

RECEIVED  
OCT 18 2019  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to Pickens County

Honorable Alex Kinlaw, Circuit Court Judge  
—————

BRIAN EDWARD NORRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000426  
—————

APPENDIX  
—————

LARA M. CAUDY  
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

TAYLOR Z. SMITH  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Suite 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

**INDEX**

INDEX ..... i

GUILTY PLEA TRANSCRIPT (DATED AUGUST 28, 2017).....1

APPLICATION FOR POST-CONVICTION RELIEF .....11

RETURN, PARTIAL MOTION TO DISMISS, AND MOTION FOR MORE DEFINITE  
STATEMENT .....29

POST-CONVICTION RELIEF HEARING TRANSCRIPT (DATED OCTOBER 22, 2018).....38

APPLICANT’S EXHIBIT NO. 1 (EMAIL DATED MARCH 9, 2017).....81

ORDER OF DISMISSAL.....82

INDICTMENT.....94

SENTENCE SHEET .....96

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF PICKENS	)	2016-GS-39-2446 (Pickens)
	)	2017-GS-23-5088 (Greenville)
	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
BRIAN EDWARD NORRIS,	)	
DEFENDANT.	)	
_____	)	

August 28, 2017  
Pickens, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, JUDGE

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

BRANDI HINTON, ESQ.  
Attorney for the Plaintiff

STEVEN ALEXANDER, ESQ.  
Attorney for the Defendant

CHERYL A. SMITH  
Circuit Court Reporter

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

INDEX

PAGE

Sentencing of the Court

9

Certificate of Reporter

10

EXHIBITS

NO

DESCRIPTION

ID

EVD

There were no exhibits introduced.



1 charges?

2 DEFENDANT NORRIS: Yes, ma'am.

3 THE COURT: Who is that?

4 DEFENDANT NORRIS: Rodney Richey.

5 THE COURT: And is he aware of this plea here today?

6 MR. ALEXANDER: It's my understanding. I have not  
7 spoken with him directly, but it's my understanding.

8 THE COURT: And you are happy with what Mr. Richey  
9 did for you, too?

10 DEFENDANT NORRIS: Yes, ma'am.

11 THE COURT: All right. Are you under the influence  
12 of drugs or alcohol here today?

13 DEFENDANT NORRIS: No, ma'am.

14 THE COURT: Has anybody forced you to plead guilty?

15 DEFENDANT NORRIS: No, ma'am.

16 THE COURT: Has anybody promised you anything to get  
17 you to plead guilty?

18 DEFENDANT NORRIS: No, ma'am.

19 THE COURT: When you plead guilty, you give up  
20 certain constitutional rights. One is your right to  
21 remain silent about this charge. Do you know that?

22 DEFENDANT NORRIS: Yes, ma'am.

23 THE COURT: You also give up your right to a jury  
24 trial. At that trial, your attorney could call witnesses  
25 for you, cross-examine witnesses against you, and the

1 State would have to prove your guilt beyond a reasonable  
2 doubt. But when you plead guilty, you give up your right  
3 to a jury trial. Do you know that?

4 DEFENDANT NORRIS: Yes, ma'am.

5 THE COURT: In fact, a jury trial was set for today.  
6 You know that as well?

7 DEFENDANT NORRIS: Yes, ma'am.

8 THE COURT: This sentencing sheet says you're 36.  
9 How far did you go in school?

10 DEFENDANT NORRIS: I went to the 11th.

11 THE COURT: Okay. And tell me this. Have you ever  
12 been treated for any mental health disorder or substance  
13 abuse disorder?

14 DEFENDANT NORRIS: No, ma'am.

15 THE COURT: All right. And how do you plead on these  
16 charges, guilty or not guilty?

17 DEFENDANT NORRIS: I plead guilty.

18 THE COURT: Okay. You've got ten days from today's  
19 date to appeal this plea if you so choose, but you must do  
20 so in writing to this court, okay?

21 The solicitor is going to read the facts in these  
22 cases. I want you to listen because I'm going to have a  
23 question or two for you at the end, okay?

24 Yes, ma'am.

25 MS. HINTON: Thank you, Your Honor. Brandi Hinton

1 here on behalf of the State.

2 Your Honor, as to his Pickens County charges, on  
3 September the 13th of 2016, the defendant was at a Pickens  
4 County residence that was being investigated in regards to  
5 a stolen vehicle. The defendant was being questioned, and  
6 the officer asked him for consent to search and the  
7 defendant gave consent. Officers found a clear baggie  
8 containing over 6 grams of methamphetamine on his person.  
9 There's no recommendation on that case, Your Honor.

10 THE COURT: Okay.

11 MS. HINTON: As to the Greenville County charges,  
12 Allen Fretwell is the solicitor on those charges, Your  
13 Honor. On or about March 15th of 2017, deputies  
14 encountered the defendant near [REDACTED] Street in  
15 Greenville County in the course of a robbery  
16 investigation. After initially complying, the defendant  
17 took off running when he was ordered to show his hands. A  
18 deputy observed him toss what appeared to be a gun as he  
19 was running. He was eventually apprehended and found to  
20 be in possession of 1.94 grams of methamphetamine in his  
21 pocket.

22 Your Honor, there is no recommendation on the Pickens  
23 County charge. There is a recommendation on the  
24 Greenville County charge. He has 13 days credit in  
25 Pickens County and two days credit in Greenville County.

1           In conjunction with the Pickens County charge, we are  
2 dismissing an unlawful carrying. And Mr. Norris was just  
3 arrested last week on a possession of a stolen vehicle  
4 charge, which I've explained to him we do not have in our  
5 system yet so we are unable to take care of that at this  
6 time.

7           In conjunction with his Greenville plea, they are  
8 dismissing two counts of possession of meth, third  
9 offense, two receiving stolen goods and an armed robbery.

10           THE COURT: Wow. Okay. And is there a  
11 recommendation on his Greenville ---

12           MS. HINTON: Greenville, yes, Your Honor. It's ten  
13 years.

14           THE COURT: Okay. All right.

15           MS. HINTON: And he does have an extensive prior  
16 record.

17           THE COURT: Mr. Norris, you've heard the facts as  
18 stated by the solicitor. How do you plead, guilty or not  
19 guilty?

20           DEFENDANT NORRIS: I plead guilty.

21           THE COURT: Okay. I'll accept your plea as being  
22 freely and voluntarily made with the advice of extremely  
23 competent counsel with whom you say you're well satisfied,  
24 and the plea does have a substantial factual basis.

25           Yes, sir.

1           MR. ALEXANDER: Thank you, Your Honor. Obviously,  
2 the recommendation from Greenville, we don't have one here  
3 on the Pickens charge. But it's a mandatory ten years  
4 minimum, and that's what we're asking Your Honor to do.  
5 Prior to this going to trial, that was the recommendation  
6 in the Pickens case, which he turned down. If we had had  
7 the trial, the only argument would have been whether it  
8 was possession with intent to distribute or possession of  
9 meth. It was found on him. We weren't disputing that  
10 fact at all. It came back positive and all that. But it  
11 was 6 grams, but it was in one bag, no extra baggies, no  
12 scales or anything like that, so it was at least a triable  
13 case on that issue.

14           But once we kind of played out the Greenville charges  
15 and realized he wasn't getting any better deal than the  
16 Greenville stuff and he had other charges over there that  
17 he would have had to fight, even though we were still on  
18 the trial docket, he got picked up, and -- you know, he  
19 did not wish to go to trial, I guess is what I'm saying on  
20 this. I guess it would have been a moot point on whether  
21 they found him guilty of just possession, I guess is what  
22 I'm saying.

23           So we would ask Your Honor to go along with the  
24 recommendation in Greenville and do a concurrent ten years  
25 on the Pickens charge. He does have a lot of drug priors

1 and severe drug problems, so I think the ten years will  
2 certainly give him a chance to do the ATU without any  
3 issues of getting in or not. And I think he needs that.  
4 So . . .

5 THE COURT: Yeah. Mr. Norris, you look like a man  
6 who is just worn out. You just look like you're just at  
7 the end of your rope. That's how you look to me here  
8 today. I don't mean that offensively. I mean that -- I  
9 hope that means that you've decided this is the end of the  
10 road on this.

11 SENTENCING

12 THE COURT: On your Greenville charge, I'm going to  
13 give you ten years, credit for 15 days and ATU, run it  
14 concurrent to the Pickens. I've got to get you a little  
15 something extra. You've got a slew of charges, but I'm  
16 not going to go big on you. I'll give you 11 concurrent,  
17 credit for 15 days, and ATU.

18 Good luck to you.

19 MR. ALEXANDER: Thank you, Your Honor.

20 MS. HINTON: Thank you, Your Honor.

21 (WHEREUPON, proceedings concluded at 11:48 a.m.)  
22  
23  
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, CHERYL A. SMITH, 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 28th day of August, 2017.

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

February 23, 2018



Cheryl A. Smith, CVR-M  
Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )

COUNTY OF PICKENS )

IN THE COURT OF COMMON PLEAS

BRIAN NARRIS #307297  
Full name and prison number (if any) of Applicant

2018 JAN 30 A 11: 20

2018-CP-39-1105

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention KIRKLAND Corr. Inst.
2. Name and location of Court which imposed sentence PICKENS County, SC.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2016GS3902446, PWID-3<sup>rd</sup> METHAMPHETAMINE
  - (b) N/A
  - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 8/28/2017, 11 (ELEVEN) YEARS
  - (b) N/A

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) WAS NOT ADVISED THAT I COULD
- (b) INEFFECTIVE COUNSEL
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) PLEASE SEE ATTACHED REFERENCE MATERIAL (12 PAGES)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) PLEASE SEE ATTACHED REFERENCE MATERIAL (12 PAGES)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. N/A

(d) the date of each such disposition

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

NO

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

(a) which grounds have been presented

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) COUNSEL WAS DEFICIENT, LACKED THE KNOWLEDGE AND UNDERSTANDING OF THE NEVA LANDS

(b) PRESUMPTION BY COUNSEL, ONE WILL CHANGE PROBLEM

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. STEVE ALEXANDER, P.O. BOX 118-107 E MAIN ST. PICKENS, SC.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. PLEA, SENTENCING
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

STATES OFFER: PWID 2<sup>ND</sup> - 9 YEARS

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

NO

STATE OF SOUTH CAROLINA )  
 )  
County of Pickens )

VERIFICATION

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

Brian Norris

SWORN to and subscribed before me this 22  
day of January, 2018.

Melissa Spigona, (L.S.)  
Notary Public

My Commission Expires: Dec. 1, 2025

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

2018 JAN 30 A 11:20

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

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

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

  
\_\_\_\_\_  
Applicant

SWORN or affirmed to and subscribed before me this

22 day of January, 2018.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: Dec. 1, 2025

CLERK OF COURT  
SHERIFF'S OFFICE  
COUNTY OF  
SANTA BARBARA

2018 JAN 30 A 11: 20

**Steven Alexander**

---

**From:** "Hinton, Brandi" <bhinton@greenvillecounty.org>  
**Date:** Thursday, March 9, 2017 1:54 PM  
**To:** "Steven Alexander" <slalexander@thealexanderlawfirm.com>  
**Subject:** RE: [REDACTED]

I had previously offered him 10 to a PWID 2<sup>nd</sup>. I talked to his Greenville prosecutor (Fretwell) and he said if he got active time he would dismiss his charges. I can be a little more flexible on the amount of time but it will have to be something active.

Brandi Hinton, Assistant Solicitor  
 13th Judicial Circuit  
 214 E. Main Street, B-120  
 Pickens, SC 29671  
 Phone: 864-898-5905  
 Fax: 864-898-5798  
 Email: bhinton@greenvillecounty.org

**From:** Steven Alexander [mailto:slalexander@thealexanderlawfirm.com]  
**Sent:** Thursday, March 09, 2017 1:50 PM  
**To:** Hinton, Brandi  
**Subject:** Brian Norris

**CAUTION:** This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Brandi

I met with this guy today. PWID 3rd, 6 grams of meth. His has a lot of arrests for drugs on his record, but the most recent real serious one I saw conviction for was 2006. He did 4 years in 2012 for filing false police report on a felony, looks like a bunch were dismissed at that time maybe.

Anyway, he is looking at getting into an inpatient rehab, waiting to hear on that, but thought I would see if we could get this reduced down to a possession charge. Certainly it's over the weight, but no other evidence of being a dealer. He's a user, had the drug para on him where he was using it also it seems.

Let me know what you think, and what if any offers you might have. Thanks.

Steven L. Alexander, Esq.  
 Alexander Law Firm  
 107 E. Main Street  
 P.O. Box 618  
 Pickens, SC 29671  
 P:(864) 898-3208  
 F:(864) 898-3408

3/20/2017

3-23-17

Spoke to Brian Norris's mother and advised her to let him know that he does not have to appear in court on the 30<sup>th</sup>.

JFE

offer

10 yrs

PWID @<sup>nd</sup>

STATE OF SOUTH CAROLINA )  
 COUNTY OF Pickens )  
 STATE VS. )  
Brian Edward Norris )  
 AKA: )  
 Race: WHITE Sex: M Age: 36 )  
 DOB: 1981 SS#: [REDACTED] )  
 Address: Pearson Cir )  
 City, State, Zip: Easley, SC 29640-7675 )  
 DL#: [REDACTED] SID#: [REDACTED] )

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: 2016GS3902446  
 A/W#: 2016A39101043  
 Date of Offense: 9/13/2016  
 S.C. Code § : 44-53-0375(b)(3)  
 CDR Code #: 3200

SENTENCE SHEET  
10-30; 10yr \$0-50K  
 CONVICTED OF or  PLEADS

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: PWID Methamphetamine - 3rd offense

In violation of § 44-53-0375(b)(3) of the S.C. Code of Laws, hearing CDR Code # 3200  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC)  §17-25-45  
 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] 77844 [Signature] 71164  
 Hinton, Brandi Batson SC Bar# Defendant ALEXANDER, STEVEN L SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 11 days/months/years  under the Youthful Offender Act not to exceed        years  
 and/or to pay a fine of \$       ; provided that upon the service of        days/months/years and/or payment  
 of \$       ; plus costs and assessments as applicable\*; the balance is suspended with probation for       

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections. 15 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.  
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic  
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waiver Hearing  Ordered  
 Total: \$        plus 20% fee: \$         
 Payment Terms:         
 Set by SCDPPPS       

PTUP        days/hours Public Service Employment  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp.         
 May serve W/E beginning         
 Substance Abuse Counseling   
 Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$        beginning         
 \$        paid to Public Defender Fund  
 Other: ATL

Recipient:       

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-299§ (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-14(B)(1) (Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40ea
3% to County (if paid in installments)	\$ 8.25
<b>TOTAL</b>	<b>\$ 283.25</b>

Appointed PD or appointed other counsel,  
 Proviso 61.6 requires \$500 be paid to Clerk  
 during probation and shall be collected before  
 any other fees.  
 Presiding Judge [Signature]  
 Judge Code:         
 Sentence (Date): 3/16/17

Clerk of Court/ Deputy Clerk Kandi W. Wood, Jr.  
 Court Reporter: Cheryl Smith  
 SCCA/217 (07/2016)

## REFERENCE MATERIAL

2018 JAN 30 STATEMENT OF CASE, ARGUMENT AND  
REQUESTED RELIEF

CLERK OF COURT  
SOUTH CAROLINA  
GREENVILLE COUNTY

## EXHIBIT MATERIAL

OFFICE VISIT 3/9/2017 (1 PAGE)

WITH STEVEN L. ALEXANDER

NOTES: LAST DRUG CONVICTION WAS FOR  
PWID METH 1<sup>ST</sup> 2006

ACTION NEEDED: TRY FOR REDUCTION

SO A WOV - 85% + WOV MANDATORY  
SENTENCE.

E-MAIL COMMUNICATION (PAGE 1 of 2)

From: BRANDI HINTON, ASSISTANT SOLICITOR  
3<sup>RD</sup> JUDICIAL CIRCUIT

COMMUNICATION OF OFFER FOR PWID 2<sup>ND</sup> UNDER

10 YEARS. ALL GREENVILLE CHARGES DISMISSED

(FRETWELL) GREENVILLE PROSECUTOR

OFFERED 3/9/2017 - 3/20/2017. DOCUMENT PRINTED

COMMUNICATION (1 PAGE)

3/23/2017 JFE

PHONE CALL TO MOTHER, NOT CLIENT, NO

COMMUNICATION OF PWID 2<sup>ND</sup> - 10

## REFERENCE MATERIAL

2018 JAN 30 A 11:20

SENTENCING SHEET : (1 PAGE)

JUDGMENT / CASE 2016GS3902440

CLERK OF COURT

OPEN PLEA 10-30 + OR 0-50K

DWLD METH 3<sup>RD</sup> - 11 YEAR SENTENCE

AS INDICATED AND WITHOUT NEGOTIATIONS

OR RECOMMENDATION AS INDICATED (MARKED)

ON SENTENCING SHEET

HERE IN THE INSTANT APPLICATION FOR POST CONVICTION RELIEF DEFENDANT STATES THE FOLLOWING IN FORM OF GROUNDS AND SUPPORT.

DEFENDANT RESPECTFULLY REQUESTS THIS HONORABLE COURT TO GRANT DEFENDANT'S REQUEST FOR PCR APPLICATION.

COUNSEL FOR DEFENDANT, STEVEN L. ALEXANDER S.C. BAR # 71164 IN THE INSTANT CASE WAS APPOINTED AND ACCORDING TO RECORD, PRIMARY FOCUS OF LAW IS INJURY AND NOT CRIMINALISTIC.

WHERE COUNSEL'S NON-UNDERSTANDING OF THE PENALTY PROVISIONS OF THE STATUTE 44-53-370; PWID AND INTERPRETATION OF THE COMPLEX LANGUAGE SCHEME USED IS CLEAR IN THE EXHIBITED DOCUMENTS.

THAT COUNSEL DID NOT UNDERSTAND THE COMPLETE SENTENCING SCHEME PLAINLY SET FORTH BY LEGISLATURE, CREATED A PLATFORM THAT VIOLATED HIS CORE PROCESS RIGHTS TO EFFECTIVE REPRESENTATION.

COUNSEL FAILED TO ACCEPT THE LESSER PLEA NEGOTIATION ON BEHALF OF DEFENDANT AND BECAUSE OF, DEFENDANT HAD TO PLEA TO GREATER CHARGE AND SENTENCE BECAUSE OF DEFICIENT REPRESENTATION.

UNDER ATTORNEY AND CLIENT PROVISION OF THE CIVIL RULES OF PROCEDURE, PROFESSIONAL CONDUCT, AN ATTORNEY

UNDER (ABA) AMERICAN BAR ASSOCIATION AND LAW IS TO PARTICIPATE IN CONTINUING LEGAL EDUCATION (CLE) SO THAT COUNSEL CAN REPRESENT HIS CLIENTS TO THE FULLEST OF HIS ABILITY SO AS TO MAINTAIN THEIR COMPETENCY, UNDER CASE MATERIAL, CURRENT LAW, INCLUDING THE COMPLEX STATUTES AND SENTENCING SCHEMES OF THE SOUTH CAROLINA CODE OF LAWS SO AS TO AVOID MISREPRESENTATION OF CLIENTS AND THE STATES JUDICIAL SYSTEM, (IN RE STARKS S.C. 2001 341 S.C. 29, 542 S.E. 2d 726.)

THIS MODERN LEGAL ENVIRONMENT, THE MORE COMPLEX LAWS CONTINUE TO GROW AND AS SUCH CLE IS A NECESSITY AS DEFENDANT SHALL SHOW HERE WITHIN, IN ADDITION TO INADEQUATE, DEFICIENT AND INEFFECTIVE ASSISTANCE OF COUNSEL, WALKER V. STATE 407 S.C. 400 (2014).

UNDER STONE V. STATE, 419 S.C. 378 (2017) THE COURTS PROVIDE, TO CURE THE PRESUMPTION THAT COUNSEL RENDERED ADEQUATE ASSISTANCE AND EXERCISED REASONABLE PROFESSIONALISM IN JUDGMENT AND PREVAIL ON INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, DEFENDANT MUST PROVE:

1) COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND,

2) BUT FOR COUNSEL'S ERROR, THERE IS A REASONABLE PROBABILITY THAT THE OUTCOME OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT, U.S. CONST AMEND 6.

THE RESULT DID RESULT IN PREJUDICE, WHERE THE DEFENDANT DID RECEIVE A HIGHER CHARGE AND SENTENCE AS A RESULT OF COUNSEL'S FAILURE TO UNDERSTAND THE LAW HIMSELF.

THE DEFENDANT CAN SHOW THROUGH DOCUMENTS THAT COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, U.S.C.A 18th AMENDS (DUE PROCESS).

THAT COUNSEL DEFEASANTLY GUIDED DEFENDANT UNDER INADEQUATE KNOWLEDGE AND PRESENTMENT OF THE LEVEL OF CHARGES AND SENTENCING. WHERE THE STATES OFFER OF 2<sup>ND</sup> OFFENSE P.W.I.A IS A PARDONABLE OFFENSE, AND COUNSEL ADVISED DEFENDANT THAT IT WAS NOT PARDONABLE. SUBSEQUENTLY COUNSEL FAILED TO PRESENT/NOTIFY DEFENDANT OF STATES COMMITMENT IN WRITING TO P.W.I.A 2<sup>ND</sup> UNDER 10 YEARS INSTEAD OF P.W.I.A 3<sup>RD</sup> 11 YEARS WITH NO PAROLE. THIS PREJUDICED DEFENDANT AND HIS DUE PROCESS, THE RIGHT TO KNOW ALL PLEA OFFERS, HAVE ALL OFFERS AND PUNISHMENTS MADE CLEAR AND UNDERSTANDABLE BY AND THROUGH DUE DILIGENCE OF COUNSEL UNDER CIVIL RULE 407; 1.1 COMPETENCE, 1.2 SCOPE OF REPRESENTATION, 1.3 PROFESSIONAL CONDUCT, 1.4 COMMUNICATION AND DILIGENCE.

COUNSEL FOR DEFENDANT PREJUDICED DEFENDANT WHILE UNDER DURESS AND NOT UNDERSTANDING COUNSEL'S ACTIONS OR ADVICE INTO ACCEPTING A PLEA THAT WAS LEFT "OPEN" WITHOUT NEGOTIATION OR RECOMMENDATION AS INDICATED

BY DEFENDANTS SENTENCING SHEET.

WHERE COUNSEL FOR THE DEFENDANT WAS DEFICIENT IN HIS DUTIES TO REPRESENT DEFENDANT AND THERE IS REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT, LAFLER V. COOPER 182 L. Ed 2d 398 (2012), THUS SATISFYING BOTH ELEMENTS.

THE 6<sup>TH</sup> AMENDMENT REQUIRES EFFECTIVE ASSISTANCE OF COUNSEL AT CRITICAL STAGES OF CRIMINAL PROCEEDINGS, NOT SIMPLY TO PROTECT DEFENDANT AT TRIAL. DEFENDANT HAS THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT EVERY STAGE OF THE COURT PROCESS INCLUDING DURING PLEA BARGAIN PROCESS, METZBACHER V. SHANKIN 706 F.3d 356 (2013).

UNDER THE RULING IN MISSISSIPPI V. FRYE 506 U.S. 134, 132 S. Ct. 1399, 182 L. Ed 2d 379 (2012), DEFENSE COUNSEL HAS THE DUTY TO COMMUNICATE FORMAL OFFERS FROM THE PROSECUTION, TO ACCEPT A PLEA ON TERMS AND CONDITIONS THAT MAY BE FAVORABLE TO THE ACCUSED. THE NEGOTIATION OF A PLEA BARGAIN IS A CRITICAL PHASE OF LITIGATION AND IN ORDER THAT THE BENEFITS OF A PLEA BARGAIN, WHICH INCLUDE THE POTENTIAL TO CONSERVE VALUABLE PROSECUTION RESOURCES AND FOR DEFENDANTS TO ADMIT THEIR CRIME AND RECEIVE MORE FAVORABLE TERMS AT SENTENCING, CAN BE REALIZED, CRIMINAL DEFENDANTS REQUIRE EFFECTIVE COUNSEL DURING PLEA NEGOTIATIONS. THIS PREJUDICE RESULTED FROM THE

BREACH OF DUTY.

HERE DEFENDANT CAN SHOW A REASONABLE PROBABILITY BOTH THAT (THEY) DEFENDANT WOULD OF ACCEPTED THE MORE FAVORABLE PLEA OFFER HAD DEFENDANT BEEN AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL AND THAT THE PLEA WOULD HAVE BEEN ENTERED WITHOUT THE PROSECUTION CANCELING IT, SINCE THE PROSECUTOR OFFERED IT OR THE TRIAL COURT REFUSING TO ACCEPT IT, IF THEY HAD THE AUTHORITY TO EXERCISE THAT DISCRETION UNDER STATE LAW.

NORRIS ARGUES THAT WITH EFFECTIVE ASSISTANCE HE WOULD OF ACCEPTED AN EARLIER PLEA OFFER AS OPPOSED UNDER DURESS ENTERING AN "OPEN PLEA", STRICKLAND'S INQUIRY INTO WHETHER "THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT" 406 U.S. AT 694, 104 S. CT. 2052 REQUIRES LOOKING NOT AT WHETHER THE DEFENDANT WOULD HAVE PROCEEDED TO TRIAL BUT AT WHETHER HE WOULD OF ACCEPTED THE EARLIER PLEA OFFER.

WHERE BOTH ATTORNEYS HAD COMMUNICATED AND EXPRESSED INTENT OF CHARGE AND TERMS OF SENTENCE THERE IS NO REASON TO QUESTION IF THE COURT WOULD OF ACCEPTED IT.

RELIEF REQUESTED

DEFENDANT'S RESPECTFULLY REQUESTS THIS COURT TO

GRANT THIS PCR APPLICATION AND REASONS OF  
COUNSELS FAILURE TO CORRECTLY UNDERSTAND THE  
STATE SENTENCING SCHEME AND PROPERLY INFORMING  
DEFENDANT OF AND ACCEPTING THE LESSER PLEA OFFER  
AND ITS FAVORABLE BENEFITS.

DEFENDANT HUMBLY REQUESTS THIS HONORABLE COURT  
TO GRANT RELIEF IN THE FORM OF P.W. 2<sup>ND</sup> - 9 YEARS.

RESPECTFULLY,  
*Brian Norris* 1/22/18

BRIAN NORRIS # 307297

E-02-

KIRKLAND CORR JUST.

4344 BROAD RIVER RD.

COLUMBIA SC 29201

22<sup>nd</sup> January 2018

*Melissa Spigner*

December 1, 2025

STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

Brian Edward Norris, #307297

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEA  
) IN THE THIRTEENTH JUDICIAL CIRCUIT  
)

) Case No.: 2018-CP-39-0165  
)

) **RETURN, PARTIAL MOTION**  
) **TO DISMISS, AND MOTION FOR**  
) **MORE DEFINITE STATEMENT**  
)

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

I.

Brian Edwards Norris (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Pickens County Clerk of Court. In February 2017, the Pickens County Grand Jury indicted Applicant for possession with intent to distribute methamphetamine, third offense (2016-GS-39-02446). Applicant was also indicted by the Greenville County Clerk of Court in June of 2017 for another count of possession with intent to distribute methamphetamine (2017-GS-23-5088).

Regarding the Pickens County charges on September 13, 2016, Applicant was present at a Pickens County residence that was being investigated in regards to a stolen vehicle. (Gp.p.6). Applicant was being questioned when he consented to a search by the officer. (Gp.p.6). Here, it was discovered that he was in possession of a clear baggie containing six grams of methamphetamine on his person. (Gp.p.6). Regarding the Greenville County charges on March 15, 2017 deputies encountered Applicant near Serene Street in Greenville County in the course of a robbery investigation. (Gp.p.6). After initially complying, Applicant took off running when

he was ordered to show his hands. (Gp.p.6). A deputy observed him toss what appeared to be a gun as he was running. (Gp.p.6). He was eventually apprehended and found to be in possession of 1.94 grams of methamphetamine in pocket. (Gp.p.6).

Applicant was represented by Mr. Steven Alexander, Esquire. Brandi Hinton prosecuted this case for the Solicitor's Office of the Thirteenth Circuit of South Carolina. On August 28, 2017, Applicant proceeded to plead guilty to both charges of possession with the intent to distribute, third degree. Applicant was sentenced to eleven years imprisonment, to run concurrent with his second charge of possession with the intent to distribute out of Greenville County for which he received ten years imprisonment. (Gp.p.9). He was given fifteen days credit for time served and the condition of enrollment and attending of the addiction treatment unit (ATU). (Gp.p.9).

Attached to this Return and incorporated by reference are the records of the Pickens County Clerk of Court and Greenville County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the post-conviction relief application and the guilty plea transcript. 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:

- I. Ineffective Assistance of Counsel
  - a. "Primary focus of law is injury and not criminal". (Application Ap. p. 1).
  - b. "[Attorney] did not understand the complete sentencing scheme plainly set forth by the legislature". "Counsel's non-understanding of the penalty provisions of the statute 44-53-370; PWID and interpretation of the complex language scheme used is clear in the exhibited documents". (Application Ap. p. 1).
  - c. "Failed to accept the lesser plea negotiation". (Application Ap. p. 1).
  - d. "Deficiently guided Defendant under inaccurate knowledge and presentment of

- the level of charges and sentencing.” (Application Ap. p. 3).
- e. “Where the State’s offer of 2<sup>nd</sup> P.W.I.D. is a ‘parolable’ offense, and counsel advised Defendant that it was not ‘parolable’”. (Application Ap. p. 3).
  - f. “Counsel failed to present/notify Defendant of State’s commitment in writing to P.W.I.D. 2<sup>nd</sup> under 10 years, instead of P.W.I.D. 3<sup>rd</sup> 11 years with no parole.” (Application Ap. p. 3).
  - g. “Unprofessional errors”. (Application Ap. p. 4).
  - h. “Breach of Duty” (Application Ap. p. 5).
2. Due Process Violation
- a. “Defendant can show through documents that counsel’s performance fell below an objective standard of reasonableness, U.S. [Constitution amendment VI] (due process)”. (Application Ap. p. 3).
  - b. Violated right to know all plea offers, have all offers and punishments made clear and understandable by and through due diligence of counsel under Civil Rule 407; Competence 1.1, 1.2 Scope of Representation, 1.3 Professional Conduct, 1.4 Communication and Diligence”. (Application Ap. p. 3).
3. Involuntary Guilty Plea
- a. “Failed to accept the lesser plea negotiation on behalf of the Defendant and because of, Defendant had to plea to greater charge and sentence because of deficient representation”. (Application Ap. p. 1).
  - b. “Counsel for Defendant prejudiced Defendant while under duress and not understanding counsel’s actions or advice into accepting a plea that was left ‘open’ without negotiation or recommendation as indicated by Defendant’s sentencing sheet.” (Application Ap. p.p. 3-4).

Applicant seeks as relief that he receive a nine year sentence for possession with intent to distribute methamphetamine.

### III.

Applicant alleges ineffective assistance of counsel, but has failed to set forth specific facts to wholly support this allegation as it pertains to his particular interactions with his attorney, Mr. Steven Alexander, Esquire. Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit.

The Sixth Amendment of the Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E. 2d 164 (2008). Where the applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must prove that the conduct of counsel

“so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 669.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test in *Strickland*. *Id.* at 686. First, an 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, attorneys are held to an objective standard of “reasonably effective assistance” under “prevailing professional norms”. *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625, (citing *Strickland*). The proper analysis for performance is whether an attorney provided representation within the range of competency required in criminal cases. *Butler v. State*, 286 S.C. 442, 334 S.E.2d 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement”. *Id.* (Citing *Strickland* at 466 U.S. 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, the applicant must show that counsel’s deficient assistance produced “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625. With respect to counsel in a guilty plea proceeding, the applicant must show that there is a reasonable probability that, but for counsel’s errors, he would not have plead guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985).

Respondent submits Applicant cannot satisfy both requirements set forth in 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. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

## IV.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who accepts a plea agreement on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). Further, that a "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". *Blackledge v. Allison*, 431 U.S. 63 (1977). Thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton*, at 137-38, 654 S.E.2d at 874. Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." *Id.* at 138-39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

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

## V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth requisite detailed facts to support the allegation of ineffective assistance to counsel or to explain with any specificity the particular surrounding facts upon which his claim is 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). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth the exact 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.

Applicant's allegation regarding a due process violation under the Sixth Amendment of the U.S. Constitution raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

#### VII.

Additionally Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCPP.

All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained counsel, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCPP. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to

Respondent. *See* Rule 15(a), SCRPC.

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

#### VIII

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

#### IX.

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

*[Signature page follows]*

STATE OF SOUTH CAROLINA )

COUNTY OF PICKENS )

IN THE COURT OF COMMON PLEAS

2018-CP-39-0165

BRIAN EDWARD NORRIS, 307297 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )

Respondent. )

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return, Partial Motion to Dismiss, and Motion for 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 25<sup>th</sup> day of July, 2018.

  
 Judy A. C. Carey, Legal Assistant  
 For Respondent



I N D E X

(AW) - Denotes Applicant's Witness  
(RW) - Denotes Respondent's Witness

Page No.

(AW) BRIAN EDWARD NORRIS:  
 Direct Examination by Mr. Ariail.....5  
 Cross-Examination by Mr. Mitchell.....17

(RW) STEVEN LUTHER ALEXANDER:  
 Direct Examination by Mr. Mitchell.....20  
 Cross-Examination by Mr. Ariail.....28  
 Examination by the Court.....36

INDEX (CONTINUED)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Applicant's Exhibits)		
A-1	E-mail dated March 9, 2017.....	29.....	29

All Exhibits were retained by the Clerk of Court for Pickens County.

P R O C E E D I N G S

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

THE COURT: Yes, sir. Whenever you're ready.

MR. MITCHELL: May it please the Court, Your Honor.

THE COURT: Yes.

MR. MITCHELL: This is 2018-CP-39-0165, Brian Edward Norris v. the State of South Carolina. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Pickens County Clerk of Court.

In February of 2017, the Pickens County Grand Jury indicted the Applicant for possession with intent to distribute methamphetamine third offense. The Applicant was, also, indicted by the Greenville County Clerk of Court in June of 2017 for another count of possession with intent to distribute methamphetamine.

The Applicant was represented by Steven Alexander. Solicitor Brandi Hinton prosecuted the case. On August 28th, 2017, the Applicant pled guilty to both charges of possession with intent to distribute. He was sentenced to 11 years imprisonment to run concurrent with his other possession charge out of Greenville.

He's present in the courtroom today and represented by Mr. Ariail.

THE COURT: Mr. Ariail, are you all ready to proceed?

MR. ARIAIL: Yes, Your Honor.

1 Thank you.

2 May it please the Court.

3 As our first witness, I call Mr. Norris to the stand.

4 THE COURT: All right. Mr. Norris, if you would,  
5 come forward. Come forward where this Bible is right  
6 here.

7 And I'm going to ask Madam Clerk to swear you in at  
8 the appropriate time.

9 As best you can, place your left hand on the Bible,  
10 raise your right, and face me -- face the Clerk. Face  
11 Madam Clerk.

12 WHEREUPON,

13 BRIAN EDWARD NORRIS,  
14 after first having been duly sworn, testified as follows:

15 THE CLERK: Thank you.

16 You may be seated.

17 THE COURT: All right. The bailiff's going to -- or  
18 the deputy, one of the two, is going to put that  
19 microphone in front of you.

20 THE CLERK: Please state your full name for the record.

21 THE WITNESS: Brian Norris.

22 DIRECT EXAMINATION

23 BY MR. ARIAIL:

24 Q Brian, how are you doing today?

25 A All right.

1 Q Good.

2 I want to take you through a little bit of the  
3 background in regards to your case. You were represented  
4 by Steven Alexander; is that correct?

5 A Yes, sir.

6 Q There are, actually, two charges that you had, one  
7 was in Pickens County. It was PWID methamphetamine third  
8 offense; correct?

9 A Yes, sir.

10 Q And then PWID, I think, third offense in Greenville  
11 County; is that correct?

12 A Yes, sir.

13 Q Okay. Now, you went forward with these and pled  
14 guilty, from my understanding, to both of the charges on  
15 August 28th, 2017; is that right?

16 A Yes, sir.

17 Q Okay. So you pled to the PWID third offense on both  
18 of the charges; right?

19 A Yes, sir.

20 Q And you received 11 years imprisonment to run  
21 concurrent with the charge in Greenville County; is that  
22 correct?

23 A Yes, sir.

24 Q And you got 10 years on that charge in Greenville  
25 County; is that right?

1 A Yes, sir.

2 Q Okay. Now, as part of this -- and I think you were  
3 appointed counsel, and that would be Mr. Alexander; is  
4 that correct?

5 A Yes, sir.

6 Q Okay. How long after you were charged with these --  
7 and I think it began -- the charge in Pickens County was  
8 September 13th, 2016; correct?

9 A Yes, sir.

10 Q Then you got the Greenville charge on March 15th,  
11 2017; right?

12 A Yes, sir.

13 Q Okay. How long after that September 13, 2016, arrest  
14 was Mr. Alexander appointed as your attorney?

15 A I'm really not sure.

16 Q Okay.

17 A I can't say for sure.

18 Q Let's go back and kind of recreate it. Were you  
19 released on bond after that charge?

20 A Yes, sir.

21 Q Okay. So how long did you stay in jail after you  
22 were arrested?

23 A Probably a couple weeks.

24 Q A couple weeks?

25 A Yeah.

1 Q You got out. Then you found out you had  
2 Mr. Alexander appointed as your attorney; is that correct?

3 A Yeah. I had to go pay the \$40 to the --

4 Q Right. Appointment of counsel, all that stuff. He  
5 was there. When -- and just a guess, I mean, or some  
6 estimation, how long after you were released from jail did  
7 you talk to Mr. Alexander about your case?

8 A Maybe three, four months.

9 Q Okay. And how many -- when you discussed with him at  
10 your first meeting, did y'all go over the charge that you  
11 had? Because right then, you just had one charge;  
12 correct?

13 A Yeah.

14 Q And y'all -- y'all talked about the charge?

15 A Yeah.

16 Q And I think it involved a little bit of the facts  
17 where there was an investigation. Somebody came to your  
18 house looking for -- in regards to a stolen vehicle. And  
19 then you consented to a search and they found some drugs  
20 in the house; is that correct?

21 A Yes, sir.

22 Q Did you go through with him, I guess, the specifics  
23 about that and maybe any searches or any type of defenses  
24 you would have in that case?

25 A Yes, sir.

1 Q Okay. Did he explain to you what the evidence they  
2 had against you was?

3 A Yes, sir.

4 Q Did he tell you what you were looking at and the  
5 reason you were looking at PWID third offense meth -- with  
6 methamphetamines?

7 A Yes, sir -- well, we looked at my prior criminal  
8 history.

9 Q Right.

10 A And he told me my last charge was in 2006, which was  
11 over 10 years old.

12 Q So he's telling -- y'all discussed how you got to the  
13 third offense because of that 2006 conviction, I guess?

14 A Correct.

15 Q Did you ever discuss with him, well, hold on a  
16 second, you know, that's over 10 years, that shouldn't  
17 count to my enhancement?

18 A He -- he -- I've got the papers over there where he  
19 wrote down over 10 years old. But, at the time, I  
20 didn't -- I didn't know that they could -- that charges  
21 over 10 years old couldn't be used against you until I  
22 went to prison and studied it myself.

23 Q Okay. So one -- one of your, I guess, arguments is  
24 that it shouldn't have been a PWID third because one of  
25 those charges was over 10 years old; correct?

1 A Correct.

2 Q So tell -- just for the Court's reference, that was  
3 one in 2006, you had a conviction there; correct?

4 A One in 2005, 2006.

5 Q 2005, 2006. Were there any others that you had?

6 A No.

7 Q So those are the two that you had?

8 A Uh-huh.

9 Q And then this one, which would have been in 2016, I  
10 guess?

11 A Yes, sir.

12 Q Okay. Did y'all go over why these shouldn't apply,  
13 or why they shouldn't be used as enhancements?

14 A No, sir.

15 Q You don't remember having a discussion about that?

16 A No, sir.

17 Q Okay. So you went through -- you talked about your  
18 discovery. How many times do you think you met with him  
19 over the course of your case?

20 A Twice.

21 Q Twice. Okay. And during those conversations, did  
22 y'all discuss -- at some point, y'all discussed a plea  
23 offer; correct?

24 A Yes, sir.

25 Q Okay. And what did he bring you in regards to a plea

1 offer in this case?

2 A He told me it was an offer -- the State was going to  
3 recommend 10 years. And it wouldn't get no better than  
4 that. He told me that the first time I -- that I seen  
5 him.

6 Q Okay. And that was 10 years under a PWID second?

7 A At the time, yeah. He was saying that they would let  
8 me plead to a PWID second. And it would be an 85 percent  
9 sentence, non-parolable.

10 Q Okay. And that -- as part of that, too, when you got  
11 that offer, you already had the Greenville charges, too;  
12 correct?

13 A No. I caught that later on.

14 Q Okay. So, initially, you had a PWID third in  
15 Pickens. And he brought you a reduced PWID second, 10  
16 years; correct?

17 A Yes, sir.

18 Q Okay. And what was your response to that?

19 A I turned it down because, I mean, he -- he told me it  
20 was a -- it was going to be an 85 percent sentence,  
21 non-parole. And I turned it down.

22 Q Okay.

23 A I -- I didn't think that sounded right. But he said  
24 it was because it was marked serious on the guilty plea.

25 Q Okay. So you didn't want a PWID second serious

1 because it was 85 percent. Is what you're saying?

2 A Yeah. I -- the way I was thinking -- the way I was  
3 looking at it is if second was going to be 85 percent and  
4 a third was 85 percent, why not try to play it out a  
5 little bit?

6 Q But, I mean, did you have any discussions with him  
7 during this that PWID second carries a different range  
8 than a PWID third, which you could get more time on?

9 A Yeah. 10 to 30 on a third, and zero to 30 on a  
10 second.

11 Q Right. So you were looking at a mandatory minimum of  
12 10 on the third?

13 A Yes, sir.

14 Q And that's what you were getting offered right there.  
15 So what was your thinking about why you --

16 A That I might as well just play it out and take the  
17 third, because they was going to recommend 10 on the  
18 second.

19 Q Okay. So you made a decision, I'm not going to  
20 accept that, I'm going to see how far I can play this out?

21 A Yeah.

22 Q Okay. Did you tell him that? Did y'all discuss that  
23 and how that could affect you?

24 A Yeah.

25 Q What'd he tell you about that?

1 A They'd put me on the trial docket.

2 Q Okay.

3 A He told me I'd be put on the trial docket.

4 Q Okay. And you were aware that if you went on the  
5 trial docket, you'd be going there for PWID third;  
6 correct?

7 A Yes, sir.

8 Q Did y'all discuss it -- if you go on the trial  
9 docket, the likelihood of getting a plea back for a PWID  
10 second is non-existent, or did -- what'd he tell you about  
11 that?

12 A He didn't. We didn't talk about it.

13 Q He -- he didn't tell you that if you're on the trial  
14 docket, it's not likely you're going to get that PWID  
15 second charge back -- I mean, or plea back?

16 A They just put me on the trial docket and we didn't  
17 discuss it that much.

18 Q Okay. Now, we've discussed -- I think one of the  
19 issues I tried to go through a little bit here is about  
20 that plea deal and getting that plea offer. Are there  
21 other things that you -- you want to raise with the Court  
22 in regards to his representation of you that was  
23 ineffective, or you think he didn't do?

24 A I don't think that -- I mean, I know now that he  
25 didn't look at my prior criminal history correct. I've

1 raised that issue.

2 Q Okay. Now -- and I know you didn't -- and let me go  
3 back. Did you appeal?

4 A No, sir.

5 Q Okay. When did you find out or know there might be  
6 an issue in regards to getting an enhancement for PWID  
7 third?

8 A I -- I -- I wrote him. I wrote Steven Alexander and  
9 asked him for my Brady 5 and 6 material. And when I got  
10 my Brady 5 and 6 material, I started studying more about  
11 the -- the drug laws myself.

12 Q Okay. So that's -- those -- those are the issues  
13 we've discussed. I want to make sure you -- if there's  
14 anything else that I've missed during our discussions, or  
15 anything that we've -- we've talked about that you want to  
16 raise before Judge Kinlaw here today?

17 A The -- the charge out of Greenville, I never knew I  
18 had a third offense distribution out of Greenville. I  
19 went -- I got arrested for a possession of an LSD charge.  
20 I bonded out. I've got the papers with me on -- on the  
21 table, my bond papers, the original arrest warrant, and...

22 Q Do you remember pleading guilty to that?

23 A At -- at the time when I pled guilty, I didn't  
24 really -- really realize I was signing a third offense  
25 distribution out of Greenville.

1 Q Okay. You -- you don't remember anything about that?

2 A No, sir.

3 Q Okay. Did y'all discuss -- and I'm going back --

4 MR. MITCHELL: Your Honor, I'm going to object at  
5 this time. The application that the Applicant's filed  
6 alleges the charges in Pickens County.

7 THE COURT: Right.

8 MR. MITCHELL: It doesn't reference in the  
9 application anything about a Greenville charge, any  
10 grievances with the attorney from Greenville. So I object  
11 to any amendment at this time.

12 THE COURT: All right. And that's why I was looking  
13 through the application, Counsel. And I didn't see  
14 anything in reference to a Greenville charge.

15 So I'm -- I'm going to go ahead and sustain that  
16 objection.

17 MR. ARIAIL: Okay.

18 BY MR. ARIAIL:

19 Q Are there other items that you want to raise outside  
20 of that that deal with that Greenville charge?

21 A He -- Alexander represented me on the Greenville  
22 charges and the Pickens charges in -- in the Pickens  
23 County Courthouse.

24 Q I understand. And you put as part of your  
25 application -- you just got the one charge from Pickens is

1 what we're talking about; is that --

2 A Yeah, I mean...

3 Q Are there things in that Green -- that -- excuse me,  
4 in that Pickens charge that you want to say that he did  
5 that -- in addition to what we've talked about now?

6 A No, sir.

7 THE COURT: Let me ask you this. And I didn't mean  
8 to cut Counsel off.

9 But is this one of these situations where you've  
10 got -- you've got the Greenville charge, and you've --  
11 you've got the Pickens charge, and you took both pleas in  
12 Pickens?

13 MR. MITCHELL: That's my understanding, Judge.

14 MR. ARIAIL: Correct.

15 THE COURT: So both pleas for the -- for the  
16 Greenville charge, as well as the Pickens charge, both of  
17 those took place in Pickens County?

18 MR. MITCHELL: Same time --

19 MR. ARIAIL: Correct, same time.

20 THE COURT: Same time?

21 MR. MITCHELL: Yes, sir.

22 THE COURT: All right.

23 MR. ARIAIL: And I have no further questions.

24 THE COURT: Mr. Mitchell.

25 MR. MITCHELL: Thank you, Your Honor.

CROSS-EXAMINATION

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

BY MR. MITCHELL:

Q Good morning, Mr. Norris.

How are you?

A All right.

Q So how many times did you meet with Mr. Alexander prior to pleading guilty, just for the record again?

A Twice.

Q Okay. So I just want to make sure I have this correct. So during those meetings, you guys talked about your criminal history?

A No. We never talked about my criminal history. We went over my criminal history. And he circled the 2005, 2006 charge and said, It's over 10 years old.

Q Okay. So when did you plead guilty to that charge?

A 2005 and 2006.

Q So you pled guilty in both years? What year did you plead guilty?

A In 2005 -- one in 2005, and one in 2006.

Q Okay. And so when did you plead guilty to the -- or when were you arrested for this Pickens County charge?

A 2017.

Q You were arrested in 2017 on the Pickens charge?

A Uh-huh.

Q Okay. And you pled guilty in 2017?

1 A Yes, sir.

2 Q Okay. And so let me ask you about this plea offer.  
3 So the State extends to you a plea offer. Mr. Ariail  
4 presents it to you; right?

5 A Yes, sir.

6 Q And you reject the plea offer; right?

7 A Yes, sir.

8 Q Okay. Based on Mr. Alexander telling you something,  
9 or you just didn't want to take it, or what?

10 A Yeah. He -- he told me that it -- that it would have  
11 been an 85 percent sentence non-parolable.

12 Q So you're saying he advised you that it was  
13 85 percent?

14 A Yes, sir.

15 Q Okay. And do you remember the day that you pled  
16 guilty?

17 A Yeah, 8/28/17.

18 Q 8/28/17?

19 A Uh-huh.

20 Q Okay. So I just want to make sure. So the Pickens  
21 County charge, you were arrested in 2017, and you pled  
22 guilty in that same year?

23 A Yes, sir.

24 Q Okay. And so when did you -- when were you arrested  
25 in Greenville?

1 A 2017.

2 Q Okay. So they just moved the cases that quick?

3 A Yeah.

4 Q Okay. So do you remember the Judge asking you if you  
5 had any complaints with your lawyer?

6 A Yes, sir, I do.

7 Q And do you remember telling the Judge that you were  
8 satisfied with your lawyer?

9 A At that point in time, I was satisfied until I -- I  
10 studied the laws myself and found out what I know now  
11 about them.

12 And I, also, discovered in the e-mail from Brandi  
13 Hinton to Alexander that she was recommending under 10.  
14 And Alexander told me that it was a 10-year plea and it  
15 wasn't going to get no better than that.

16 Q Okay. So let me ask you this. At any point, did you  
17 represent yourself prior to Mr. Alexander representing  
18 you?

19 A No, sir.

20 Q So you were never pro se at all at any time?

21 A No, sir.

22 MR. MITCHELL: Okay. That's all the questions I have  
23 for this witness, Judge.

24 THE COURT: All right. Anything else?

25 MR. ARIAIL: Nothing further, Your Honor.

1 THE COURT: All right. I have no questions.

2 You can step down.

3 MR. ARIAIL: Your Honor, that is our case.

4 THE COURT: All right. Mr. Mitchell, are you ready  
5 to proceed?

6 MR. MITCHELL: Yes, sir, Your Honor.

7 The State would call Mr. Alexander to the stand.

8 THE COURT: All right. Mr. Alexander, come forward.

9 THE CLERK: Mr. Alexander, please place your left  
10 hand on the Bible and raise your right hand.

11 WHEREUPON,

12 STEVEN LUTHER ALEXANDER,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 You may be seated.

16 And please state your full name for the record.

17 THE WITNESS: Steven Luther Alexander.

18 DIRECT EXAMINATION

19 BY MR. MITCHELL:

20 Q Good morning, Mr. Alexander.

21 How are you?

22 A Good.

23 Good morning.

24 Q How long have you practiced law here in South  
25 Carolina?

1 A Since 2003.

2 Q Okay. And how much of that time has been devoted to  
3 criminal law?

4 A All of it.

5 Q All of it?

6 A I mean, I -- I'm a general practitioner, but I've  
7 done criminal law since the beginning, so.

8 Q Okay. In this particular case, were you appointed or  
9 retained?

10 A I was appointed on this case.

11 Q Okay. And if you could, just for the Court's  
12 knowledge, if you could give us a brief back view of the  
13 facts of the case and what led Mr. Norris to be charged.

14 A Sure. So he was arrested for possession with intent  
15 to distribute. If I'm remembering correctly, the alleged  
16 drugs, which, eventually, tested positive, I think, for  
17 six or so grams if I'm remembering right, it was well over  
18 the presumptive limit of one gram. But they were found on  
19 him.

20 The officers gave a statement that he consented to a  
21 search, which Mr. Norris disputed that he gave consent.  
22 But they found the drugs on him. They found some drug  
23 paraphernalia on him. And he was arrested September or so  
24 of 2016.

25 And I was appointed January 3rd, 2017. I got the

1 discovery in February. I sent it to Mr. Norris. And then  
2 I had my -- at least, as far as my -- my file shows, I  
3 think Mr. Norris is correct on -- on the -- how often we  
4 met. We met one time in my office in early March. And  
5 then I thought we'd met, at least, a couple times at the  
6 courthouse, but it may have only been once. I do  
7 remember -- in looking back at my notes, he -- there was a  
8 roll call for the March term that -- that I got continued  
9 because I had another court date. And that was based on  
10 some e-mails I had sent.

11 And then I met with him in the April term where we  
12 discussed the case some more. And we had -- in -- in my  
13 March appointment with him, we had went over the evidence  
14 that they had. We did discuss his prior record. And what  
15 I remember discussing about that, we, certainly, looked at  
16 the fact that they were older drug charges and I -- about  
17 being properly enhanced, and all that.

18 But we did discuss the fact they were older. And  
19 that it was in my opinion that that could potentially play  
20 in his favor that they were older charges. That he'd kind  
21 of stayed clean to some degree for a significant period of  
22 time. And that may be able to get the Solicitor to agree  
23 to, you know, drop it down to a possession charge, or  
24 something like that.

25 At that time, I wasn't aware -- I don't know if he'd

1       been arrested yet or not on the Greenville charge. But if  
2       he had, he didn't make me aware of it at that time, I  
3       don't believe anyway.

4               And then I had reached out to the Solicitor,  
5       Ms. Hinton, after that meeting, basically, telling her  
6       that, that I'd -- that he was a user, he wasn't a dealer.  
7       He did have a -- you know, a large amount on him. It was  
8       over the limit. But given the -- the time between the  
9       charges, you know, if she would be interested in reducing  
10      it to a possession charge and work out some kind of plea.

11              He, at the time, had shown an interest in getting  
12      into some inpatient rehab. And he told me he was working  
13      on that. And that's when she sent the --

14      Q       Let me stop you right there.

15      A       Yeah. Go ahead. Sorry.

16      Q       During the course of these conversations, did  
17      Mr. Norris ever indicate to you that he didn't understand  
18      what you were saying to him, or anything to that extent?

19      A       No. He -- he seemed to understand everything and  
20      that -- the evidence they had against him, that his prior  
21      charges is what caused it to be enhanced to the third  
22      charge.

23      Q       Okay. So after you -- you met with him, you got in  
24      contact with the Solicitor. Did she extend a plea offer  
25      to Mr. Norris?

1       A     Yeah.  She sent the e-mail that Mr. Norris was  
2       referring to, which was really the only written plea offer  
3       I ever got from them.  I never got the normal formal plea  
4       offer that you would get in a case for some reason.

5               And it just said that -- that she had previously -- I  
6       guess referring to -- prior to my involvement offered him  
7       10 years to a PWID second, and then she mentioned a  
8       Greenville prosecutor at that time.  And I think this  
9       e-mail was the same day that I met with him.

10              So he must have already been charged.  Clearly, he'd  
11       already been charged with the Greenville offense.

12       Q     And I guess to follow-up with that.  To your  
13       knowledge, had -- had Mr. Norris been represented by  
14       somebody before you had been appointed?

15       A     Not on the Pickens charge.

16       Q     Okay.

17       A     I never represented him on the Greenville charge,  
18       except for the limited purpose of doing the plea.  Symmes  
19       Culbertson represented him is my understanding on the  
20       Greenville charge.  And he confirmed that -- you know,  
21       that he was going to plead to that charge the day he pled.

22       Q     And you may not know the answer to this question, and  
23       that's okay.  Do you know if Mr. Norris was pro se and the  
24       offer was extended to him prior to you being involved at  
25       all?

1 A I -- I don't know that. All I know is what  
2 Ms. Hinton said, that she'd previously offered him 10.  
3 That led me to believe that she had sent a letter to him  
4 directly. But I never -- I never asked Mr. Norris that.  
5 And it never -- never came up really as a relative point.  
6 Because that -- that was their offer at that time.

7 Q Okay. So safe to say she may have extended that  
8 before, it still was the present offer. Did you discuss  
9 that offer with Mr. Norris?

10 A I did. And -- and in the e-mail she sent, it said  
11 that she'd offered him 10 before and she might be a little  
12 more flexible on time. It wasn't anything specific.

13 But -- and so the next time we really talked was at  
14 the courthouse in -- on April 25th where we went over all  
15 that. And I -- I talked with Ms. Hinton again that day  
16 and I confirmed what her offer was, which was 10 years to  
17 the reduced charge of a second offense. And then, at that  
18 point, they were not willing to dismiss the Greenville  
19 charge, the Greenville solicitor wasn't.

20 And so a plea would have, also, involved -- or, at  
21 least, that charge would have still been out there. He  
22 could have pled to the Pickens charge by itself, I guess.

23 Q So what was -- what was the Applicant's response  
24 to --

25 A I tried to get the Solicitor to extend the time that

1 she -- her position was that that was the drop dead date.  
2 It was either accept the plea offer on that day or she was  
3 going to withdraw it and, eventually, put it on the trial  
4 docket.

5 And I explained that all to him. And he decided not  
6 to accept the offer. I had -- I went over -- I had him  
7 sign a statement saying what the offer was, and that he  
8 was rejecting it. And there's language in there about it  
9 that it would be withdrawn after that date. And...

10 Q Okay. And -- and as a follow-up question to that,  
11 were -- were there ever any discussions about parole  
12 eligibility, time served in prison, anything like that?

13 A If there was on parole, I would've -- my -- I  
14 would've said that I don't know whether it's parole  
15 eligible or not, that I -- my general position is I don't  
16 advise on parole eligibility because I don't know the  
17 answers to most of those questions, so. And, generally,  
18 it's kind of a moot point if -- what the offer is. And it  
19 was in this case. Because the offer wasn't getting any  
20 better.

21 And you're -- the Solicitor kind of had hands tied on  
22 this to some degree. Because she was willing to reduce it  
23 to a second offense, but only if he accepted the 10 years.  
24 That's my recollection of it. It wasn't even -- it wasn't  
25 even an option for, like, a straight-up plea to the second

1 offense because he kind of -- she had the third offense  
2 hanging over him with a mandatory 10.

3 So as far as the amount of time served, I probably --  
4 my recollection of it is we discussed the possibility that  
5 it was -- that it would be an 85 percent sentence, based  
6 on it being the maximum of 30 years. But that -- I -- I,  
7 generally, tell them -- especially on drug offenses  
8 because I know there's case law out there about what prior  
9 offenses count as far as making it 85 percent or not.

10 So my recollection is that I discussed the  
11 possibility that it was probably -- could be an 85 percent  
12 charge, but there's a possibility it might not have been,  
13 depending on his prior offenses, whether they qualified or  
14 not as far as the Department of Corrections was concerned.  
15 But I, generally, tell all my clients, assume you're going  
16 to do the whole amount when deciding the case -- deciding  
17 to take the plea, even though, you know, generally, you  
18 never do the whole amount, you know.

19 Q Let me ask you, so Mr. Norris got 11 years. What was  
20 the potential exposure?

21 A On the Pickens charge, it was 30 years. What he  
22 ended up pleading to was 10 to 30 years is my  
23 understanding. They -- he had a -- I believe he had an  
24 unlawful carrying charge out of that same thing for  
25 Pickens. I don't know if I was ever officially appointed

1 on that. But that, apparently, got dismissed at the plea.

2 And then he pled to the Greenville charge, which was  
3 a 10 to 30. I didn't represent him on that -- over the  
4 course of that. But it was 10 to 30 on that, too, I  
5 believe.

6 Q And the transcript may bear it out. But do you know  
7 if there were other Greenville charges that were dismissed  
8 because he pled guilty or not?

9 A I believe there were. My notes say that all other  
10 charges were dismissed. So I don't know what those were.

11 MR. MITCHELL: Okay. Please answer any questions  
12 Mr. Ariail may have for you.

13 Thank you so much.

14 THE COURT: Mr. Ariail.

15 MR. ARIAIL: Thank you.

16 May it please the Court.

17 CROSS-EXAMINATION

18 BY MR. ARIAIL:

19 Q Mr. Alexander, how are you doing today?

20 A Good.

21 Q Good.

22 So you represented him solely on this PWID third  
23 charge in Pickens; is that right?

24 A That's right.

25 Q Okay. Now, I've got the e-mail. And I think Brandi

1 Hinton sent it to you on March 9th, 2017. Let me see if  
2 you -- if you remember seeing it from her -- or I think  
3 you sent her one, and then she responded?

4 A That's correct. That looks like it.

5 MR. ARIAIL: Your Honor, if I could put this in as  
6 Exhibit No. 1 for the Applicant.

7 THE COURT: Any objection?

8 MR. MITCHELL: Without objection, Your Honor.

9 THE COURT: All right. Without objection, that'll be  
10 Exhibit No. 1 on behalf of the Applicant.

11 (WHEREUPON, Applicant's Exhibit No. 1 was marked for  
12 identification and admitted into evidence.)

13 BY MR. ARIAIL:

14 Q As part of this e-mail -- you might have another copy  
15 in your file.

16 A I do.

17 Q You do. I'm going to reference it.

18 A Yeah. I've got it.

19 Q It indicates -- I think you say he's -- he's got a  
20 PWID third. And then she said she previously offered him  
21 10 to a PWID second; is that correct?

22 A That's correct, yes, sir.

23 Q Okay. Now, as part of that, did you -- during your  
24 discussions with him, I guess y'all had some discussions  
25 about a PWID second and trying to get it lowered down; is

1 that correct?

2 A We did, yeah. I mean, we -- we, also, talked about  
3 trying to get her to just do a -- do it to a possession  
4 charge.

5 Q Yeah.

6 A And at some point -- I don't know if it was at that  
7 first meeting or our second meeting, we discussed -- and  
8 it may, actually, have been right before he pled because  
9 he was on the trial docket. But we discussed that if it  
10 went to trial, our best argument was that, I mean, they  
11 got the presumptive weight, but that he was -- it was for  
12 his personal use and he should only be convicted of  
13 possession versus possession with intent to distribute.  
14 But that was kind of a long shot given the amount that he  
15 had on him.

16 Q Okay. And as part of that, the PWID second, he  
17 was -- he was aware that it carried less time than the  
18 PWID third; correct?

19 A He was, at least, the minimum sentence. He was aware  
20 that the second was zero to 30.

21 Q Right.

22 A Whereas my understanding of the third was 10 to 30.  
23 And that the 10 was -- the Judge couldn't, at least,  
24 sentence him to less than 10.

25 Q Right.

1 A It had a mandatory minimum sentence.

2 Q I mean, did y'all talk about pleading straight up to  
3 PWID second and see what we get?

4 A Well, my recollection of it is -- I was thinking  
5 about that. And I, initially, thought that that was an  
6 option. But now that I think back, I -- I don't even  
7 think that was an option. Because the Solicitor -- he was  
8 charged as a third and the deal for reducing it to a  
9 second was you take 10 years.

10 Q Okay.

11 A So I -- that's, at least, my recollection today is  
12 that -- that, normally, that is an option.

13 Q Right.

14 A But I don't think it was in Mr. Norris' case because  
15 she was going to say, well, I won't reduce it to a second  
16 if he pleads straight up.

17 Q Okay.

18 A Which -- which was the same for him because the  
19 minimum 10 on a third offense. So it's certainly -- you  
20 know, it was a bad position for him to consider,  
21 certainly.

22 Q Right. So it -- it didn't look like it could be a  
23 straight up. So you -- you said it was either PWID second  
24 10 years, which he said -- what was his response in  
25 regards to that when y'all had that discussion?

1 A I think -- along the lines of what he testified to  
2 was -- because, at that point, he had the Greenville  
3 charge, which, at least, in our April meeting at the  
4 courthouse, they were not willing to reduce it down from a  
5 third offense. And it was a 10-year minimum on that is my  
6 understanding, even though I didn't -- I didn't have that  
7 offense for him.

8 And so he was kind of stuck. Because he could -- he  
9 could have pled -- my recollection was it was kind of a  
10 universal offer. You, basically, take the Pickens charge,  
11 add a second offense, but the Greenville charge is not  
12 going to get any lower.

13 Q Right.

14 A I think he -- we probably could have pled him just to  
15 the Pickens offense, but he was -- still had that  
16 Greenville offense out there. And -- and that's kind of  
17 how it played out, I think, when he, ultimately, pled off  
18 the trial docket. He, eventually, at least, realized they  
19 were not going to reduce the Greenville one any further --

20 Q Right, right.

21 A -- so it -- you know, it was kind of a moot point to  
22 try to delay it any further. Because the Greenville  
23 charge was out there, so.

24 Q Right. Do you think -- and we've heard parole  
25 eligibility come up. Do you think that if he was aware --

1 I mean, I think he thought it was 85. If it could have  
2 been 65 or if there was any chance for that that he would  
3 have taken the PWID second?

4 A I mean, that was the only incentive, I guess, he  
5 could have had to take the second offense at 10 years, in  
6 my opinion, with it being 65 to 85 percent. But that was  
7 kind of a moot point because he was getting 10 on the  
8 Greenville charge, which was a third offense.

9 So, at least, from my recollection, our discussion  
10 was I -- I believe I did discuss with him that there could  
11 be a difference between a 65 and 85 percent, that best  
12 case scenario for him was that the second offense at 10  
13 years was 65 percent, or around that range. But I  
14 couldn't guarantee him that it was, so.

15 Q Right. I mean, this offer on March 9th, I mean, I  
16 guess do you take this as an offer, the e-mail that she  
17 sent back?

18 A Well, to some degree. But -- but she did -- her last  
19 line was that she could be a little more flexible.

20 Q Right.

21 A So I took that to mean that we could negotiate  
22 further. And then when we did, it, actually, got worse.  
23 Because they -- they weren't willing to dismiss the  
24 Greenville charge once we talked further, so.

25 Q Well, that's what I'm trying to figure out. Because

1 here, it sounds like she's willing to offer him 10 under a  
2 PWID second. And then she says, I talked to his  
3 Greenville prosecutor and he said if he got active time,  
4 he would dismiss his charges, which would be the PWID  
5 third?

6 A Correct.

7 Q I can be a little more flexible on the amount of  
8 time, but it will be -- have to be something active. I  
9 take that as -- and I don't want to put words in your  
10 mouth. But it's a -- he could plead to a PWID second, he  
11 could possibly get less than 10, and he's going to get the  
12 icing on the cake of I'm going to get rid of the PWID  
13 third in Greenville.

14 A And that's -- and that's how I took it is that he --  
15 that she was offering 10, the Greenville charge would go  
16 away. And we might get a little bit better than 10. And  
17 then when we got to court in April, that was not the  
18 offer.

19 I, certainly, showed her that e-mail. And she said,  
20 Well, I'm sorry. I'm not doing that any more. And the --  
21 and Mr. Fretwell wasn't willing to dismiss for whatever  
22 reason in Greenville anymore, which wasn't her case. But  
23 she said she was just relaying what -- I don't know if  
24 they -- you know, they got together on that or not. But,  
25 at least, she told me that was his position at that time.

1 Q And so you -- when you got to April 25th, 2017, you  
2 were stuck with either a PWID second with a recommendation  
3 of 10 years?

4 A Correct.

5 Q And no -- I guess no understanding -- or you weren't  
6 getting the Greenville charges dismissed?

7 A They -- at that point, they were not being dismissed.  
8 It would not have been -- would not have been part of the  
9 plea where we could have put on the record the Greenville  
10 charge was getting dismissed.

11 Q Okay.

12 A It would have still been out there.

13 Q Okay. And do you think he understood during this  
14 whole process kind of what was going on and...

15 A I mean, I think he did. I know -- I can't remember  
16 if somebody was with him in my office visit or not, if it  
17 was just him. I kind of think his girlfriend might have  
18 been there.

19 But the -- at the courthouse, when I met with him, he  
20 was there. I think it was his mother and his girlfriend  
21 were, also, there. And we -- we had lengthy discussions  
22 about the options, and all that stuff.

23 Q Right.

24 A I mean, he didn't appear high, or intoxicated, or  
25 anything like that, you know.

1 Q Okay.

2 A And that's -- that's when he turned down the offer.

3 Q He turned down the offer on April 25th, 2017;  
4 correct?

5 A Right.

6 Q Knowing that he was going to go on the trial docket  
7 for PWID third?

8 A Right, yeah. I -- I put in there the offer would be  
9 withdrawn. And maybe the writing isn't explicit. But  
10 I -- I would have told him that the offer would be  
11 withdrawn. The standard practice in Pickens is that they  
12 do not make plea offers off the trial docket.

13 Q Okay.

14 A It might happen once in a blue moon, but don't count  
15 on it. It's, you know, 99 percent not going to be an  
16 offer again in this case.

17 MR. ARIALL: Okay. Your Honor, I have no further  
18 questions.

19 THE COURT: I -- I've got a couple.

20 EXAMINATION

21 BY THE COURT:

22 Q So --

23 A Yes, sir.

24 Q -- as it relates to the Pickens charge -- you know,  
25 both of these were handled at the same time. As it

1 relates to the Pickens charge, he pled straight up on that  
2 charge?

3 A He did off the trial docket.

4 Q Off the trial docket. And there was a recommendation  
5 of 10 years on the Greenville charge?

6 A That's right.

7 Q All right. I'm looking at the transcript --

8 A Yes, sir.

9 Q -- and I'm looking at Page 7. So he had a number of  
10 other charges. I'm just going to read. He had a  
11 possession of stolen vehicle charge in Pickens that was --  
12 was not dealt with, or was dismissed, or -- or -- because  
13 I'm really unclear as to -- it's -- in the transcript, it  
14 says, In conducting -- in conjunction with the Pickens  
15 County charge, we are dismissing an unlawful carrying,  
16 which -- and Mr. Norris just -- was just arrested last  
17 week on a possession of a stolen vehicle charge, which  
18 I've explained to him that we do not have in our system  
19 yet. So we're unable to take care of that at this time.

20 Did you ever know -- so that was a charge that they  
21 were just dismissing, too, over in Pickens. You weren't  
22 representing him on that, were you?

23 A I wasn't appointed on that. And that was probably  
24 the first time I was hearing about it.

25 Q All right.

1 A So I -- I don't know whether that was dismissed or  
2 not, to be honest.

3 Q Then the lawyer that he had in Greenville -- I think  
4 there was some mention of Mr. Culbertson. But I -- when I  
5 read the transcript, it was Rodney Richey. Rodney  
6 Richey's name was in the transcript, not Mr. Culbertson's.  
7 But -- but in conjunction with the Greenville charge,  
8 there were several other charges. There were two  
9 counts -- I'm just reading the transcript on Page 7. They  
10 were dismissing two counts of possession of meth, which  
11 was a third offense, two receiving stolen goods, and an  
12 armed robbery.

13 So all of those Greenville charges were being  
14 dismissed as a result of the 10-year recommendation on the  
15 drug charge?

16 A Yes, sir. That -- and I -- I got him signed up for  
17 that plea as part of the --

18 Q And he knew all these other charges -- the two counts  
19 of meth third offense, two counts -- two receiving stolen  
20 goods charge, and the armed robbery, he knew all that was  
21 being dismissed part and parcel because of the plea on  
22 the -- on the drug charges and the 10-year  
23 recommendations?

24 A He did, Your Honor. And I -- my record had that  
25 Symmes Culbertson represented him. I -- I could be wrong,

1 but --

2 Q Well, the only reason I said that is because I think  
3 on the -- and I was looking through the transcript just a  
4 minute ago. Maybe on Page --

5 MR. ARIAIL: 4.

6 BY THE COURT:

7 Q 4, it had Rodney Richey's name.

8 A Right. If I'm remembering right, I -- I think I --  
9 whoever it was, I tried to reach them by phone prior to  
10 it --

11 Q Right.

12 A -- but I don't think I ever got them. So I just  
13 talked with Mr. Norris. And if he was willing to -- he  
14 was willing to accept the plea regardless of that, so.

15 Q All right. But, irregardless, once -- once the --  
16 the plea was done, whatever -- it's your understanding  
17 whatever Pickens County charges that -- that was pending  
18 at that time had been negotiated out or went away. And  
19 then the Greenville charges -- other charges that were  
20 pending at that time, the armed robbery, and these other  
21 things, they went away as part of the deal?

22 A Yes, sir. I think -- and I think that -- the one  
23 that they said they didn't have in their system in Pickens  
24 yet, they couldn't formally agree to dismiss it at the  
25 time, because they hadn't talked to the alleged victim, or

1 anything like that.

2 Q Was that the stolen vehicle?

3 A I think, yes, sir.

4 Q Okay.

5 A And so I think kind of off the record, their intent  
6 was to dismiss it. And I don't know if that's what ended  
7 up happening or not.

8 Q It -- it appears just from reading the transcript,  
9 they didn't go forward on it at all.

10 A That's my understanding, yes, sir.

11 THE COURT: I don't have any other questions.

12 Any -- any other questions?

13 MR. ARIAIL: No, Your Honor.

14 MR. MITCHELL: No other questions.

15 THE COURT: All right. You can step down.

16 Anything else from the State?

17 MR. MITCHELL: The State has no additional witnesses,  
18 Your Honor.

19 THE COURT: All right. My -- my practice is to get a  
20 little short argument from both sides as to...

21 MR. ARIAIL: Your Honor, just a real short argument  
22 in regards to it. I mean, you've heard his testimony in  
23 regards to it. I'm concerned in regards to the  
24 discussions of the enhancements, and whether or not it  
25 falls within that.

1           Also, his understanding of the 65 versus 85 percent  
2           and whether or not that would have affected his ability to  
3           make a decision on that. It sounds to me, based on the  
4           information, if he had some definitive answer in regards  
5           to that, he probably would have done the PWID second at  
6           the time on April 25th, 2017.

7           And that would be the basis of our argument, Your  
8           Honor.

9           THE COURT: All right.

10          MR. MITCHELL: I think we've heard testimony from the  
11          trial -- or plea counsel, I should say, that the Applicant  
12          rejected the plea offer of PWID second offense. So I  
13          think there is conclusive testimony regarding that  
14          allegation.

15          In terms of parole eligibility, in terms of how much  
16          time should be spent in prison, I think the response from  
17          plea counsel was that it was his general practice not to  
18          advise regarding those matters.

19          The Supreme Court has issued an opinion regarding  
20          parole eligibility. And it says that counsel -- there is  
21          not a duty to -- to discuss parole eligibility. But if  
22          you advise, you must advise correctly. And so -- and  
23          that's Frazier v. State. And I'll be happy to provide the  
24          Court with the cite, if it needs it. But based on the  
25          response -- or I guess the testimony from plea counsel,

1 his general practice would not be to advise him about  
2 parole eligibility.

3 So for those reasons, I don't think that the  
4 Applicant has met his burden pursuant to Strickland.

5 THE COURT: Okay. If there's nothing further, I find  
6 the Court has jurisdiction of the parties, as well as  
7 subject matter of this action.

8 I've, also, had the opportunity to review the -- the  
9 Applicant's application. He alleges ineffective  
10 assistance of counsel on behalf of the counsel that he had  
11 at the time that he entered the plea in Pickens County.  
12 It's my understanding that the plea in Pickens County was,  
13 also -- involved the Greenville offense as well.

14 Based upon my examination of the testimony as well as  
15 the record, I find that the Applicant has not met his  
16 burden of proof. And I will not grant his application for  
17 post-conviction relief.

18 Could you prepare the appropriate order?

19 MR. MITCHELL: I will, Your Honor.

20 THE COURT: All right.

21 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
22  
23  
24  
25

CERTIFICATE OF REPORTER

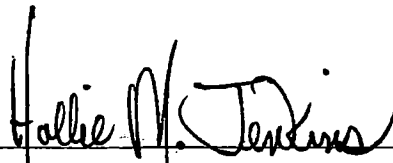
STATE OF SOUTH CAROLINA )

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 Common Pleas for Greenville County, South Carolina, on the 22nd day of October, 2018

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

May 28, 2019



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

**Steven Alexander**

From: "Hinton, Brandi" <bhinton@greenvillecounty.org>  
 Date: Thursday, March 9, 2017 1:54 PM  
 To: "Steven Alexander" <stalexander@thealexanderlawfirm.com>  
 Subject: R [REDACTED]

I had previously offered him 10 to a PWID 2<sup>nd</sup>. I talked to his Greenville prosecutor (Fretwell) and he said if he got active time he would dismiss his charges. I can be a little more flexible on the amount of time but it will have to be something active.

Brandi Hinton, Assistant Solicitor  
 13th Judicial Circuit  
 214 E. Main Street, B-120  
 Pickens, SC 29671  
 Phone: 864-898-5905  
 Fax: 864-898-5798  
 Email: bhinton@greenvillecounty.org

From: Steven Alexander [mailto:stalexander@thealexanderlawfirm.com]  
 Sent: Thursday, March 09, 2017 1:50 PM  
 To: Hinton, Brandi  
 Subject: Brian Norris

**CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.**

Brandi

I met with this guy today. PWID 3rd, 6 grams of meth. His has a lot of arrests for drugs on his record, but the most recent real serious one I saw conviction for was 2006. He did 4 years in 2012 for filing false police report on a felony, looks like a bunch were dismissed at that time maybe.

Anyway, he is looking at getting into an inpatient rehab, waiting to hear on that, but thought I would see if we could get this reduced down to a possession charge. Certainly it's over the weight, but no other evidence of being a dealer. He's a user, had the drug para on him where he was using it also it seems.

Let me know what you think, and what if any offers you might have. Thanks.

Steven L. Alexander, Esq.  
 Alexander Law Firm  
 107 E. Main Street  
 P.O. Box 618  
 Pickens, SC 29671  
 P:(864) 898-3208  
 F:(864) 898-3408

3/20/2017



### PROCEDURAL HISTORY

Brian Edwards Norris (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Pickens County Clerk of Court. In February 2017, the Pickens County Grand Jury indicted Applicant for possession with intent to distribute methamphetamine, third offense (2016-GS-39-02446). Applicant was also indicted by the Greenville County Clerk of Court in June of 2017 for another count of possession with intent to distribute methamphetamine (2017-GS-23-5088). Applicant was represented by Steven Alexander, Esquire. Brandi Hinton, Esquire prosecuted this case for the Solicitor's Office of the Thirteenth Circuit of South Carolina. On August 28, 2017, Applicant proceeded to plead guilty to both charges of possession with the intent to distribute, third degree. Applicant was sentenced to eleven years imprisonment, to run concurrent with his second charge of possession with the intent to distribute out of Greenville County for which he received ten years imprisonment. (Gp.p.9). He was given fifteen days credit for time served and the condition of enrollment and attending of the addiction treatment unit (ATU). (Gp.p.9).

### FACTUAL HISTORY

Regarding the Pickens County charges on September 13, 2016, Applicant was present at a Pickens County residence that was being investigated in regards to a stolen vehicle. (Gp.p.6). Applicant was being questioned when he consented to a search by the officer. (Gp.p.6). Here, it was discovered that he was in possession of a clear baggie containing six grams of methamphetamine on his person. (Gp.p.6). Regarding the Greenville County charges on March 15, 2017 deputies encountered Applicant near Serene Street in Greenville County in the course of a robbery investigation. (Gp.p.6). After initially complying, Applicant took off running when he was ordered to show his hands. (Gp.p.6). A deputy observed him toss what appeared to be a

gun as he was running. (Gp.p.6). He was eventually apprehended and found to be in possession of 1.94 grams of methamphetamine in pocket. (Gp.p.6).

### ALLEGATIONS

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

1. Ineffective Assistance of Counsel
  - a. "Primary focus of law is injury and not criminal". (Application Ap. p. 1).
  - b. "[Attorney] did not understand the complete sentencing scheme plainly set forth by the legislature". "Counsel's non-understanding of the penalty provisions of the statute 44-53-370; PWID and interpretation of the complex language scheme used is clear in the exhibited documents". (Application Ap. p. 1).
  - c. "Failed to accept the lesser plea negotiation". (Application Ap. p. 1).
  - d. "Deficiently guided Defendant under inaccurate knowledge and presentment of the level of charges and sentencing." (Application Ap. p. 3).
  - e. "Where the State's offer of 2<sup>nd</sup> P.W.I.D. is a 'parolable' offense, and counsel advised Defendant that it was not 'parolable'". (Application Ap. p. 3).
  - f. "Counsel failed to present/notify Defendant of State's commitment in writing to P.W.I.D. 2<sup>nd</sup> under 10 years, instead of P.W.I.D. 3<sup>rd</sup> 11 years with no parole." (Application Ap. p. 3).
  - g. "Unprofessional errors". (Application Ap. p. 4).
  - h. "Breach of Duty" (Application Ap. p. 5).
2. Due Process Violation
  - a. "Defendant can show through documents that counsel's performance fell below an objective standard of reasonableness, U.S. [Constitution amendment VI] (due process)". (Application Ap. p. 3).
  - b. "Violated right to know all plea offers, have all offers and punishments made clear and understandable by and through due diligence of counsel under Civil Rule 407; Competence 1.1, 1.2 Scope of Representation, 1.3 Professional Conduct, 1.4 Communication and Diligence". (Application Ap. p. 3).
3. Involuntary Guilty Plea
  - a. "Failed to accept the lesser plea negotiation on behalf of the Defendant and because of, Defendant had to plea to greater charge and sentence because of deficient representation". (Application Ap. p. 1).
  - b. "Counsel for Defendant prejudiced Defendant while under duress and not understanding counsel's actions or advice into accepting a plea that was left 'open' without negotiation or recommendation as indicated by Defendant's sentencing sheet." (Application Ap. p.p. 3-4).

### SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

Applicant testified Plea Counsel represented him on his Pickens County charge. He testified he ended up pleading guilty to two drug charges for which he received a ten year sentence for one and an eleven year sentence for the other. Applicant testified he was arrested and charged with the drug charge out of Pickens County first and was later arrested on the Greenville charge. He testified he was released on bond after being charged in Pickens County. Applicant testified Plea Counsel discussed his charges with him and also reviewed his discovery with him. He testified he met with Plea Counsel twice during the course of his representation. Applicant testified he received a plea offer of ten years to plead guilty to PWID 2<sup>nd</sup> for his Pickens County charge. He testified he rejected the plea offer based on Plea Counsel's advice and his case was then placed on the trial docket. Applicant testified Plea Counsel did not accurately look at his criminal history in evaluating whether his charge he was facing was a true third offense.

On cross-examination, Applicant testified he was satisfied with his Plea Counsel's services at his guilty plea. Applicant testified he rejected the plea offer from the State for a ten year sentence for PWID 2<sup>nd</sup>.

Plea Counsel's Testimony

Plea Counsel testified he had practiced law since 2003 and had also practiced criminal law since that time. He testified he was appointed to represent Applicant on his Pickens County charges in January of 2017. He testified he met with Applicant a couple of times during the course of his representation. Plea Counsel testified he reviewed the discovery in Applicant's case with him. He testified he discussed with Applicant how his prior record of convictions could play a factor into the disposition of his case. Plea Counsel testified Applicant never indicated to him

he did not understand their discussion about Applicant's charges or his rights. Plea Counsel testified the State sent Applicant a plea offer of ten years for PWID 2<sup>nd</sup> in April of 2017. He testified he relayed this plea offer to Applicant who rejected the offer. Plea Counsel testified in terms of parole eligibility, his general practice was he does not advise regarding parole eligibility. He testified Applicant ended up pleading guilty to PWID 3<sup>rd</sup> and received a sentence of eleven years for his Pickens County charge. Plea Counsel testified Applicant's potential exposure was thirty years imprisonment.

On cross-examination, Plea Counsel testified concerning an email he received from Assistant Solicitor Brandi Hinton in which she extended a plea offer to Applicant to plead guilty to PWID 2<sup>nd</sup> for ten years imprisonment. He testified the Solicitor was also in communication with the Greenville Solicitor handling Applicant's Greenville County charges. Plea Counsel testified Applicant was aware that a plea to PWID 2<sup>nd</sup> carried a sentence of zero to thirty years and a plea to PWID 3<sup>rd</sup> carried a mandatory sentence of ten years up to a cap of thirty. He testified it was his understanding that the plea offer from the State on the Pickens charge was for a PWID 2<sup>nd</sup> for a sentence of ten years straight up. Plea Counsel testified he believed the offer from the Pickens County Solicitor was a universal offer for all of Applicant's charges. He testified he did not guarantee Applicant he would receive a specific sentence.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth

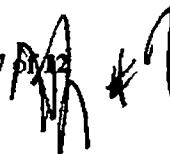
below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, 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



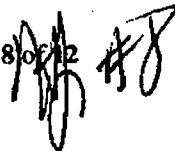
Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error 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)).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

**Ineffective Assistance of Counsel**

*Failure to Explain Charges and Convey Plea Offer*

Applicant alleges Plea Counsel was ineffective in that he did not properly explain whether his current charges were an actual second or third offense and the impact on his parole eligibility. Applicant also testified in a cursory fashion that Plea Counsel did not convey a plea offer to him. This court finds both of these allegations to be without merit and finds the following concerning each issue. First, this court finds Plea Counsel was not deficient regarding advising Applicant about his charges. A review of Applicant's records from the Department of Corrections indicates he had multiple prior convictions for drug related charges for which he served a period of incarceration beginning in 2006. This court finds Applicant was properly charged with a third drug offense. Additionally, this court finds Plea Counsel was not deficient regarding parole eligibility advice as Plea Counsel testified in terms of parole eligibility, his



general practice was he does not advise regarding parole eligibility. A guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence. Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991). Typically, parole eligibility is considered a collateral consequence of a sentence. However, if trial counsel actively misinforms the defendant about parole eligibility, the defendant must prove he relied on the misinformation to receive PCR. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997); Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). Furthermore, this court finds Applicant cannot demonstrate sufficient prejudice because when offered a plea deal by the State to a plea to PWID 2<sup>nd</sup> offense, Applicant rejected it. Moreover, this court finds credible Plea Counsel's testimony that the State extended a plea offer of ten years to PWID 2<sup>nd</sup> to Applicant which Applicant ultimately rejected. This Court concludes Applicant has not met his burden of proving Plea Counsel failed to render reasonably effective assistance. This court would also note Applicant received a plea deal where several other drug charges were dismissed. Because of this, this court finds Applicant has failed to meet his burden to show Plea Counsel was ineffective. The allegations of failure to explain Applicant's charges and convey a plea offer are denied and dismissed with prejudice.

*Involuntary Guilty Plea*

Applicant also contends his guilty plea was involuntary as he was under duress during his guilty plea. This Court finds Applicant has failed to meet his burden of proof. This Court finds Plea Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Further this Court finds Applicant's testimony not credible regarding this allegation.

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. 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 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.

*Due Process Violation*

Applicant alleged a due process violation in his application for post-conviction relief. Applicant did not present any evidence on this allegation at the PCR hearing or specify what constitutional violations were infringed upon. Accordingly, this Court finds Applicant failed to prove there was any evidence of a due process violation. Accordingly, this Court denies and dismisses this allegation.

**CONCLUSION**

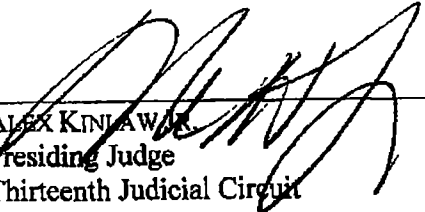
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 71.1(g), SCRPC 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 THAT:**

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 5 day of November, 2018.

  
 \_\_\_\_\_  
 ALEX KINLAW  
 Presiding Judge  
 Thirteenth Judicial Circuit

Greenville, South Carolina

CLERK OF COURT  
 SOUTHERN DISTRICT OF SOUTH CAROLINA  
 GREENVILLE

2018 NOV 12 P 2 56



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

INDICTMENT FOR  
POSSESSION OF METHAMPHETAMINE WITH INTENT TO  
DISTRIBUTE

At a Court of General Sessions, convened on **FEB 14 2017** the Grand Jurors of Pickens

County present upon their oath:

That BRIAN EDWARD NORRIS did in Pickens County, on or about the 13th day of September, 2016, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Methamphetamine (Crank), a controlled substance, such possession 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. Veltman*  
Clerk of Court *MB*  
Pickens County, SC  
Dated *Feb 2018*

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

*Brandi Hunter*  
\_\_\_\_\_  
SOLICITOR BAR # 77844

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens VS. STATE

INDICTMENT/CASE#: 2016GS3902446

AKA: Brian Edward Norris

A/W#: 2016A3910101043

Race: WHITE Sex: M Age: 36

Date of Offense: 9/13/2016

DOB: 1981 SS#: [REDACTED]

S.C. Code §: 44-53-0375(b)(3)

Address: [REDACTED]

CDR Code #: 3200

City, State, Zip:asley, SC 29640-7675

DL#: [REDACTED] SID#: [REDACTED]

\*CDL Yes [ ] No [ ] CMV Yes [ ] No [ ] Hazmat Yes [ ] No [ ]

In disposition of the said indictment comes now the Defendant who was

TO: PWID Methamphetamine - 3rd offense

SENTENCE SHEET 10-30; 110r \$0-50K [ ] CONVICTED OF or [X] PLEADS

in violation of § 44-53-0375(b)(3) of the S.C. Code of Laws, bearing CDR Code # 3200

[X] NON-VIOLENT [ ] VIOLENT [X] SERIOUS [ ] MOST SERIOUS [ ] Mandatory GPS(CSC w/minor 1st or Lowd Act) [ ] §17-25-45

The charge is: [X] As Indicted, [ ] Lesser Included Offense, [ ] Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: [X] Without Negotiations or Recommendation, [ ] Negotiated Sentence, [ ] Recommendation by the State.

ATTEST: Brandi Batson 77844 Defendant ALEXANDER, STEVEN L 71164 SC Bar#

WHEREFORE, the Defendant is committed to the [ ] State Department of Corrections, [ ] County Detention Center,

for a determinate term of 11 days/months/years [ ] under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference.

[ ] CONCURRENT or [ ] CONSECUTIVE to sentence on:

[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections. 15 days

[ ] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic

Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$

Payment Terms: Obtain GEID [ ]

[ ] Set by SCOPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

\*Fine: Substance Abuse Counseling [ ]

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114(BU) Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/Deputy Clerk: Handi P. Walker, Jr.

Court Reporter: Cheryl Smith

SCCA217 (07/2016)

Presiding Judge: [Signature]

Judge Code: 2/16/8

Sentence Date: 8/28/17

Certified Copy

Handi P. Walker, Jr.

Clerk of Court

Pickens County, SC

Dated Feb 2018