought she was speaking to me, and then
24 she pointed to Ms. Johnson. I believe she was
25 addressing --

1 **THE COURT:** What was she saying?

2 **MS. PARKER MCCLAIN:** She said, "I'm
3 watching you." But I can't say that for sure.
4 She definitely -- she was staring us down
5 through.

6 **THE COURT:** Mr. Valentine, yes?

7 **MR. VALENTINE:** When I came back, she was
8 saying something about that, I guess, Ms. Teal
9 Johnson -- am I correct? -- and Mr. DeJong was
10 back there laughing or something. I guess she
11 felt like they were trying to make -- that's
12 Samantha Dodson. That's one of my witnesses. I
13 don't know what's going on, myself.

14 **THE COURT:** Well, just by way of
15 explanation -- if I could, I happen to know a
16 little bit about this situation -- Mr. DeJong
17 and Ms. Johnson used to work together. They no
18 longer work together. I think they're just --
19 probably just catching up with one another.

20 **MR. VALENTINE:** And I know that, now
21 knowing that that's who that is, Ms. Teal
22 Johnson. I had met her one time. I didn't
23 recognize her, though. But I know that,
24 personally, but I don't think she knows that.

25 **THE COURT:** And so, I -- she -- there's

1 not anything that -- they're not laughing about
2 your situation. I think they were just catching
3 up, which I heard -- which I heard them a little
4 bit before we started -- catching up.

5 **MR. VALENTINE:** May I say something before
6 we get started?

7 **THE COURT:** Yes, sir.

8 **MR. VALENTINE:** This whole PCR thing here,
9 we speaking about this -- in court about this,
10 but honestly, I'm just meeting him today.

11 **THE COURT:** Uh-huh.

12 **MR. VALENTINE:** I talked to him for five
13 minutes before. I'm just want -- this is my life
14 at stake.

15 **THE COURT:** I understand. I understand.
16 That's the reason why I wanted all of this to
17 stop that was going on, because I'm trying to
18 hear and understand what's being said. I was
19 trying to focus on what you were telling me and
20 the information you're telling me.

21 **MR. VALENTINE:** Yes, ma'am.

22 **THE COURT:** And then I'm trying to focus
23 on what Mr. DeJong is saying here today. I don't
24 -- I was being distracted by the lady saying
25 something to somebody in the gallery. That's the

1 reason I stopped. But I understand what you're
2 saying here today.

3 **MR. VALENTINE:** Basically what I'm saying
4 is, I don't think -- me, personally, I was
5 going to say this. If I had met with him before
6 we came here, because I haven't even spoke with
7 him -- but I was going to hire a lawyer. I
8 haven't spoke with this guy. Like I said, I'm
9 not prepared for this.

10 I spoke with him for five minutes at Lee
11 County. Now, for him to put me on the stand and
12 talk, I mean, I do the best I can. But me,
13 personally, I don't want to go through with this
14 right here with this lawyer. I was going to say
15 this before, but they ain't never gave me a
16 chance to speak. I tried to contact --

17 **THE COURT:** You're saying he came to Lee
18 County and --

19 **MR. VALENTINE:** No, he called me on the
20 phone for five minutes.

21 **THE COURT:** Called you on the phone and
22 talked to you on the phone?

23 **MR. VALENTINE:** For five minutes.

24 **THE COURT:** I got you.

25 **MR. VALENTINE:** Like I said, I got 16

1 years. I'm really trying to take this serious.

2 **THE COURT:** Oh, yeah.

3 **MR. VALENTINE:** I understand that, but
4 this is something that I know that he wasn't
5 prepared for.

6 **THE COURT:** I'm surprised to hear you say
7 that. I felt like he did an outstanding job.

8 **MR. VALENTINE:** Understand, he did do
9 good, but this is my life, too, at the same
10 time. At the same time --

11 **THE COURT:** Will the attorneys approach?

12 Hold on just one second.

13 Will the attorneys approach.

14 (Bench conference is held off the record.)

15 **THE COURT:** All right. I was just asking
16 the State if they had any objections to what I
17 consider to be your motion here today for a
18 continuance. And, Mr. Valentine, we have
19 started. I felt like I understood your testimony
20 very well.

21 **MR. VALENTINE:** Yes, ma'am.

22 **THE COURT:** Mr. Ariail is a very extremely
23 experienced post-conviction relief attorney. So,
24 I'm going to continue on, here today. I may give
25 you some time to supplement something, in other

1 words, send something else to me, because I'm
2 not going to rule today. I want to take under
3 consideration all the things that you said, and
4 I want to look into a few things, and that's
5 going to take me a little time.

6 I haven't finished hearing Mr. DeJong's
7 testimony, but if there's something else you
8 want to send me or if, in the interim before I
9 rule, you hire an attorney, then that's one
10 thing. We can maybe cross that bridge when we
11 get to it. But, as I said, I'm not going to rule
12 today. You can be assured of that. Because I
13 want to -- I think you raised some interesting
14 points on the stand, and I want to look into it.

15 **MR. VALENTINE:** All right. I understand
16 that. But like I said, this is my life on the
17 line.

18 **THE COURT:** I understand.

19 **MR. VALENTINE:** I'm willing to do that
20 now.

21 **THE COURT:** I got you.

22 **MR. VALENTINE:** I wasn't aware that I
23 could have hired an attorney, being that you
24 dealing with the state and it's a
25 post-conviction.

1 **THE COURT:** I got you.

2 **MR. VALENTINE:** I never was told that. I
3 never spoke with nobody that was -- I spoke to
4 jailhouse lawyers. I haven't spoke with nobody
5 more than five minutes.

6 **THE COURT:** I understand. All right. All
7 right. I understand.

8 Yes, ma'am, you can proceed.

9 **MS. CLEVELAND:** I just have one final
10 question for Mr. DeJong.

11 **THE COURT:** Sure.

12 **BY MS. CLEVELAND:**

13 **Q** Had Mr. Valentine decided to proceed to
14 trial, do you believe you were adequately prepared?

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

16 **MS. CLEVELAND:** That's all I have. Thank
17 you.

18 **THE COURT:** I'm sorry. I stopped you
19 before your last question.

20 **MR. ARIAIL:** I have no follow-up,
21 Your Honor.

22 **THE COURT:** All right. Mr. DeJong, you can
23 step down.

24 **THE WITNESS:** Thank you, ma'am.

25 **MR. ARIAIL:** That's our case, Your Honor.

1 **THE COURT:** All right. And is the State
2 planning to call any other witnesses?

3 **MS. CLEVELAND:** No.

4 **THE COURT:** Mr. Valentine, we sort of
5 stopped midway, and before I knew it, it was a
6 minute before. But I'm going to take these
7 matters under consideration. Here's what I'm
8 going to tell you, I'm going to hold off, for
9 one month, to rule on this case. If you want to
10 submit anything else, then I'd be happy to take
11 a look at anything you want to submit, and I'm
12 going to leave it open for a month.

13 **MR. VALENTINE:** What about my witnesses?

14 **THE COURT:** You're saying you've got these
15 -- well, you said that he did not subpoena your
16 witnesses here today. We were here to retry the
17 case. But you said -- you said that he didn't
18 subpoena your witnesses and that they were
19 necessary witnesses.

20 **MR. VALENTINE:** I was speaking about John
21 DeJong when we were going to trial. But my
22 witness was just in here. He asked me to have my
23 witnesses come up here today.

24 **THE COURT:** Okay. And she's -- and she's
25 here. I understand what he -- Mr. Ariail, if I'm

1 understanding the situation correctly --
2 -- and Mr. Ariail, you tell me if I'm
3 wrong.

4 -- but Mr. Ariail was asking you to have
5 those witnesses here today so it would prove to
6 me that, in fact, those witnesses would have
7 shown up, because they did show up here today.

8 **MR. VALENTINE:** Right. As I explained to
9 you, I'm incarcerated. I really --

10 **THE COURT:** I got you.

11 **MR. VALENTINE:** -- I really didn't have
12 no --

13 **THE COURT:** But you were able to get her
14 here, and that's --

15 **MR. VALENTINE:** That's my baby's mother.

16 **THE COURT:** I got you. Okay. All right. So
17 I understand where you -- I understood where you
18 were coming from, and now I understand your
19 complaint about this. I do. I believe I
20 understand it, and I want to understand it even
21 better. Just because we had to ask this lady to
22 leave here today doesn't mean that I discount
23 the fact that she was here. She, obviously,
24 showed that she will be here.

25 **MR. VALENTINE:** Right.

1 **THE COURT:** I'm not discounting that, at
2 all. I just have to keep order in the courtroom.
3 That's all.

4 **MR. VALENTINE:** Okay.

5 **THE COURT:** Okay, Mr. Valentine. Anything
6 else that you want to submit?

7 **MR. VALENTINE:** That's it.

8 **THE COURT:** Okay. Thank you. All right.

9 Will you bring our lady back in? Will you
10 bring our lady back in for just a moment? I want
11 to have a talk with her.

12 (Pause.)

13 Ma'am, tell me your name please?

14 **SPEAKER:** Samantha Dodson.

15 **THE COURT:** All right, Ms. Dodson. We had
16 a -- I asked the deputy here to remove you,
17 because I thought that I saw you making gestures
18 to another person in the courtroom. Here's what
19 I want to say to you, I spoke with Mr. Valentine
20 about it. He told me about y'all's relationship
21 and he told me that you felt like Mr. DeJong and
22 another attorney were making fun of him on the
23 stand. We have already cleared this up. Those
24 two attorneys used to work together, no longer
25 work together, and they were just catching up.

1 That had nothing to do with Mr. Valentine.

2 I just -- but I want you to know something,
3 any kind of things like that, where you say,
4 "I'm watching you" or "I've got my eye on you"
5 or something like that or whatever I could see
6 you mouthing, looking over at an attorney, I
7 take that very seriously. In fact, normally, I
8 take somebody into custody for that kind of
9 behavior -- hold on one second.

10 I take them into custody and I let them
11 stay at the Law Enforcement Center until they
12 can be appointed an attorney and come up here
13 and we can sort this out and we decide whether
14 or not to have you charged. Because of the
15 misunderstanding that happened today, I'm not
16 going to do that. Okay? I'm going to let you
17 leave the courtroom, and I'm not going to take
18 you into custody, because it was just a
19 misunderstanding.

20 But I need for you to know that if you
21 communicate any sort of threat or anything to
22 anyone involved in this case, the sheriff's
23 deputy will come out and pick you up.

24 **SPEAKER:** May I speak?

25 **THE COURT:** Yes, ma'am.

1 **SPEAKER:** Okay.

2 **THE COURT:** Very briefly, because we've
3 got a bunch of other matters.

4 **SPEAKER:** I do understand. What I said
5 was, "It was unprofessional." I been here before
6 Mr. Valentine came out. I heard them speaking on
7 Mr. Valentine. They have been making jokes, the
8 whole time, about Mr. Valentine. I felt it was
9 unprofessional, and that's what I said.

10 **THE COURT:** I got you. Okay. Listen. Like
11 I said, they are two attorneys who used to work
12 together a long time ago, now they don't work
13 together. And they saw each other today and were
14 catching up. I think it was a misunderstanding
15 on both sides and so we'll just -- we'll drop it
16 at that. I thought you said something else and
17 that's why I had you removed from the courtroom.

18 **SPEAKER:** I said, "It's unprofessional."

19 **THE COURT:** It's unprofessional? Okay.
20 Look, I thought you said something else, but
21 that's why I asked you to leave the courtroom.
22 But we got it all cleared up now, and I'm not
23 going to take you into custody or do anything
24 like that. Okay.

25 And I told Mr. Valentine I would wait one

1 month before I'm going to rule on this case, in
2 case he needs to submit anything else, but we
3 noted, for the record, that you would appear as
4 a witness if you -- if this case were to go to
5 trial again. That was -- that's what we did --
6 Okay? -- just to catch you up. All right. Thank
7 you, ma'am.

8
9 (Proceedings conclude at approximately
10 10:39 a.m.)

11
12
13
14

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Pickens, South Carolina, on this 21st day of August, 2018.

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

Teresa B Johnson
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF PICKENS)
 Demossio Montae Valentine, #242226,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

2017-CP-39-0021

ORDER OF DISMISSAL

CLERK OF COURT
 DISTRICT COURT
 THIRTEENTH JUDICIAL CIRCUIT
 GREENVILLE, SOUTH CAROLINA

MAY 21 A 6:33

This matter is before the Court by way of an application for post-conviction relief filed by Demossio Montae Valentine ("Applicant") on January 11, 2017. The Court convened an evidentiary hearing into the matter on October 25, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present at the hearing and represented by R. Mills Ariail Jr., Esquire. Rasheeda Cleveland, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, John DeJong, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, a copy of the original plea transcript, the records of the Pickens County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. In February 2012, the Pickens County Grand Jury indicted Applicant for distribution of cocaine base (crack cocaine), third offense (2011-GS-39-2047). John W. DeJong, Esquire represented Applicant. Assistant

Solicitor D. Graham Buckner, Esquire prosecuted the case. On September 15, 2014, Applicant pleaded guilty as indicted before the Honorable G. Edward Welmaker. Judge Welmaker sentenced Applicant to imprisonment for fifteen years and nine months for distribution of cocaine base (crack cocaine), third offense.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient guilty plea explanation on December 30, 2015. State v. Valentine, Appellate Case No. 2014-001991 (S.C. Ct. App. filed December 30, 2015). The remittitur was returned to the circuit court on February 10, 2016.

FACTUAL HISTORY

On November 23rd, 2010, in Pickens County within the city limits of Easley, Applicant sold .19 grams of crack cocaine to a confidential informant working under the supervision and direction of the Easley Police Department. (GP. Tr. p. 8).

PRESENT APPLICATION

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to help produce a defense in the case which" cause me to plead guilty"
2. "Violation of the 14th amendment Due Process"

II. APPLICABLE LAW

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

S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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 at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged

errors, he would not have pleaded guilty and would have insisted on going to trial: Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38; 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Counsel

IAC Allegation— Failure to Help Applicant Produce A Defense in the Case

Applicant alleges Counsel failed to “help produce a defense in the case” which caused him to plead guilty. At the guilty plea proceeding, the plea judge asked Applicant if he understood that by pleading guilty he was giving up any defenses he may have, to which Applicant replied that he understood. GP. Tr. 6. 21-25, 7, 1-3.

At the evidentiary hearing, Applicant testified that he met with Counsel before trial and

reviewed the facts of his case with him. Applicant recalled meeting with Counsel three to four days before his plea. Applicant asserted Counsel advised him of a plea for ten years for Applicant's August 2012 assault and battery of a high and aggravated nature and distribution of crack cocaine- 2nd offense charge. Applicant further asserted that before this meeting he had never been informed of this ten year plea offer. Applicant stated that he did not want to discredit Counsel but he should have subpoenaed his witnesses and he did not. Applicant also stated that he wanted to know if the confidential informant would testify at his trial but Counsel was unable to provide him with an answer. Applicant explained that the confidential informant was brought to his holding cell, and that he took this as a threat to force him to plea. He alleged that he never sold the confidential informant drugs, and only discussed alcohol with him. Applicant testified he pled freely and voluntarily to avoid a possible thirty year sentence.

Applicant further testified that he pled for the "sake of kids" so that he could get home to them. Applicant asserted that he "was ignorant to the law" and his biggest issue was that he did not know of a ten year plea offer. Applicant also testified that he pled because he "didn't know what to do." Applicant stated that he provided Counsel with at least four names of witness that he wanted subpoenaed to testify at trial. Applicant further testified that Applicant explained that he had no complaints against Counsel and that he was truthful during his guilty plea.

Counsel testified that he represented Applicant on a number of other charges in addition to the distribution of crack cocaine-3rd offense charge. Counsel could not recall the exact number of times he met with Applicant before the guilty plea but recalled that Applicant was not good at keeping his appointments. Counsel also recalled that during the time he met with Applicant he reviewed the evidence and all written discovery with him. Counsel testified that he recalled reviewing the statements of the confidential informant with Applicant. Counsel further

testified that Applicant did not provide him with names of any witnesses. Counsel explained that there was nothing in his file that showed there was a ten year plea offer in Applicant's case. Counsel further explained that it was for Applicant's benefit to see the confidential informant because he was so adamant that the informant would not show up to testify at trial. Counsel testified that it was Applicant's decision to plea.¹

This Court finds Counsel's testimony credible. Based upon this Court's observations of Applicant at the hearing and the inconsistency of his testimony, the Court finds Applicant's testimony not credible. This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Counsel is a trial practitioner who had experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions.

This Court further finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses told the plea judge that he was satisfied with his attorney. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant told the plea judge

¹ There was a break in the courtroom during Counsel's testimony. During the break, Applicant proclaimed that he did not want to continue to go forward with Mr. Mills representing him because he was not prepared. The Court construed this proclamation as a motion for continuance. The motion was denied and the evidentiary hearing continued.

he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements."). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

This Court would further find Applicant stated that he provided Counsel with at least four names of witness that he wanted subpoenaed to testify at trial. However, those witnesses were not present in the courtroom and did not present any testimony during the evidentiary hearing.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991).

Due Process Violation

Applicant alleges that he was denied due process of law. However, Applicant failed to set forth with specificity the grounds upon which these constitutional violations were based or present any evidence of a specific violation. After a review of the record, this Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

IV. CONCLUSION

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


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.J(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your

attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15 day of May, 2018.


 LETITIA H. VERDIN
 Presiding Judge
 Thirteenth Judicial Circuit

Greenville, South Carolina.

CLERK OF COURT
 THIRTEENTH JUDICIAL CIRCUIT
 GREENVILLE, SOUTH CAROLINA

2018 MAY 21 A 8:34

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on **FEB 21 2012** the Grand Jurors of Pickens

County present upon their oath:

That DEMOSSIO MONTA VALENTINE did in Pickens County, on or about the 23rd day of November, 2010, distribute, dispense, deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Cocaine Base (Crack Cocaine), a controlled substance, such distribution not having been authorized by law. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

Certified Copy
Harold P. Walker
Clerk of Court
Pickens County, SC
Dated *Jan 2017*
MB

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

Lisa Bentley

SOLICITOR

WITNESSES

Jonathan C Hamby

Easley Police Department

6/21/2011

ARREST WARRANT NUMBER

M078275

ACTION OF GRAND JURY

~~TRUE BILL~~
~~NO BILL~~

FEB 21 2012

Foreperson of Grand Jury

James C. Hyatt

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-39-^{LAB} 2047

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 21 2012

TERM 2011

THE STATE

vs.

DEMOSSIO MONTA VALENTINE

Indictment for

3039

DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)

VIOLATION § 44-53-0375(B)(3)

Certified Copy

Harold P. Walker

Clerk of Court

Pickens County, SC

Dated *Jan 20 17*

HWB