

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Thomas A. Russo, Circuit Court Judge

RECEIVED

DEC 16 2019

S.C. SUPREME COURT

TAMARCUS LONG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000768

APPENDIX

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Appellate Defender

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

3 The State,) TRANSCRIPT OF RECORD
4) 2016-GS-42-03113;-03114;-06473;
5 -vs-) -06474;-06475
6 Tamarcus Detrelle Long,)
7 Defendant.) June 8, 2017
8 Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE R. KEITH KELLY, JUDGE
12
13

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

15 GRADY B. ANTHONY, ESQUIRE
16 Attorney for the State

17 JOHN G. RECKENBEIL, ESQUIRE
18 Attorney for the Defendant
19
20
21

22 Margaret A. Woods
23 Circuit Court Reporter
24
25

1 MR. ANTHONY: May it please the Court, Your Honor.

2 THE COURT: Yes.

3 MR. ANTHONY: Before you is Tamarcus Detrelle Long, he's
4 here on a true billed Indictment Number 2016-GS-42-03113,
5 that's for a possession with intent to distribute marijuana
6 third offense, Judge, 2016-GS-42-03114, that's for a
7 possession with intent to distribute marijuana within one-half
8 mile of a school, 2016-GS-42-06473, that's for distribution of
9 marijuana third offense, Judge, uh, and 2016-GS-42-06474,
10 that's for distribution of marijuana within one-half mile of a
11 school, 2016-GS-42-06475, that's for possession with intent
12 to distribute marijuana. Judge, in our negotiations we
13 negotiated a 12-year sentence, uh, on these charges.

14 THE CLERK: Sir, if you'll raise your right hand.

15 TAMARCUS DETRELLE LONG, having
16 been first duly sworn, testified as follows:

17 EXAMINATION BY THE COURT:

18 Q. Sir, you are, uh, Tamarcus, uh, Long?

19 A. Yes, sir.

20 Q. Mr. Long, you are in custody, have you taken any
21 medication or substance that interferes with your ability to
22 think clearly?

23 A. No, sir.

24 Q. Mr. Long, the government says in 2016-3113 that you did
25 in Spartanburg County, South Carolina on or about October 15

1 of 2015 manufacturer, distribute, dispense, deliver, purchase,
2 aid, abet, attempt or conspire to manufacturer, distribute,
3 dispense, deliver or purchase or possess with the intent to do
4 so a quantity of marijuana which is a controlled substance in
5 violation of law, that matter was presented to the grand jury
6 and a true bill was, uh, returned. You're pleading as
7 indicted, it is non-violent by definition, it's a third
8 offense, it carries with it from 5 years up to 20 years no
9 part of which may be suspendible by the Court, you understand?

10 A. Yes, sir.

11 Q. You, your lawyer and the government have negotiated a
12 12-year sentence on this charge, do you understand?

13 A. Yes, sir.

14 Q. On 2016-3114 the State says that you did in Spartanburg
15 County, South Carolina on or about October 15 of 2015
16 distribute, sell, purchase, manufacturer or unlawfully possess
17 with the intent to distribute a quantity of marijuana while
18 in, on or within a one-half mile radius of the grounds of a
19 elementary, middle or secondary school, a playground or park,
20 a vocational or a trade school or a technical education center
21 or a college or university, that is, Carlisle Park under
22 provisions, uh, as defined by state law, that matter has been
23 true billed by the grand jury. You're pleading as indicted,
24 it's non-violent by definition, uh, it carries with it up to
25 10 years, you and the government and your lawyer have

1 negotiated a sentence on this one which would be, uh, 10 years
2 to run concurrent, you understand?

3 A. Yes, sir.

4 Q. On 2016-6473 the State says that you did in Spartanburg
5 County, South Carolina on or about May 3 of 2016 manufacture,
6 distribute, dispense, deliver, purchase or otherwise aid,
7 abet, attempt or conspire to manufacturer, distribute,
8 dispense, deliver or purchase or possess with the intent to do
9 so a quantity of marijuana, a schedule 1 controlled substance
10 in violation of law, that matter has been true billed by the
11 grand jury, you're pleading as indicted, it's non-violent, uh,
12 it carries with it up to, from 5 years up to 20 years, once
13 again you have negotiated a sentence with the government for
14 12 years, you understand?

15 A. Yes, sir.

16 Q. 2016-6474, the State says that you did in Spartanburg
17 County, South Carolina on or about May 3 of 2016 distribute,
18 sell, purchase, manufacturer or unlawfully possess with the
19 intent to distribute a quantity of marijuana, a schedule II
20 controlled substance while in, on or within a one-half mile
21 radius of the grounds of a elementary, middle or secondary
22 school, vocational or trade school, technical education center
23 or private or public college or university, Carlisle Park
24 located in Spartanburg County in violation of law, that matter
25 has been true billed by the grand jury, it's my understanding

1 you're offering to plead as indicted, it is non-violent and it
2 is serious, it carries with it up to 10 years and you've
3 negotiated a sentence of 10 years on that indictment, you
4 understand?

5 A. Yes, sir.

6 Q. And, finally, on 2016-6475 the government alleges that
7 you did in Spartanburg County, South Carolina on or about
8 May 3 of 2016 manufacturer, distribute, dispense, deliver,
9 purchase, aid, abet, attempt or conspire to manufacture,
10 distribute, dispense, deliver or purchase or possess with the
11 intent to do so a quantity of marijuana, a schedule II
12 controlled substance in violation of law, that matter has been
13 true billed by the grand jury. You're pleading as indicted,
14 it's non-violent, it carries from 5 years to 20 years, you've
15 negotiated a 12-year sentence with the government, you
16 understand

17 A. Yes, sir.

18 Q. Mr. Long, there are certain important constitutional
19 rights you must waive and give up to enter these pleas. Sir,
20 you have a right to remain silent under the state, federal
21 constitution, you have the right put twelve jurors in the box
22 and try your case and we're actually trying cases this week or
23 we're tryin' to, nobody's takin' me up -- well one took co --
24 took me up on it but he pled this mornin' so we can still ---

25 A. Yes.

1 Q. --- try your case, you also have the right to call and
2 confront witnesses, do you understand those rights?

3 A. Yes, sir.

4 Q. Do ya waive and give up those rights?

5 A. Yes, sir.

6 Q. How do ya plead to 2016-6475, guilty or not guilty?

7 A. Guilty.

8 Q. 2016-6474?

9 A. Guilty.

10 Q. 6473?

11 A. Guilty.

12 Q. Si -- 2016-3114?

13 A. Guilty.

14 Q. And 2016-3113?

15 A. Guilty.

16 Q. Do you plead guilty to each and every indictment because
17 you are guilty of each and every offense?

18 A. Yes, sir.

19 Q. Do you plead guilty freely, intelligently and
20 voluntarily?

21 A. Yes, Your Honor.

22 Q. Did any family member, friend or otherwise convince you
23 to plead guilty?

24 A. No, sir.

25 Q. And is it your decision and your decision alone to plead

1 guilty?

2 A. Yes, sir.

3 Q. Sir, have you had sufficient time to speak with your
4 lawyer?

5 A. I have.

6 Q. Has he answered all of your questions?

7 A. Yes, sir.

8 Q. Has he shared all of the discovery materials with you?

9 A. Yes, sir.

10 Q. Are you satisfied with his services?

11 A. Yes, sir.

12 Q. Did he do everything he possibly can for you?

13 A. I believe so.

14 Q. Okay. Do you need for me to take a break while you
15 discuss your case with your lawyer?

16 A. Uh, no, sir.

17 Q. Okay. Are you completely satisfied with his services?

18 A. Yes, sir.

19 Q. You have ten days to appeal, if you do so you must file
20 it in writing with the clerk's office, you understand?

21 A. Yes, sir.

22 Q. Please listen to the solicitor.

23 MR. ANTHONY: Thank Your Honor. With regards to the
24 first charge occurred on October 15th 2015, officers with the
25 Spartanburg Police Department executed a search warrant at

1 ■■■■, uh, and ■■■■ Westview Boulevard located, uh, they -- there
2 was a Dodge Neon parked outside of that residence, Judge, the
3 defendant was in the driver's seat a that Dodge Neon, they
4 found a blue tote bag with a field weight of 134 grams of
5 marijuana and tupperware container containing 36 grams of
6 marijuana on the passenger seat of that vehicle, it's
7 addressed directly behind the Carlisle Park located at ■■■■
8 Crescent Avenue, Spartanburg County. Uh, with regards to the
9 other charges, Judge, uh, one occurred on May 5th 2016,
10 officers with the, uh, Officer Seacrest utilized a
11 confidential informant to make a controlled purchase a
12 marijuana from the defendant, the defendant was given
13 Spartanburg County Sheriff's Office funds with a cord
14 listening device, the informant was searched pre and post-buy,
15 purchase location at the corner of John B. White, Sr. and
16 Westview Boulevard in Spartanburg County, that is
17 approximately .22 miles or, yes, Your Honor, .22 miles from
18 Carlisle Park, uh, he proceeded to purchase 8.2 grams of
19 marijuana from the defendant. Uh, final charges, Your Honor,
20 May 20th 2016 officers pulled over a car the defendant was
21 riding in intersection of Charlesworth and Crescent Avenue,
22 uh, because the vehicle's brake light was out. Officers saw a
23 Ziploc bag next to, uh, next to the emergency level, uh, lever
24 with a green plant-like material in it, uh, they received
25 consent to search, a black book bag was found in that vehicle

1 which contained 265 grams of marijuana where the defendant was
2 sitting, Your Honor.

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

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is all a that true?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Court accepts all pleas bein' freely,
8 intelligently and voluntarily given, sound advice of an
9 excellent lawyer with whom, sir, you have obviously benefited,
10 that brings me to madam agent, yes, ma'am.

11 MS. MANNIGAN: Your Honor, may it please the Court.
12 Mr. Long was before Judge Hayes on March 22nd of 2012 for
13 the offense of distribution sale of ma, uh, marijuana near a
14 school and he received a sentence of 5 years provided upon the
15 service of 1 year and the balance was suspended 24 months
16 probation. Your Honor, durin' that time he picked up a charge
17 in Georgia and it was for distributin' marijuana and he
18 received a sentence of 10 years provided upon the service of
19 3 years and the balance was suspended to 7 years probation so
20 we had to toll this case because he was actually servin' time
21 in Georgia so now he's bein' supervised here as a courtesy to
22 Georgia but he also had a Spartanburg County indictment which
23 upon pleadin' today would be a violation of that probation.

24 THE COURT: I've already accepted the plea, sir, you
25 understand that violates your probation?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Violates the Spartanburg, uh, and the
3 South Carolina Probation?

4 MS. MANNIGAN: Yes, Your Honor.

5 THE COURT: Okay, Court finds that that is a a violation.
6 Yes, sir, Ms. Strickland [sic].

7 MR. RECKENBEIL: Uh, may it please the Court, Your Honor,
8 just a couple housekeeping matters. First, uh, I'd like to
9 make an oral motion to the Court, uh, for the indictments of
10 6473 through 6475, uh, Mary Lyles Shealy was the, uh, counsel
11 of record for the public defender's office and I have assumed,
12 uh, all responsibilities on that, um, on those charges and
13 therefore respectfully ask the Court to, uh, grant motion for
14 substitution a counsel. Uh, one thing I will mention is that
15 there has been a notice of life sentence, uh, served and I
16 know the statute must be, uh, substantially completed, I
17 believe that, uh, Ms. Shealy was the one that was served as
18 counsel but I also received, uh, before Court decides that
19 motion of a substitution of counsel.

20 MR. ANTHONY: Uh, Your Honor, I consent to that, uh, ---

21 THE COURT: Yeah.

22 MR. ANTHONY: --- substitution, uh, I have been
23 negotiations with Mr. Reckenbeil primarily.

24 THE COURT: That's so ordered.

25 MR. RECKENBEIL: Thank you. Uh, Your Honor, my

1 understanding is from what I just hear from probation office
2 is that the active Georgia probation is that something with --
3 within the jurisdiction of here in Spartanburg County?

4 MS. MANNIGAN: No, sir, it is not, ---

5 MR. RECKENBEIL: Okay.

6 MS. MANNIGAN: --- it's, and that would have to be dealt
7 with in Georgia.

8 MR. RECKENBEIL: Okay, alright. Uh, Your Honor, as, uh,
9 it's been presented here today this is a negotiated sentence,
10 uh, my client was served on December, uh, on about December
11 22nd 2016 with, uh, Section Code 17-25-45(A), a notice of life
12 sentence, uh, pursuant to, uh, two, uh, prior drug
13 convictions, uh, that were the intent to distribute near a
14 school zone, uh, just for the record I recognize that there
15 was a scrivener error where it was, uh, depicted in the body
16 of the motion that or the notice that he distributed cocaine,
17 uh, that was inaccurate, I discussed that with the solicitor's
18 office, I also discussed that with my client that in fact it
19 was a scrivener's error, that we agreed that there was a a a
20 prior, uh, marijuana within a half mile and that's the way it
21 should read. Uh, no doubt, Your Honor, I believe that the
22 statute has been complied with and therefore my client would
23 be subjected to life in prison without the possibility of
24 parole. I have discussed that, uh, at length with my client,
25 uh, as a consideration and a benefit that he would be

1 receiving, uh, in regards to this negotiated sentence, uh,
2 further, Your Honor, uh, I have indicated to my client that
3 the Court, uh, can reject or accept negotiated sentence, uh, a
4 and that is obviously well within the discretion of Your
5 Honor. Uh, there has been a lot of discussions about the
6 discovery and all the other factual incidents that have taken
7 place, uh, that I've had with my client and we have weighed
8 all those options, um, understanding that there is, uh, some
9 discussions about confidential informants and some, uh, tapes
10 that would be made available and would not be made available
11 depending upon what stage that we're at in our uh, proceedings
12 forward to trial. Your Honor, I believe that we go back to
13 civil law I think with a, with a negotiated sentence is that
14 it's a contract that you're entering into with a basis of the
15 bargain and does the defendant receive a benefit and is the
16 State basically forbearing, that is, not seeking life in
17 prison based upon his acceptance of the deal, I think we've
18 met all those requirements and I've discussed that with my
19 client in the sense that he is getting a major benefit by s --
20 not spending the rest of his life in in prison without the
21 possibility of parole i -- i -- in lieu of exchange of giving
22 up his constitutional rights and accepting this negotiated
23 sentence, uh, a a and so with the fact that it is just
24 marijuana, uh, I know the way the West Coast thinks about
25 marijuana but it's not the East Coast, um, I I do think that

1 12 years is a very, uh, reasonable offer that the State has
2 put forward, uh, my client and I after full discussions, uh, I
3 agree with his decision to plead to this and I respectfully
4 request the Court to go along with the negotiated sentence.

5 THE COURT: Sir, I'd be happy to hear from you.

6 THE DEFENDANT: Uh, well I I made a lotta mistakes in my
7 life and, uh, I've grown up since then, I haven't been in any
8 trouble passed a little over a year, been workin', I'm
9 married, two children, I just wanna get this behind me, get
10 back to my family, uh, I agreed to a 12-year sentence because
11 by then I will -- that will give me enough time watch my
12 daughter graduate by the time she was 18 and, um, I'm a little
13 nervous so I can't really say what's all on my mind but ---

14 THE COURT: Well I'm gonna tell ya right now the smartest
15 thing you ever did was hire that lawyer standin' by your elbow
16 'cause he has done a fine job for you, you understand, ---

17 THE DEFENDANT: Yes, sir.

18 THE COURT: --- a fine job for you. I didn't mean to cut
19 ya off, anything else you wanna say?

20 THE DEFENDANT: Um, I just hope Court have mercy on me.

21 MR. ANTHONY: Your Honor, I would just like to read his
22 record just for the record.

23 THE COURT: Yes, sir.

24 MR. ANTHONY: A 2003 possession with intent to distribute
25 half mile of a school, possession with intent to distribute

1 cocaine first; 2004 possession a marijuana; 2006 two counts of
2 posse -- possession with intent distribute within a half mile
3 of school; 2010 assault and battery third; 2015 possession
4 with intent to distribute the half mile of school.

5 THE COURT: Anything further from anyone, uh, agent,
6 anybody?

7 MR. ANTHONY: Nothing from the State, Your Honor.

8 THE COURT: His probation is revoked in full, it'll run
9 concurrent, 2016-3113 State Department a Correction for a
10 negotiated 12 years; 2016-6475 State Department a Correction
11 for the negotiated 12 years; 2016-6473, uh, State Department
12 a Correction for 12 years; 2016-3114 State Department a
13 Correction for 10 years; 2016-6474 10 years Department a
14 Corrections, all of 'em are concurrent, all of 'em give credit
15 for time served and the probation runs concurrent as well,
16 best a luck, sir.

17 MR. RECKENBEIL: Thank ---

18 MR. ANTHONY: Thank ---

19 MR. RECKENBEIL: --- you ---

20 MR. ANTHONY: --- Your Honor.

21 MR. RECKENBEIL: --- very much, Your Honor.

22 THE DEFENDANT: Thank ---

23 THE COURT: Did ---

24 THE DEFENDANT: --- Your Honor.

25 THE COURT: --- a fine job with that.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on June 8, 2017 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 14, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

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

June 20, 2018



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

STATE OF SOUTH CAROLINA

County of SpartanburgTamarcus Detrelle Long #00305486

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2018 CP. 112. 1279

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County General Sessions
3. Name(s) of co-defendant(s) (if any) Michelle Davis
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016GS4203113 - CDR 0186; 2016GS4203114 - CDR 0107; 2016GS4206473 - CDR 0183
 - (b) 2016GS4206474 - CDR 0107; 2016GS4206475 - CDR 0188

CLERK OF COURT
 SPARTANBURG COUNTY
 2018 APR 12 PM 3:10
 M. HOPE BLACKLEY

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 6/8/17 - 3113 - 12 YRS; 3114 - 10 YRS; 6473 - 12 YRS; 6474 - 10 YRS; 6475 - 12 YRS
- (b) (CONCURRENT)
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) GUILTY PLEA
- (b) _____

2018 APR 12 PM 3:10
 M. HOPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) failure to advise 85% sentence
- (b) failure to pursue valid defenses
- (c) failure to review discovery before plea
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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

2018 APR 12 PM 3:10
 BY: HIDE BLACKLEY

CLERK OF COURT
 STATE OF SOUTH CAROLINA

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

FILED
 CLERK OF COURT
 SPANISH FLORIDA
 2010 APR 12 PM 3:10
 M. HOPE BLACKLEY

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) _____
 (b) _____
 (c) _____

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

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

PCR APPLICATION PREPARATION

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

(a) the name and address of each attorney who represented you:

i. John G. Reckenbeil, PO Box 1633, Spartanburg SC
 29304

ii. _____

iii. PCR application - Eleanor Duffy Cleary, PO Box 40086, Columbia, SC 29240

(b) the proceedings at which each such attorney represented you:

i. _____

ii. _____

iii. _____

SPARTANBURG SC
 2018 APR 12 PM 3:40
 M. HOPE BLACKLEY
 Revised 3/2003

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

New trial; resentencing

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

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Spartanburg)

I, Tamarcus Detrelle Long, 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.

TAMARCUS LONG

SWORN to and subscribed before me this 3rd
day of April, 2018.

Eleanor A. Cleary (L.S.)
Notary Public

My Commission Expires: 9/8/2020

2018 APR 12 PM 3:10
M. HOPE BLACKLEY

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

I, Tamarcus Detrelle Long, 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.

♂ TAMARCUS LONG
Applicant

SWORN or affirmed to and subscribed before me this

3rd day of April, 2018.

Chloris A. Cleary
Notary Public

My Commission Expires: 9/8/2020

CLERK OF COURT
 SPALDAN COUNTY, GA
 2018 APR 12 PM 3:10
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Tamarcus Detrelle Long, #305486

Case No.: 2018-CP-42-1279

Applicant,

v.

State of South Carolina,

Respondent.

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

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN -3 AM 8:44
MICHAEL BLACKLEY

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on April 12, 2018, would respectfully show this Court:

I. Procedural History

Tamarcus Detrelle Long (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In June 2016, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute marijuana (2016-GS-42-3113), and possession with intent to distribute marijuana within one-half mile of a school or park (2016-GS-42-3114). Applicant was subsequently indicted in December 2016 for distribution of marijuana (2016-GS-42-6473) and distribution of marijuana within one-half mile of school (2016-GS-42-6474). The charges stem from two separate incidents. First, on October 15, 2015, the police department executed a search warrant of the Applicant's residence and vehicle and found two containers filled with around 170 grams of marijuana. The second incident occurred on May 3, 2016, in which a confidential informant made a controlled purchase of marijuana from the defendant. A search of Applicant's vehicle was later conducted, and a bag containing 265 grams of marijuana was seized.

John G. Reckenbeil, Esquire, represented Applicant. Assistant Solicitor Grady B.

Anthony, Esquire, prosecuted the case. On June 8, 2017, Applicant pleaded guilty as indicted to all charges before the Honorable R. Keith Kelly. Pursuant to a negotiated sentence between the State and the Applicant, Judge Kelly sentenced Applicant to imprisonment for concurrent terms of twelve years each for distribution of marijuana and possession with intent to distribute marijuana, and ten years for distribution of marijuana within one-half mile of school and possession intent to distribute within one-half mile of a school or park. Applicant did not appeal his conviction or sentence.

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

II. Allegations Raised and Relief Sought

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

1. "Ineffective Assistance of Counsel"
 - a. "Failure to advise 85% sentence"
 - b. "Failure to pursue valid defenses"
 - c. "Failure to review discovery before plea"

In his requested relief, Applicant is seeking for a new trial and resentencing.

III. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as

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having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

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

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IV. Request to Summarily Dismiss

Applicant alleges that counsel failed to inform him of his 85% sentence. Classification of crime as violent or non-violent is also a collateral consequence of sentencing and a guilty plea is not rendered involuntary due to counsel's failure to inform defendant of consequences of a violent crime conviction. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997). The "85% Rule," which requires a defendant to serve at least 85% of certain sentences prior to being eligible for release, is a collateral consequence of sentencing of which a defendant need not be informed. Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004). South Carolina Code Ann. § 24-13-100 also lists which offenses are subject to the 85% Rule, including all A, B and C felonies. Therefore, this claim is not proper for post-conviction relief, and this allegation should be summarily denied and dismissed.

V. Motion for a More Definite Statement

Respondent also hereby moves for a more definite statement as to what meritorious defense was available that counsel should have pursued. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

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VI. Any Future Amendments

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

VII. Response to Any and All Other Allegations

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

VIII. Request for an Evidentiary Hearing

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

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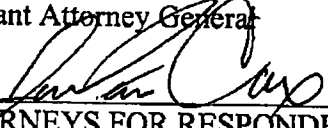
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JORDAN COX
Assistant Attorney General

By: 
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August 1, 2018

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STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

2018-CP-42-1279

TAMARCUS DETRELLE LONG, #305486)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

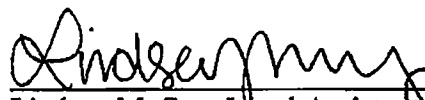
STATE OF SOUTH CAROLINA,)

Respondent.)

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

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

DATED this 1st day of August, 2018.


 Lindsey McCoy, Legal Assistant

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SPARTANBURG)

COURT OF COMMON PLEAS NONJURY

3
4 TAMARCUS DETRELLE LONG,)

5 APPLICANT,)

6 VS.)

7 THE STATE OF SOUTH CAROLINA,)

8 RESPONDENT.)

TRANSCRIPT

OF

RECORD

2018-CP-42-1279

9
10 March 4th, 2019
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE THOMAS A. RUSSO, Judge.

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

16 RODNEY W. RICHEY
17 ESQ.
18 Attorney for the Applicant

19 JACOB A. ISENBERG
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the Respondent

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
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P R O C E E D I N G S

MR. ISENBERG: May it please the Court?

THE COURT: Yes,,sir.

MR. ISENBERG: Your Honor, this is Case 2018, 2-0-1-8, CP-42-1279. The Applicant's name is Tamarcus Detrelle Long. He's presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Spartanburg County Clerk of Court.

In June, 2016, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute marijuana, and possession with intent to distribute marijuana within one-half mile of a school or park. Applicant was subsequently, subsequently indicted in December of 2016 for distribution, distribution of marijuana, and distribution of marijuana within one-half mile of a school. The charges stemed from two separate instances.

First, on October 15th, 2015, the police department executed a search warrant of the Applicant's residence and vehicle, and found two containers filled with around 170 grams of marijuana. The second incident occurred on May 3rd, 2016, in which a confidential informant made a controlled purchase of marijuana from the Defendant. A search of the Applicant's vehicle was later conducted, and a

1 bag containing 265 grams of marijuana was seized.

2 John G. Reckenbeil, Esquire, represented Applicant.
3 Assistant Solicitor Grady B. Anthony, Esquire, prosecuted
4 the case. On June 8th of 2017, Applicant pleaded guilty, as
5 indicted, to all charges before the Honorable R. Keith
6 Kelly. Pursuant to negotiated sentence between the State
7 and the Applicant, Judge Kelly sentenced Applicant to
8 imprisonment for concurrent terms of 12 years each for
9 distribution of marijuana, and possession with intent to
10 distribute marijuana, and 10 years for distribution of
11 marijuana within one-half mile of a school, and possession
12 of -- with intent to distribute within one-half mile of a
13 school or park. Applicant did not appeal his conviction or
14 sentence.

15 In today's -- the PCR Application that Applicant filed,
16 he alleges ineffective assistance of counsel. And, with
17 that, I'll turn it over to his attorney, Rodney Richey.

18 THE COURT: Mr. Richey.

19 MR. RICHEY: Thank you, Your Honor.

20 We'd call Mr. Long to the stand.

21 THE COURT: All right. Mr. Long, if you'd please come
22 around, sir.

23 THE WITNESS: Right here?

24 THE COURT: Yes, sir, right up here, and, if you would,
25 I'm gonna get you to, before you have a seat, if you put

Tamarcus Long - Direct examination
by Mr. Richey

1 your left-hand on the Bible. Raise your right-hand.

2 (Witness complies.)

3 THE COURT: All right.

4 TAMARCUS LONG, being first duly
5 sworn, testified as follows:

6 THE COURT: All right. Thank you, sir. And if you'd
7 have a seat, and then if you would just state your full name
8 for the record.

9 THE WITNESS: My name is Tamarcus Detrelle Long.

10 THE COURT: All right.

11 MR. RICHEY: Thank you, Your Honor.

12 THE COURT: Mr. Richey.

13 MR. RICHEY: May I approach the witness?

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. RICHEY:

17 Q Sir -- sir, are you currently in the Department of
18 Corrections?

19 A Yes, sir.

20 Q And what are you in there for?

21 A Possession with intent to distribute marijuana.

22 Q Okay. Were you con -- were you convicted in
23 Spartanburg County?

24 A Yes, sir.

25 Q Okay. Who represented you on those charges?

Tamarcus Long - Direct examination
by Mr. Richey

- 1 A John G. Reckenbeil --
- 2 Q Okay. and---
- 3 A -- on one charge, and Mary Stuart-Shealy on another,
- 4 but there was an oral motion made at the time. So, there
- 5 was -- there was no formal time to prepare a defense.
- 6 Q So, when you were standing in front of the judge, and
- 7 you were pleading guilty, he just said I'm gonna accept all
- 8 the cases right now---
- 9 A Yes.
- 10 Q ---and you pled to them?
- 11 A Yes.
- 12 Q Okay. And, and you filed an Application for
- 13 Post-Conviction Relief, correct?
- 14 A Correct.
- 15 Q And, and you believe that your attorney -- and who
- 16 represented you?
- 17 A John G. Reckenbeil.
- 18 Q Okay. And you believe he did not effectively represent
- 19 you?
- 20 Is that what you believe?
- 21 A Yes, sir.
- 22 Q Okay. And you're asking this Court to grant you a new
- 23 trial today.
- 24 Is that correct?
- 25 A New trial or either relief.

Tamarcus Long - Direct examination
by Mr. Richey

1 Q Okay. You, you understand the only relief you can get
2 is a new trial?

3 A (Witness nods affirmatively.)

4 Q And you---

5 A Yes, sir.

6 Q ---want that?

7 A Yes, sir.

8 Q And, and you want to start over from the beginning.

9 Is that correct?

10 A Yes, sir.

11 Q Okay. In these cases, you believe that your attorney
12 did not review the discovery in this case.

13 Is that correct?

14 A Uh.

15 Q Well, let me ask you -- let me ask you -- I'm gonna
16 rephrase. I'm sorry.

17 You had defenses in these cases, correct?

18 A Correct.

19 Q And what were those defenses?

20 A Um.

21 Q For each case, what -- tell me the case and the
22 defense.

23 A John G. Reckenbeil, I retained him on the, on the case
24 of 10 -- 10/15/2015. And, in that case, there was a -- in
25 the incident report, it states that there was a search

Tamarcus Long - Direct examination
by Mr. Richey

1 warrant. To this day I haven't, I haven't seen the search
2 warrants. But also, on top of that, at the time that, that
3 everything transpired or happened or whatever, there was a
4 guy by the name of Dominick Hurst, who was also at the
5 scene, who also came to the Solicitor's Office, and took
6 responsibility for those charges. I also brought Mr. Hurst
7 to Mr. Reckenbeil, but, at the time, he convinced me that he
8 believed he could beat the charges. You know, it, it wasn't
9 too serious, that he could handle it---

10 Q Did Mr. Hurst state---

11 A ---and I basically rolled with that.

12 Q I'm sorry. Excuse me. Go ahead. Finish. I'm sorry.

13 A I'm, I'm done.

14 Q Did Mr. Hurst give a statement to law enforcement that
15 you're aware of?

16 A I have the statement right here, but I just seen the
17 statement for the first time a few weeks ago when you
18 forwarded me everything.

19 Q Okay. So---

20 A My first time ever seeing that statement.

21 Q So, there is a statement that says that he accepts
22 responsibility?

23 A Yes, sir.

24 Q And, and can you show me that statement?

25 A (Witness complies.)

Tamarcus Long - Direct examination
by Mr. Richey

1 Q And was this statement a part of your discovery?

2 A Like I said, when you forwarded me the discovery a few
3 weeks was my first time ever, ever seeing it.

4 MR. RICHEY: Okay. Your Honor, we'd like to offer this
5 as Applicant 1.

6 THE COURT: Any objection?

7 MR. ISENBERG: No, Your Honor.

8 THE COURT: All right. Without objection.

9 (WHEREUPON, the statement was marked as Applicant's
10 Exhibit No. 1 and received into evidence at this time.)

11 Q So, you believe that was a valid defense to that
12 charge, correct?

13 A That, and the fact that I've never seen a search
14 warrant. So, if there's no search warrant, I believe my
15 Fourth Amendment was violated, and there was illegal search
16 and seizure altogether.

17 Q And that somebody else claimed the drugs?

18 A Also.

19 Q Okay. The next charge, tell me about the next charge.
20 Did you have a defense for the next charge?

21 A The next charge is---

22 Q Yes, sir.

23 A Well, I -- the one that I see right in front of me --

24 Q Yes, sir.

25 A -- is a case that happened on five -- May 20th, 2016.

Tamarcus Long - Direct examination
by Mr. Richey

1 I was in the car with a lady by the name of Michelle Davis.
2 We were pulled over. At the time of the crime, she, she let
3 officers know that there was something in the car. She gave
4 them permission---

5 MR. ISENBERG: Objection, Your Honor.

6 A ---to search it.

7 THE COURT: All right. Hold on.

8 MR. ISENBERG: This is hearsay.

9 THE COURT: Yeah, I---

10 THE WITNESS: No, it's in the incident report.

11 Q No, no, don't -- be quiet. Hold on.

12 THE COURT: Sustained.

13 Go ahead.

14 Q Okay. Based, based off the discovery, did someone else
15 claim those drugs based off of the discovery?

16 A Yes.

17 Q And do you know who that person was?

18 A Yes.

19 Q And, and, and you believe that's a defense in your
20 case, correct?

21 A Yes.

22 Q Okay. Do you have that statement from that particular
23 witness?

24 A (Witness hands statement to Mr. Richey.)

25 MR. RICHEY: We'd offer this as Applicant No. 2.

Tamarcus Long - Direct examination
by Mr. Richey

1 THE COURT: Any objection?

2 MR. ISENBERG: No, Your Honor.

3 THE COURT: Without objection.

4 (WHEREUPON, the statement was marked as Applicant's
5 Exhibit No. 2 and received into evidence at this time.)

6 Q Okay. On, on the last charge, did you have a defense
7 of that one?

8 A On the last charge, on the day -- on the day that I
9 pled, me and Mr. Reckenbeil, we talked. I didn't really
10 want to plead. He, he advised me of -- that if I take it to
11 trial, I would receive a life sentence without parole --
12 without the possibility of parole. Under, under the
13 statutes and codes that I'm sentenced under, my charges
14 don't carry life without parole, and -- but I was, I was
15 convinced that, that what I would be -- that's what I would
16 be facing if I took it to trial and lost. And we came up
17 with a 12 year plea deal that was suppose to been
18 nonviolent, which it says nonviolent, and I'm currently
19 doing 85 percent of that, but --.

20 Q Now, what charge is that you're referring to?

21 A It's -- that was -- that was the charges all together.

22 Q Was -- excuse me?

23 A Could you repeat your question?

24 Q What your---

25 A I might of misunderstood.

Tamarcus Long - Direct examination
by Mr. Richey

1 Q What charge -- which charge are you serving 12 years
2 for?

3 A I'm serving 12 years for all charges. All of them was
4 ran concurrent.

5 Q Right.

6 But some you received less than 12 years, correct?

7 A Correct.

8 Q And so the, the drug charge that you were referring to
9 right now, you're saying that you, you thought you would be
10 serving less than 85 percent, correct?

11 A Correct.

12 Q And are you serving less than 85 percent?

13 A No, sir.

14 Q Did your lawyer advise you that you would have to do 85
15 percent?

16 A All I was advised was that it would be nonviolent. I
17 would have the possibility of parole.

18 Q Okay. What -- the other charges that you pled to, were
19 you advised that they were nonviolent?

20 A Yes, sir, my sentencing states it shows it.

21 Q Okay. And, and are you referring to this manufacturing
22 Schedule I, II, and III where it has five to 20 years on top
23 of it?

24 A Yes.

25 Q And it's marked nonviolent?

Tamarcus Long - Direct examination
by Mr. Richey

1 A Yes.

2 Q Okay. That's consistent with your -- what your lawyer
3 told you?

4 A Consistent with what my lawyer told me, consistent with
5 what the judge says in my transcript when I pled.

6 Q Okay. And so you believe that one or two cases you had
7 a defense, and, on a third case, you wasn't properly advised
8 to parole eligibility, correct?

9 A No. And on the third case I had a defense also because
10 I was led to believe that they had a videotape of me, but no
11 where in my incident report does it state that there's a
12 video, and I never seen the video, and you shouldn't make a
13 plea knowingly and intelligently without seeing all the
14 evidence.

15 Q So, so, you're saying all the statements that you
16 refute today, and all that, those statements, you only
17 reviewed those because I sent them to you, the two
18 statements?

19 A No, the, the one with Dominick Hurst, that was my first
20 time seeing that one when you sent that one to me. That was
21 my first time ever seeing that one.

22 Q And so you believe that cause you had a defense that
23 this Court should grant you a new trial, correct?

24 A Correct.

25 Q On all charges, correct?

Tamarcus Long - Direct examination
by Mr. Richey

- 1 A Correct.
- 2 Q And, and you, you were served with notice of intent to
3 seek life.
- 4 Is that correct?
- 5 A Correct.
- 6 Q And, and is your position that the State could not do
7 that?
- 8 A Well, not --.
- 9 Q Well, let me ask you---
- 10 A Before---
- 11 Q Go ahead.
- 12 A Before I didn't know too much about law, but, since,
13 since I been incarcerated and I been looking at the law
14 myself, and with the codes that I'm sentenced under, based
15 on those sentencing sheets I have, no. It, it carries five
16 to 20. A minimum of five. Maximum of 20.
- 17 Q Okay. And you talked---
- 18 A Not life without parole.
- 19 Q And you talked to your lawyer about that, correct?
20 About this life without parole enhancement.
21 Did you talk to your attorney about that?
- 22 A We, we spoke on it, but at the time I didn't know that
23 it didn't constitute that.
- 24 Q Uh-huh. (Affirmative).
- 25 A So, we didn't, we didn't speak into great detail on it.

Tamarcus Long - Direct examination
by Mr. Richey

1 I was just informed that there was a video of me, and that
2 that's what could possibly get me a life sentence without
3 parole. But, after reviewing my discovery and reading the
4 incident report, no where does it state that there's a
5 video.

6 Q And, and you, you, you know in this transcript that you
7 said -- you told the judge you were satisfied with your
8 lawyer, and all that, just paraphrasing, correct?

9 A Yes, but most of the time when you're pleading you're
10 advised to go along with your -- your, your lawyer usually
11 tells you to go along with what the judges say, and that's
12 pretty much what I did.

13 Q So, so all the stuff about being satisfied with your
14 lawyer, pleading free and voluntary, your, your -- you're
15 saying that you did that so the plea would go through.

16 Is that correct?

17 Is that a fair way of saying that?

18 A To a certain extent, yes.

19 Q Okay.

20 A I wouldn't say that I was fully satisfied, but I, I
21 thought, at that time, it was, it was a better decision to
22 make --

23 Q Okay. Thank you. Answer---

24 A -- was to plea.

25 Q Okay. Answer the questions the Attorney General will

Tamarcus Long - Cross-examination
by Mr. Isenberg

1 have for you.

2 CROSS-EXAMINATION

3 BY MR. ISENBERG:

4 Q Mr. Long, so you're alleging here today that you knew
5 of a video, but you never saw it?

6 A I was informed that there was a video, but, no, I never
7 saw it.

8 Q And you remember testifying at the plea hearing, right?

9 A Yes.

10 Q And you remember talking to the judge directly about
11 your case?

12 A Not directly about my case. I just stated yes and no
13 cause I was advised to do.

14 Q So, you remember telling him that you had seen all the
15 discovery materials in your case, right?

16 A No.

17 Q You didn't tell the judge that?

18 A I don't remember.

19 MR. ISENBERG: Okay. I'm approaching opposing counsel.

20 I'm handing you the transcript from the plea hearing.

21 A Okay.

22 Q Page 7, and if you'll look down at Line 8, and read
23 silently.

24 A Okay. You---

25 Q Read silently while I read aloud.

Tamarcus Long - Cross-examination
by Mr. Isenberg

1 Question from the Judge. Has he shared all of the
2 discovery materials with you?

3 Answer from you. Yes, sir.

4 A Yes, sir.

5 Q So, you would agree that a video from your case would
6 be a part of discovery, correct?

7 A Yes, I would.

8 Q So you told him that you had seen all the discovery
9 materials, but you're saying today you never saw a video?

10 A I was advised that if I told to see the video that plea
11 offer would be taken off the table.

12 Q So you're saying you lied to the judge?

13 A I guess you can say that.

14 Q Okay. So you lied to the judge at your plea hearing?

15 A I lied to the judge based on what my counsel wanted me
16 to do.

17 Q So now you're alleging that your counsel advised you to
18 lie to the judge?

19 A He, he told me to agree with everything and go along
20 with everything for the plea deal.

21 Q Okay. Can I grab that?

22 A Yes, sir, you can.

23 Q Thank you.

24 And so you're also alleging today that your counsel
25 failed to pursue a valid defense?

Tamarcus Long - Cross-examination
by Mr. Isenberg

1 A Yes.

2 Q Do you remember waiving your right to try your case in
3 front of a jury at the plea hearing?

4 A Not really because, as, as I informed Mr. Richey here,
5 I was trying to get him to contact the Spartanburg County
6 Jail to get my medical records to show that I was under the
7 influence of Librium also at the time of my hearing. So --
8 and I know that some of the side effects of Librium, Librium
9 are hallucinations, confusion, shakes, and jitters, and --.

10 Q So you told the judge that you were under the influence
11 of medication?

12 A No, I didn't.

13 Q But you're saying now you were?

14 A I, I was and---

15 Q So you lied to the judge about that too?

16 A I was following the instructions of my counsel.

17 Q Okay. So you said that you wanted them to find a
18 witness during this process?

19 Is that how you testified earlier on direct?

20 A What do you mean?

21 Q You wanted them to -- your lawyer to talk to Dominick
22 Hurst?

23 A I, I brought Dominick Hurst to my lawyer, and Dominick
24 Hurst also wrote a written statement on his own saying that
25 those drugs were his.

Tamarcus Long - Cross-examination
by Mr. Isenberg

1 Q Okay. So -- but do you remember telling the judge that
2 you waived your right to confront any of the witnesses?

3 A I'm pretty sure you're probably right he told me that
4 in the transcript, but no, I don't.

5 Q You would want to go confront someone who was guilty of
6 the crime you were being convicted of, correct?

7 A Yes, if there was a valid defense that my counsel set
8 up I would.

9 Q But you waived that right freely and voluntarily at the
10 hearing. That's what you told the judge.

11 A I feel as I was never given that right.

12 Q Well, you remember being served with life without
13 parole in the case, correct?

14 A Correct.

15 Q And you testified on direct that you were afraid you
16 might be exposed at trial if you went, correct?

17 A I was afraid that there was a chance I could receive
18 life without the possibility of parole, correct.

19 Q Okay. So, your lawyer negotiates for a 12 year
20 sentence, correct?

21 A Correct.

22 Q And then you plead guilty to all the charges?

23 A Correct.

24 Q Okay. And now you're saying that nobody advised you of
25 the ramifications of an 85 percent serving of your sentence?

Tamarcus Long - Cross-examination
by Mr. Isenberg

1 A No.

2 Q Did anybody have to advise you of that?

3 That's an SCDC issue. Not a, not a legal issue.

4 A That I didn't know, but that was what I was led to
5 believe, and I probably would of not pled guilty had I known
6 that.

7 Q So, let's just summarize. You lied to the judge about
8 having all the discovery materials. You lied to the judge
9 about wanting to confront witnesses. You lied to the judge
10 about being under the influence of medication.

11 So, did, did I get that right?

12 A All under the advice of my counsel.

13 Q And you're saying here today that your counsel told you
14 to lie to the judge?

15 A He told me to agree with the judge.

16 MR. ISENBERG: All right. Well, I have no further
17 questions for this witness.

18 MR. RICHEY: No other questions.

19 THE COURT: All right. Thank you, sir. You may step
20 down.

21 MR. RICHEY: Call Mr. Reckenbeil.

22 THE COURT: All right. Please place your left-hand on
23 the Bible. Raise your right.

24 JOHN RECKENBEIL, being first duly
25 sworn, testified as follows:

John Reckenbeil - Direct examination
by Mr. Richey

1 THE COURT: Thank you, sir, and if you would please
2 state your full name for the record.

3 THE WITNESS: John Reckenbeil.

4 THE COURT: All right. Mr. Richey.

5 DIRECT EXAMINATION

6 BY MR. RICHEY:

7 Q All right. Sir, do you recall representing Mr. Long?

8 A I do.

9 Q And you were in the courtroom today, and you heard the
10 issues that have been raised, correct?

11 A Yes, sir.

12 Q And let me start with the 85 percent issue.

13 Did you discuss with him that the charges were up to 85
14 percent, that he would have to serve 95 percent?

15 A Yes.

16 Q You did?

17 A Yes, sir.

18 Q And, and when did you discuss that with him?

19 A It would of been during the one of I would say
20 somewhere between seven and ten times that we spoke either
21 via phone or in person.

22 Q Okay. And I'm gonna hand you this and just show you
23 this. I'm gonna hand you this, and this is -- do you, do
24 you recognize that as being a sentencing sheet?

25 A Yes, sir.

John Reckenbeil - Direct examination
by Mr. Richey

1 Q And, and, and this is a sentencing sheet for one of Mr.
2 Long's cases?

3 A That's correct.

4 Q And you see that it is marked nonviolent on the
5 sentencing sheet. Eight-five percent is not nonviolent.

6 Is that correct?

7 A Well, some -- it, it -- state your question again and
8 then let me --.

9 Q Okay. If -- does nonviolent -- being marked
10 nonviolent, that's -- does that mean that the sentence does
11 not carry 85 percent in your, in your mind?

12 A Yes, it, it -- in other words, there should of been a
13 serious---

14 Q Okay.

15 A ---checked --

16 Q And do you---

17 A -- eventually on one of these documents.

18 Q Yes, sir.

19 A But this one is actually not a serious, but it falls
20 under the 85 percent rule.

21 Q All right. And do you -- and, and let me go back.
22 Was he served with life without parole?

23 A Yes.

24 Q And do you believe that was a valid, valid service?

25 A Yes, I do cause he had a prior -- he had two prior

John Reckenbeil - Direct examination
by Mr. Richey

1 seriouses. One back in 2010, and one in July of 2003. They
2 were both the possession with intent to distribute within
3 inside school zones, and that is the one that falls under
4 Code 44-53-45, excuse me, 445(b)(1)(2), and that would be
5 one that falls in the parameters of the statutory code
6 underneath 17-25-45, the life sentences of persons convicted
7 of certain crimes.

8 The two prior seriouses would basically give him the
9 two strikes, and then there was an opportunity for there to
10 be two other strikes with the two incidences that he had,
11 the October 15th -- of 2015, and the May 3rd or 5th of
12 2016 depending upon which date you want to --.

13 Q And did you discuss that with him?

14 A Yes, sir.

15 Q Okay. And I'm gonna get these exhibits here.

16 Can you tell me whether you went over the discovery
17 with him?

18 A So, the discovery, the discovery that -- of the
19 original charge which I was retained for of October of 2015
20 we discussed in depth in the beginning. Then he picked up
21 two additional charges with Mary Stuart from the Public
22 Defender's Office representing him, but I was made aware of
23 all the evidence when Grady Anthony served me with a life
24 notice saying that he was gonna be seeking that. And so
25 before I could give any sort of opinion, I had to seek out

John Reckenbeil - Direct examination
by Mr. Richey

1 what exactly was the information.

2 Mary, I know, went over one of the, the charges with
3 him, but I know I reviewed in depth the 2015 charge. And
4 then I have reviewed with Mary the accounts of the evidence
5 of what was the other two charges, and then conveyed that to
6 Tamarcus.

7 But can I say that I went over every piece of evidence
8 in all three cases with him?

9 No, that would not be factually accurate.

10 And then, also, one other thing I want to make
11 certain -- clear of. The very -- there's confusion with the
12 Attorney General's questions and my client's, excuse me, my
13 former client's answers. The prosecution here in the
14 Seventh Circuit made it very clear policy that they were not
15 gonna allow confidential informant's names or videos to be
16 released prior to trial, 10 days, and then all deals are
17 off. I think it's very constant. You know, this is
18 something that is in the Federal Courts. This is
19 everywhere.

20 And, and so it would not be accurate to say that my
21 client saw all the discovery. It, it would only be accurate
22 to say that he saw all the discovery that would be limited
23 to the -- to what I just described.

24 Q So, so, you refer to policy is, is that, if you want to
25 see this video of this informant, and show his identity,

John Reckenbeil - Direct examination
by Mr. Richey

1 then we're not gonna do any deals with you?

2 A (Witness nods affirmatively.)

3 Q You got---

4 A Massive risk.

5 Q Okay.

6 A Massive risk in this case.

7 Q Okay.

8 A Massive risk.

9 Q Now, you talked to him -- you discussed that with your
10 client?

11 A Yeah. Absolutely. And, and so he would -- it would
12 not be accurate of him saying that he was not candid to
13 Judge Kelly about the video issue because the fact that I, I
14 didn't even get to see the video because I was making sure
15 my client was getting an opportunity for that 12 year deal
16 as opposed to looking at life in prison.

17 Q So, a video -- it's not the video?

18 It's just the identity of the person---

19 A Yes, sir.

20 Q ---person---

21 A Yeah, cause they don't want defense lawyers telling who
22 they, to their clients, who they are.

23 Q Okay. On some of these charge -- now, these two
24 charges here that you -- that we're discussing here about
25 the people taking the charges and the car and all that, was

John Reckenbeil - Direct examination
by Mr. Richey

1 those your cases?

2 A Well, yes. Yeah, eventually all three of them became
3 my cases, yes.

4 Q I know -- I'm, I'm saying -- when you say you didn't go
5 over discovery with them on, on all the cases because the
6 lawyer -- the P.D. went over them, those cases I'm referring
7 to now, are those the two cases that the P.D. had or you
8 had?

9 A No, the Dominick Hurst one was the original charge that
10 stems from October, 2015 about him claiming it, and then the
11 other one with the young lady in the car, eventually that
12 became, you know, the case that I had him on in front of
13 Judge Kelly in front of the plea, but originally no, that
14 was not my case.

15 Q Okay. So, we got the CI case, and I'm gonna go to the
16 second case, which is on your right side right there, that's
17 the case where the, the gentleman supposedly came to your
18 office---

19 A Yeah, Mr. Hurst.

20 Q ---and claimed the dope and all this.

21 Do you believe that was a value -- viable defense for
22 Mr. Long?

23 A No.

24 Q Can you tell me why?

25 A Yeah, it just was not believable.

John Reckenbeil - Direct examination
by Mr. Richey

1 Q You mean the witness was not?

2 A Yeah. Yeah.

3 Q Okay. And, and he did give a statement, correct?

4 A He did give a statement, but he was also at the house.
5 And so he was just one of the six or seven people that were
6 located at the house that day.

7 Q And do you recall whether he was charged and convicted
8 with the --?

9 A I do not know. I can't say that offhand.

10 Q And you -- and let me -- I don't, I don't want to put
11 words in your mouth. I'm just gonna try to -- your, your
12 answer is that it was -- you believe it was not a defense or
13 was not a credible defense?

14 A It was not a credible defense. Mr. Hurst.

15 Q He, he could of made the defense, but would it be safe
16 to say your position would be it would not be credible?

17 A Yeah. Correct. It was credible.

18 Q Okay. And as to the other case on the left, the drugs
19 in the car thing, did -- were you aware -- well, is that --
20 that's not the case that you went over the stuff with?

21 A Right. But she -- no doubt that that was in -- in the
22 presentation of us going forward for the, for the package
23 deal, all evidence was reviewed, but I can't say that I went
24 line by line with every piece of paper with Mr. Long through
25 everything.

John Reckenbeil - Direct examination
by Mr. Richey

1 So, the car case identification wouldn't meet the PWID
2 within school zone because you can't arrest somebody when
3 they're driving in a car and basically bring them into a
4 school zone issue. That wasn't gonna be a third strike
5 issue. So, while I did contemplate the fact that he had
6 this young lady who claimed the drugs, in all honesty, that
7 case probably would of been tried last if they were gonna
8 try him in accordance with the priority or trying to strike
9 him out.

10 And so her -- again, her defense -- the defense of
11 using her was just really not credible cause as it was noted
12 by the police officers, she couldn't even tell the weight or
13 the close weight of the amount of drugs. And I just didn't
14 believe that -- and so, of course, of course, I told my
15 client accordingly that I didn't believe this was a credible
16 defense.

17 Q And, and, and you heard his testimony about the
18 questions that the judge asked.

19 Did you tell him how to answer those questions?

20 A I never tell people how to answer. I tell what
21 questions are gonna be coming in the sense of the
22 constitutional requirements that the judge has to go over.

23 Q Yes.

24 A And, and so it's never a -- it's -- there -- this case
25 is un -- different then most cases because this is a

John Reckenbeil - Cross-examination
by Mr. Isenberg

1 contract that you had. We had a negotiated sentence that
2 Judge Kelly could of rejected. And, in fact, if Judge Kelly
3 would have rejected it, then the client has the option to
4 stand down because it's not acceptance of the contract. So,
5 I informed him of the Constitutional questions as well as
6 what would of happened if the judge doesn't accept it.

7 Q But you didn't tell him how to answer them?

8 I mean that's all---

9 A No, sir.

10 Q Oh, okay. Thank you. Answer any questions the
11 Attorney General will have.

12 MR. ISENBERG: May it please the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. ISENBERG:

16 Q So you said that you did not find Dominick's statement
17 credible.

18 A Correct.

19 Q And you did not find the female in the car statement to
20 be credible?

21 A Well, I, I think that the police had the -- Dominick
22 didn't give a statement until some -- a month afterwards.
23 The young lady did there, contemporaneously, at the site.
24 She said that it was hers when she was pulled beside, beside
25 the car. But the questions of the police officers at that

John Reckenbeil - Cross-examination
by Mr. Isenberg

1 point in the narrative of the police report did kind of
2 prove a little bit the fact that she didn't even know the
3 weight of the drugs, and there was a little bit more of her
4 indecisiveness, and it just -- it didn't per -- it didn't
5 perceive that she was the one actually having a lot of
6 knowledge about the drugs in the vehicle.

7 And so, therefore, it would of been a question of fact
8 by a jury to decide, and, ultimately, I don't think would of
9 had a good outcome.

10 Q And -- but on both of these instances, when you found
11 your witness's statements not to be credible, you had the
12 duty not to put them up if you thought they were going to
13 lie, correct?

14 A Well, the defense lawyer gets to choose the strategy.
15 The defendant gets the opportunity to say whether or not he
16 wants to go forward to trial or to plea. I don't know if
17 they would of been called as witnesses, but surely, is my
18 client adamant that people get to be able to testify to
19 statements that they've given prior, even though that those
20 statements I might not believe as being accurate, of course
21 I would put of them up on the witness stand.

22 And it's -- I don't -- I am not allowed to suborn
23 perjury, but if they have given a prior statement to police,
24 and they are consistent with that prior statement, and my
25 client is adamant that they be called, and I don't --

John Reckenbeil - Cross-examination
by Mr. Isenberg

1 therefore, I would have to -- I would put them on the stand,
2 yeah.

3 Q Right.

4 So, but -- in any event, you counseled your client that
5 maybe we should pursue a plea deal because he's pursuing
6 these defenses might not pan out at trial?

7 A Yeah. When you -- this one was very interesting cause
8 it was one of the few that I had clients that were actually
9 served LWOP notices. Not too often did I have that sort of
10 situation.

11 Q Right.

12 And you -- instead of LWOP, you got him 12 years,
13 correct---

14 A Well---

15 Q ---on a plea?

16 A ---I, I wouldn't say -- I -- yeah, you can, you can
17 phrase it that way. I, I would -- I don't think Tamarcus is
18 a bad person. So, I think it's reflective---

19 Q Right.

20 A ---of the, the -- I've -- it's reflective of it's -- of
21 the marijuana situation, of, of the -- that it wasn't any
22 other drug beside that.

23 Q Tamarcus alleged that you failed to review a video with
24 him.

25 So, you're saying -- you testified earlier you didn't

John Reckenbeil - Cross-examination
by Mr. Isenberg

1 have that video in your possession when you made the plea?

2 A Yes, sir, because it's just not made available. Like I
3 said, the custom of, of this solicitor's office as well as
4 all other DA's and Federal prosecutors is that they're not
5 gonna show their confidential informants if there's gonna be
6 a plea deal cause, obviously, they don't want to waste that
7 confidential informant---

8 Q Right.

9 A ---once that person's known. Yeah, there's a long
10 history of why that is not being done.

11 Q Okay. So, that is the custom of the solicitor's
12 office---

13 A As well as---

14 Q ---since---

15 A ---a lot of other, other prosecutor's office that I've
16 dealt with, yes, sir.

17 Q So, you couldn't have failed to review a video that you
18 didn't have in your possession?

19 A Correct. They made---

20 Q Okay.

21 A Yeah, the, the prosecutor's office get -- made it clear
22 they had an inventory that was going to be available if it
23 went to trial.

24 Q And he knew, when he accepted the plea, that that meant
25 he was not going to be able to look at the video?

John Reckenbeil - Cross-examination
by Mr. Isenberg

1 A That's correct.

2 Q And he accepted the plea anyway?

3 A He accepted the negotiated sentence, yes.

4 Q Negotiated sentence?

5 A Yes.

6 Q Okay. And so with the failure to advise of the 85
7 percent sentence, you went over everything with him?

8 A Yes. And I, I will say that I, I looked back over the
9 last couple days to try to figure out the statutory code for
10 it, but I just know what -- I've used this since I started.
11 Trey Gowdy and Jessica Thill gave this to me back in 2001,
12 and this is the cheat sheet that the solicitor's office has
13 from here that I've always used. And it's got the drug
14 distribution third underlined, which would mean it's an 85
15 percenter. And so there's no question. I've used this like
16 the Gospel. I would of told my client that it's 85 percent.

17 Q So -- and customarily you would go over that if that
18 was an issue?

19 A I would always use this to go over everything.

20 Q Okay.

21 A Yes, sir, and it's customary practice. Absolutely.

22 Q Okay. And so, just to summarize, you went over all of
23 the discovery you had with Mr. Long, but not the video
24 because you didn't have it?

25 A Right.

John Reckenbeil - Cross-examination
by Mr. Isenberg

1 Q Correct?

2 Okay. And you didn't pursue the defense with the two
3 witnesses because you didn't find their statement to be
4 credible, correct?

5 A Just the, the risk was way too much. It was just that
6 was my advice.

7 Q And you even said on direct it was a massive risk to
8 turn down the plea in exchange for the video---

9 A You can't---

10 Q ---to see it?

11 A You can't get any bigger of a risk when you're looking
12 at life in prison without the possibility -- you go out of
13 prison in a wooden box.

14 Q Right.

15 A That -- with the opportunity of serving that less
16 amount of time, that, of course, that might be my advice.

17 Q And you counseled Mr. Long on all of this before he
18 accepted that plea?

19 A Yes. And that was why I was so adamant because I,
20 quite honestly, I just didn't feel like the Public
21 Defender's Office was taking this serious enough with the
22 fact that he was looking at life in prison without the
23 possibility of parole.

24 Q Right.

25 And that was over the course of, you said, seven to ten

John Reckenbeil - Redirect examination
by Mr. Richey

1 meetings y'all had?

2 A Right.

3 MR. ISENBERG: Okay. No further questions for this
4 witness.

5 MR. RICHEY: Just have one question.

6 THE COURT: All right.

7 REDIRECT EXAMINATION

8 BY MR. RICHEY:

9 Q Was there a search warrant in your case?

10 Do you recall that?

11 A No, no, no. I agree with you on that point. No, there
12 wasn't a search warrant.

13 Q There was not one?

14 A No.

15 Q Okay.

16 A And so, if that was -- so, I agree. So that if,
17 ultimately, in that case, the search warrant was the thing
18 that literally got the cops to the house, and Tamarcus was
19 supposedly in the car that was in the curtilage area, so, no
20 question I agree that if, in fact, there was not a proper
21 search warrant, then we had a chance on that. But then,
22 also, we had -- they had -- also had another, another bite
23 at the apple. They had another shot because there was
24 another PWID school zone case.

25 Q Thank you, sir.

John Reckenbeil - Recross examination
by Mr. Isenberg

1 THE COURT: All right. Anything further?

2 MR. ISENBERG: Yes, Your Honor.

3 RECROSS EXAMINATION

4 BY MR. ISENBURG:

5 Q You never had this search warrant in your possession?

6 A No.

7 Q So, you couldn't have reviewed this search warrant with
8 him if you didn't have it in your possession?

9 A I didn't, but something gave me an inclination that the
10 12 years was reflective on the fact that there was a problem
11 with that first case. So, it's never been said, but I had a
12 sneaking suspicion that us getting where we got through the
13 negotiations down to 12 years had to do with the marijuana
14 situation, and not being another hard drug, and the fact
15 that we might of had a victory in one case, but then they
16 had us lined up for the second one. They were -- this
17 knocked us down, and it was said to me that, if I won one
18 case, he said I'm gonna bring him back the next one, and I'm
19 gonna try to LWOP him there.

20 Q But none of that would fall under ineffective
21 assistance of counsel, correct?

22 A Well---

23 Q I'm---

24 A I don't---

25 Q I confused you.

John Reckenbeil - Recross examination
by Mr. Isenberg

1 A I don't know if it gets -- if it does or if it doesn't,
2 but---

3 Q Did you have the search warrant?

4 A I didn't have the search warrant, no.

5 MR. ISENBERG: No further questions.

6 A I didn't have it. I didn't have it.

7 THE COURT: All right. Anything further?

8 MR. RICHEY: No, Your Honor.

9 THE COURT: Thank you very much, sir.

10 THE WITNESS: Okay.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: All right. Anything further from the
14 State?

15 MR. ISENBERG: Nothing further from the State, Your
16 Honor.

17 THE COURT: All right. Be glad to hear from you, Mr.
18 Richey.

19 MR. RICHEY: Your Honor, my client, he is with -- he's
20 asking the Court to give him a new trial. I -- he's asking
21 the Court to give him a new trial based on the fact that he
22 was -- claimed he was not advised of the 85 percent, and
23 also he had two defenses for the two cases. And also that
24 him and Mr. Reckenbeil did not review the discovery. I
25 think counsel testified that those two cases were not his

1 cases, but he did a global discussion of the charges.

2 But my client believes that he did not go over those
3 cases with him at the time of the plea. And that -- the
4 search warrant, that he could of procured a search warrant
5 prior to him pleading guilty. And, for those reasons, he's
6 asking this Court to grant him a new trial on this case.

7 Thank you, Your Honor.

8 THE COURT: All right. The State.

9 MR. ISENBERG: Your Honor, the Applicant's asking for a
10 new trial based upon three charges through ineffective
11 assistance of counsel. First would be the failure to review
12 discovery.

13 Now, we've already went over everything with both
14 witnesses. He testified that he never saw the video, and
15 then his lawyer testified that he accepted the plea knowing
16 that, if he wanted to see the video, he would have to go to
17 trial, and that was a massive risk based upon the
18 confidential informant situation. Now, he knew that before
19 he accepted the plea, and he chose to accept the plea to --
20 and not view this video.

21 So, he had the opportunity to go down that path, and
22 his lawyer talked to him about it, the massive risk, and
23 everything about that. And he chose not to do it.

24 In the failure to pursue valid defenses, we've heard
25 testimony from his lawyer stating that he talked to one

1 witness, and didn't find his story believable. So, he
2 thought that that would be a massive risk in front of the
3 jury, and he saw the incident report from the other witness,
4 and how there were so many holes in her story that he just
5 didn't think it would add up in trial. So, he counseled his
6 client of these risks, and the client, in the end, decided
7 to accept the plea deal.

8 Now, when it comes to the advisement of the 85 percent
9 sentence, we saw his lawyer hold up a piece of paper, and
10 said whenever there's a situation of 85 percent sentence, I
11 go through all of this with him. And I said customarily, do
12 you do that with your clients. He says every single time
13 there's a chance I do that. And, in this situation, he says
14 that he did that with his client, and that the client
15 accepted the plea deal anyway.

16 He was facing LWOP. He said, on direct examination,
17 that he was afraid that he was going to be exposed with life
18 without parole. His lawyer told him that he was going to be
19 exposed -- his lawyer told him the massive risk in going to
20 trial, and he decided that -- to accept the 12 years instead
21 of going to trial, and being exposed to life without parole.

22 So, in that case -- in that event, we believe that his
23 Application should be dismissed.

24 THE COURT: All right. You know, I look at these
25 things, and, and I, I have the transcript before me, and

1 this tran -- transcript starts off, The State calls the
2 case, tells what the charges are, and explains that there's
3 a negotiation of a 12 year sentence.

4 Before the judge gets involved at all, the clerk places
5 Mr. Long under oath. Swear to tell the truth, and then it
6 starts. And, throughout this, this colloquy, the judge asks
7 questions. Mr. Long responds to those questions supposedly
8 under oath to tell the truth.

9 Now he gets up here today and says that the oath
10 doesn't mean anything to him, that his lawyer tells him to
11 just agree with everything the judge says whether it's right
12 or wrong regardless of whether you're under oath or not.

13 I, I don't believe that to be the case. I know Mr.
14 Reckenbeil, Reckenbeil and I'm, I'm -- he testified that he
15 would never tell a client to answer dishonorably or
16 dishonestly to the Court, and I believe that to be the case.
17 I'm confident that that didn't happen.

18 So -- and the reason we put people under oath when we
19 do these guilty please is so that we can rely on the fact
20 that the Defendant is under oath, and is sworn to tell the
21 truth, and that that's what they're doing when they talk to
22 us, that they are telling us the truth. It's the reason we
23 ask questions. And you're -- so, we go through this whole
24 litany of questions where the judge basically goes over the
25 charges, Mr. Long indicates he understands what the charges

1 are. He asks him how he pleads to each individual charge as
2 it comes up. He answers that he pleads guilty. Then he
3 goes through, and he asks him, do you plead guilty to each
4 and every indictment because you are, in fact, guilty of
5 each and every offense, and he says yes, sir.

6 Is your plea voluntary?

7 Yes, sir.

8 Did any family member, friend, or otherwise convince
9 you to plead guilty?

10 No, sir.

11 Is this your decision and your decision only to plead
12 guilty?

13 Yes, sir.

14 Have you had sufficient time to speak with your lawyer?

15 I have.

16 Has he answered all of your questions?

17 Yes, sir.

18 Has he shared all of the discovery materials with you?

19 Yes, sir.

20 Now, this thing about the videos, listen, I agree one
21 hundred percent with what Mr. Reckenbeil has indicated. The
22 State has the prerogative to, to make plea offers or not
23 make plea offers. They have an obligation that, that they
24 take very seriously about protecting the identity of, of
25 informants. And obviously, they leave -- they have a legal

1 obligation to disclose that, that inform -- that information
2 if the defense requires that. But they also have the right
3 to either offer pleas -- plea, plea offers or not offer plea
4 offers, to make recommendations or negotiations, or not do
5 that. It's very common.

6 Mr. Long knew, going into the plea, that there were
7 videos that he hasn't seen. But he was also instructed
8 that, if you insist on us disclosing the identity of the
9 informant, then the plea offers are off the table. You're
10 talking -- we're not talking about -- we are talking, other
11 than a death penalty case, we're talking about a case that
12 holds the highest penalty under the law, life without
13 parole. If I were to send you back for a new trial or, or
14 whip this whole thing out and send you back, if you were to
15 be convicted, and you were to survive or, or -- and that
16 conviction were to survive any subsequent appeals or
17 anything like that, the only way you would leave the
18 Department of Corrections is in a casket. And that's what's
19 going on here.

20 So, the judge goes over these questions for that very
21 reason. There's a lot at stake. And he asked do you need
22 a -- do you need for me to take a break while you discuss
23 your case with your lawyer, and you answer no, sir.

24 Are you completely satisfied with his services?

25 Yes, sir.

1 And then we continue, and we, and we go through the,
2 the colloquy that the State gives the, the details. We go
3 through the plea.

4 The State then, at the end, says judge, I'd like to
5 read his record, his record into the record.

6 I can't remember if it was during your testimony here
7 today, I believe it was, Mr. Long, where you indicated that
8 you don't have a prior record that would allow the State to
9 seek life without parole.

10 Well, you're wrong on that if this information is true
11 because you do have a conviction, if this, if this
12 information is true that was presented to the Court, in 2003
13 for possession with intent to distribute within a half mile
14 of a school or park. That is classified, under South
15 Carolina law, as a serious offense. That was in 2003.
16 There was another conviction for possession with intent to
17 distribute within a half mile of a school or park in 2015.
18 That's another serious offense. And then the course of the
19 cases that you're before the Court on was, was, I think,
20 three counts of that.

21 So, a plea of guilty for a conviction, a -- if you went
22 to a trial and were convicted of any one of these proximity
23 charges that you were before the Court on on this date, that
24 would have qualified for life without parole. So, that,
25 that, in fact, was on the table.

1 The decisions that lawyers make for their clients, and
2 trial decision, strategy decisions, in this case, Mr.
3 Reckenbeil had to make decisions understanding that the
4 ultimate penalty -- that, that you were facing the ultimate
5 penalty, and he got -- and made those decisions which
6 certainly were in his discretion as, as trial counsel.

7 There's just nothing in this record, other than your
8 testimony here today, that would show that there was
9 anything deficient in Mr. Reckenbeil's representation. I
10 feel that there's been a complete absence of any evidence
11 that would support granting of the Application under
12 Strickland versus Washington. I don't think that that
13 standard's been met at all, and I'm gonna respectfully deny
14 the Application.

15 All right.

16 MR. RICHEY: Thank you, Your Honor.

17 MR. ISENBERG: Thank you, Your Honor.

18 Your Honor, can I ask that Mr. Reckenbeil be excused?

19 THE COURT: Sure. Absolutely.

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 4th day of March, 2019.

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

July 15th, 2019

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

ADDITIONAL NARRATIVE

Agency Name: SPARTANBURG POLICE DEPARTMENT	ORI #: SC0420100	Report Date/Time: 10/15/2015 12:14	OCA #: 10046915
---	---------------------	---------------------------------------	--------------------

Supplemental - Secret, M

On 11/03/2015 at approximately 1312 hours, I received a call in reference to a subject (Dominic Hearst) at the solicitor's office wanting to claim the marijuana found in the vehicle. Once I arrived I was advised that Tamaricus Long was with Dominic Hearst. I obtained a voluntary statement form and a pre-interrogation waiver form. Dominic Hearst stepped into a conference room in the solicitor's office. Dominic Hearst completed the pre-interrogation waiver form which explained his rights to him. Hearst also gave a voluntary statement claiming the marijuana. Mr Hearst stated he had about 142 grams of mid grade weed. He waited and changed it to 150+ grams of marijuana. I inquired if he had read a copy of the police report. Mr Hearst initially stated he read a copy of the police report. Mr Hearst later stated he did not get any paperwork and that he did not read a copy of the police report. Mr Hearst continually stated he just wanted to do what was right and claim what was his. I explained that I wanted to ensure that the marijuana that he was claiming was in fact his. Mr Hearst stated he had a "QP" of mid and about another 20 grams of loud. I know "QP" to be a quarter of a pound (4 oz that is 112 grams). The total weight found was approximately 170 grams. Located in the bag he later states is his was approximately 134 grams. In separate containers was approximately 26.3 grams and 10.3 grams that were not in the bag but in the floor board of the car. Mr Hearst stated that Tamaricus and him were the only people in the car. Mr Hearst stated he threw the bag in the back when he saw police. Mr Hearst later states that he has been drinking but not intoxicated. Mr Hearst stated the weed was packaged in a plastic bag. Mr Hearst completed the voluntary statement. I attempted to speak to Tamaricus Long but he had already left.



14/02/2016 2:15:22
ADDITIONAL NARRATIVE

Agency Name	Spartanburg Police Department	ORI #	SC0420100	Report Date/Time	05/20/2016 16:54	OCA #	05058116
-------------	-------------------------------	-------	-----------	------------------	------------------	-------	----------

At the rear of the vehicle I asked Davis about the bag and she advised that it did have some marijuana residue inside the bag but it was empty. I asked Davis for consent to search the vehicle and she stated 'yes'. I walked to the driver's side of the vehicle and Inv. Secrest asked Long to step out of the vehicle. Long did not respond to his request. I looked into the vehicle from the driver's side and observed an open container of alcohol sitting at Long's feet. After several more request by Inv. Secrest for Long to exit the vehicle he refused. I opened the driver's door and reached across Long unlocking the passenger side door. Long was handcuffed in the front seat of the vehicle and then taken to the rear of the vehicle. Once Long exited the vehicle I could see a black book bag that was sitting at his feet. The top of the bag was partially open and I could see a clear baggie containing a green plant material believed to be marijuana inside. The total approximate weight of the marijuana was 265 grams. Also inside the bag was a set of digital scales and an empty Tupperware container. I also located a box of sandwich baggies which were in the floor board of the vehicle beside the book bag. Both Long and Davis were detained due to the marijuana.

iv. Secrest attempted to speak with Long about the marijuana found in the vehicle but he would not talk. I talked with Davis and she stated that the marijuana belonged to her but when asked an approximate weight to determine if she was being honest she replied 'a pound'. The weight of the marijuana did not appear to be a pound. She did not appear to be truthful and it appeared to be an attempt to take the charge off Long. Both Long and Davis were placed under arrest for PwID Marijuana and transported to the county jail for booking. All the evidence from the vehicle was placed into Evidence at City Hall. Photographs were taken and placed into Evidence. I will speak with a judge in reference to warrants for both subjects.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Tamarcus Long,	)	Case No.: 2018-CP-42-1279
S.C.D.C. No. 305486,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before this Court by way of an application for post-conviction relief filed by Tamarcus Long (Applicant) on April 12, 2018. Respondent served its return on August 3, 2018. The Court convened an evidentiary hearing into the matter on March 4, 2019, at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Rodney Richey, Esq. Jacob Isenberg, Esq., and Johnny James, Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, John G. Reckenbeil, Esquire (Counsel), also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the plea transcript, and the records of the Spartanburg County Clerk of Court regarding the subject convictions. The Court finds Applicant has not met his burden of establishing any constitutional deprivations or any other grounds entitling him to relief and denies and dismisses this application with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the June

2016 term of the Spartanburg County Grand Jury for possession with intent to distribute (2016-GS-42-3113) and possession with intent to distribute marijuana within one-half mile of a school or park (2016-GS-42-3114). Applicant was subsequently indicted in December 2016 for distribution of marijuana (2016-GS-42-6473) and distribution of marijuana within one-half mile of a school (2016-GS-42-6474). Counsel represented Applicant on all charges. The case was prosecuted by Assistant Solicitor Grady B. Anthony of the Seventh Circuit Solicitor's Office.

On June 8, 2017, Applicant pled guilty as indicted to all charges before the Honorable R. Keith Kelly. Judge Kelly accepted the negotiated sentence of twelve years to run concurrent. Applicant did not appeal his conviction or sentence.

II. PRESENT APPLICATION

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

1. "Ineffective Assistance of Counsel"
 - a. Failure to review discovery before plea
 - b. Failure to pursue valid defenses
 - c. Failure to advise 85% sentence

Applicant requested a new trial and resentencing. At the evidentiary hearing, Applicant proceeded forward on the above-mentioned allegations.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

2019 MAY -3 AM 8:38

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Strickland at 686.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 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 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to review discovery before plea

a. Plea Hearing Statements

Applicant contends Counsel directed him to lie under oath at the plea hearing about reviewing discovery together. An applicant's statements during the plea hearing are considered "conclusive unless [he] presents valid reasons why he should be allowed to depart from the truth" of them. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007).

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Here, Applicant's statement at the plea hearing that Counsel reviewed all discovery with him is considered conclusive. (Tr. 7, L. 8-9). During the hearing, Applicant, despite multiple opportunities, never altered that statement. (Tr. 7, L. 3-18). Moreover, there is nothing in the record to support Applicant's contention that Counsel directed his answers. However, there is evidence to support Counsel's credible testimony that they reviewed discovery extensively before the plea hearing. (Tr. 12, L. 5-12). Furthermore, Counsel credibly testified to never directing Applicant to lie at the hearing. Thus, Applicant's reasoning is not valid and his deficiency claim fails on this allegation.

b. Deficiency based upon failure to review video

Additionally, Applicant contends Counsel failed to review a material video with him. The disclosure of a material video to counsel instead of the applicant is sufficient for discovery requirements during negotiations when it contains "footage of a confidential informant whose identity would have been compromised" if watched by the applicant. Hyman v. State, 397 S.C. 35, 48, 723 S.E.2d 375, 382 (2012), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Here, Counsel credibly testified he did not get the video through discovery. Moreover, Counsel gave credible testimony that he never watched the video because the Seventh Circuit Solicitor's Office's policy is to terminate any plea offer, and cease any further plea negotiations, if Counsel or the Defendant elects to view the video involving the confidential informant. This policy is followed by the federal government and a majority of Solicitor offices in South Carolina to ensure the anonymity and the protection of confidential informants. Furthermore, Counsel credibly testified Applicant agreed to forgo video access to accept a negotiated sentence.

Therefore, this Court finds Applicant has not proved Counsel was deficient for failing to review the video involving a confidential informant.

c. Prejudice based upon failure to review

Applicant contends he wanted to go to trial to gain access to this video. An applicant is not prejudiced by deficiencies involving video disclosure when he “was aware throughout negotiations and guilty plea proceedings that videotape was not exculpatory.” Hyman, 397 S.C. at 48, 723 S.E.2d at 382. Counsel credibly testified he advised Applicant a jury could “likely” identify him selling illegal drugs in the video. Furthermore, Counsel credibly testified Applicant agreed a jury could identify him based upon seeing photographs from the video. Accordingly, this Court finds Applicant was aware the video was not exculpatory through negotiations, which means any alleged failure to review was not prejudicial.

2. Failure to Pursue a Defense

Applicant contends Counsel was ineffective for failing to pursue a valid defense of third-party guilt. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation “was itself reasonable.” Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). However, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses “when it is reasonable to do so.” Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). Additionally, an applicant's statements during the plea hearing are considered “conclusive unless [he] presents valid reasons why he should be allowed to depart from the truth” of them. Dalton, 376 S.C. at 137, 654 S.E.2d at 874.

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CLERK OF COURT
JAMES L. COOPER, JR.
CLERK OF COURT

a) Male witness

Applicant contends Counsel failed to pursue a defense of third-party guilt through a male witness he offered. At the plea hearing, Applicant confirmed he was satisfied with Counsel's services, answered all questions, and "did everything he possibly" could for Applicant. (Tr. 7, L. 6-13). Furthermore, Counsel credibly testified about interviewing this male witness in his office. Counsel also credibly testified about credibility concerns with the male's story. Thereafter, Counsel credibly testified he discussed his concerns about the credibility of the male witness with the Applicant and the problems this would present at trial. This Court finds Counsel's credibility assessment of the witness after conducting an independent interview to be sufficient for a reasonable investigation. Therefore, this Court finds Applicant has failed to prove Counsel is deficient for failing to pursue a defense based on the male witness.

b) Female witness

Applicant contends Counsel was deficient for not using a female witness to present a third-party guilt defense. Specifically, Applicant testified Counsel never interviewed a female witness who wanted to take ownership of drugs used to prosecute him. Furthermore, Applicant testified the police report reflected she was responsible for all drugs recovered. Counsel testified of his awareness with female's story because of the police report. However, Counsel credibly testified the report indicated she could not identify specific details at the scene, which presented credibility concerns. Counsel further credibly testified he met with Applicant and the female witness before entering into the negotiated sentence. Counsel credibly testified the three of them went over all discovery, options, and opinions. Counsel credibly testified, at some point, he advised the Applicant that blaming his girlfriend would probably not sit well with the jury. Thereafter, the Applicant went before the plea judge where he confirmed, under oath, that he wished to waive his

right to call and confront witnesses despite having had knowledge of alleged third-party guilt. (Tr. 6, L. 5). Accordingly, this Court finds Applicant has not proved Counsel was deficient in failing to pursue a defense based upon the female witness.

c) Prejudice based upon failure to pursue third-party guilt

Applicant alleges the failure to pursue a defense for third-party guilt prejudiced his decision to avoid trial. The prejudice prong is dependent upon whether counsel's deficiencies "affected the outcome of the plea process." Frierson v. State, 417 S.C. 287, 789 S.E.2d 762 (Ct. App. 2016), *aff'd as modified*, 423 S.C. 257, 815 S.E.2d 433 (2018). To establish prejudice through witness corroboration, an applicant "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted. SCRE 801. Mere "speculation" about the details of what a witness would testify about is insufficient to establish prejudice. Dalton v. State, 376 S.C. 130 at 143, 654 S.E.2d 870 at 877.

Here, Applicant testified both of the alleged witnesses were willing to accept ownership of drugs on his behalf. However, neither alleged witness testified or submitted affidavits for his PCR hearing. Without testifying, the female's conversation with police officers at the scene is inadmissible hearsay because it goes towards the truth of the matter asserted. Also, the police report itself is actually a statement from officers at the scene. Accordingly, Applicant's testimony about the male and female's version of events is mere speculation. Accordingly, this Court finds Applicant has presented evidence insufficient to prove prejudice based upon alleged deficiencies in failing to pursue a defense.

3. Failure to Advise about delayed eligibility for release under community supervision

a) Deficiency based upon the failure to advise

Applicant contends Counsel was deficient for failing to advise him that he must serve 85% of the sentence before he would be eligible for early release under community supervision. However, Counsel credibly testified he customarily provides clients with a sentencing explanation sheet, which includes the mandatory 85% minimum incarceration for third offense sentences.¹ Furthermore, Counsel credibly testified he provided this sentencing explanation sheet to Applicant before the plea hearing. Thereafter, Counsel credibly testified he verbally explained the sentence details to Applicant, including the 85% minimum incarceration requirement before eligibility for release. As a result, this Court finds Applicant has not proven Counsel was deficient based upon a failure to advise about delayed eligibility for release under community supervision.

b) Prejudice based upon alleged failure to advise

Applicant contends he would have gone to trial if he had known about his delayed eligibility for release under community supervision. The South Carolina Supreme Court has found deficient counsel does not prejudice an applicant where the basis for their decision to avoid trial was a favorable plea. Goins v. State, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012). (Finding no prejudice where evidence showed Applicant accepted the plea after State offered to dismiss certain charges). Applicant credibly admitted he accepted the negotiated sentence based upon the fear of being exposed to LWOP at trial. Thereafter, Counsel credibly testified Applicant was aware of LWOP risks on multiple charges during plea negotiations. Counsel credibly testified he advised the Applicant the State likely had enough evidence to convict him through the confidential

¹Counsel credibly testified former Seventh Circuit Solicitor Trey Gowdy recommended this sentencing sheet, and he has been using it for many years without issue.

informant's testimony and the video. Counsel further credibly testified the State was ready to serve LWOP notice on a second distribution charge if it had lost this trial. Thereafter, Counsel credibly testified Applicant agreed the twelve-year negotiated sentence for all charges was a good deal. During the plea hearing, Counsel actually discussed Applicant's awareness of the "benefit" of not having been subject to LWOP on two occasions. (Tr. 11, L. 25) (Tr. 12, L. 15). Accordingly, Applicant thought this plea deal was more favorable than risking LWOP. Therefore, this Court finds Applicant failed to prove he would have gone to trial if he had received the proper advice regarding delayed eligibility for release under community supervision.

III. CONCLUSION

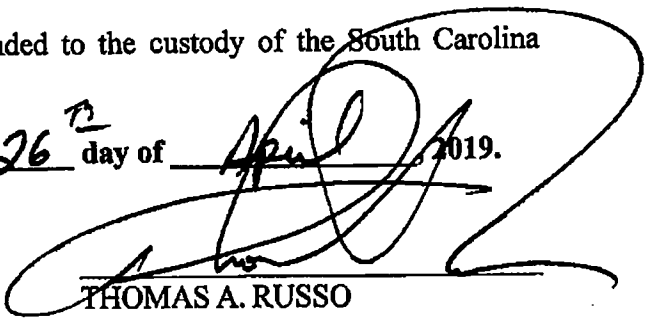
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26th day of April, 2019.


THOMAS A. RUSSO
Presiding Judge
Seventh Judicial Circuit

Florence, South Carolina

2019 MAY -3 AM 8:39

WITNESSES

SPTBG CITY

Anthony S. Minos

ARREST WARRANT NUMBER

2015A4210103934

ACTION OF GRAND JURY

TRUO BILL

JUN 17 2016

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

16-GS-42-3113

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2016

TERM

THE STATE

vs.

TAMARCUS DETRELLE LONG

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SC Code: 44-53-370

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

INDICTMENT

JUN 17 2016

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

POSSESSION WITH INTENT TO DISTRIBUTE

That Tamarcus Detrelle Long did in Spartanburg County on or about October 15, 2015, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such distribution not having been authorized by law.*

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



ASSISTANT SOLICITOR

WITNESSES

SPTBG CITY

Anthony S. Minoz

ARREST WARRANT NUMBER

2015A4210103935

Clark ACTION OF GRAND JURY

True Bill

JUN 17 2016

Foreperson of Grand Jury

Date:

1. STATEMENT

2. RETURN

VERDICT

3. RETURN

4. RETURN

5. RETURN

6. RETURN

Foreperson of Petit Jury

Date:

DOCKET NO. -

16-GS-42-3114

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2016

TERM

THE STATE

vs.

TAMARCUS DETRELLE LONG

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA
WITHIN ONE-HALF MILE

SC Code: 44-53-445

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

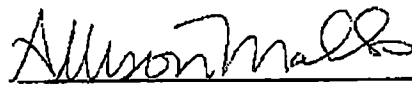
INDICTMENT

At a Court of General Sessions, convened on JUL 17 2016 the
 Grand Jurors of County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA WITHIN ONE-HALF MILE

That Tamarcus Detrelle Long did in Spartanburg County on October 15, 2015, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Marijuana, a schedule I controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Carlisle Park, under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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


 ASSISTANT SOLICITOR

WITNESSES

Spartanburg Police Department

[Signature]

ARREST WARRANT NUMBER

2016A4210101900

ACTION OF GRAND JURY

DEC 09 2016

Foreperson of Grand Jury
Date:

1. SENTENCE AND VERDICT

CP

2. RETURNED

D

3. CAUTIONED

/

4. BOUND

/

5. RETURNED TO COURT

CP

6. RETURNED TO COURT

CP

Foreperson of Petit Jury

Date:

D

7. RETURNED TO COURT

/

DOCKET NO.

16-GS-42-6473

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 12 2016

TERM

THE STATE

vs.

Tamarcus Detrelle Long

Indictment for

DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370

H. HOPE CLACKLEY

2016 DEC 16 PM 2:54

CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

DEC 09 2016

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

DISTRIBUTION OF MARIJUANA

That Tamaricus Long did in Spartanburg County on or about May 3rd, 2016, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance or controlled substance analogue, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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


 ASSISTANT SOLICITOR

WITNESSES

Spartanburg Police Department

Anthony S. Menoz

ARREST WARRANT NUMBER

2016A4210101899

ACTION OF GRAND JURY

DEC 09 2016

For person of Grand Jury
Date:

1. SENTENCED

2. FINE

3. PROBATION

4. RESTITUTION

5. COUNSELING

6. CHECKED BY

7. CASE DISMISSED

For person of Petit Jury

Date:

VERDICT

DP

☒

/

/

OR

OR

W

/

DOCKET NO.

16-GS-42-6474

The State of South Carolina

County of

Barry J. Barnette Solicitor

COURT OF GENERAL SESSIONS

DEC 12 2016

TERM

THE STATE

vs.

Tamarcus Detrelle Long

Indictment for

DISTRIBUTION OF MARIJUANA WITHIN
ONE-HALF MILE OF SCHOOL
SC Code: 44-53-445

M. HOPE BLACKLEY

2016 DEC 16 PM 2:54

CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF)

INDICTMENT

At a Court of General Sessions, convened on DEC 09 2016, the
 Grand Jurors of County present upon their oath:

DISTRIBUTION OF MARIJUANA
WITHIN ONE-HALF MILE

That Tamaricus Long did in Spartanburg County on or about May 3rd, 2016, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Marijuana, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Carlisle Park located in Spartanburg County, under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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

C. B. [Signature]
 ASSISTANT SOLICITOR

COUNTY OF SPARTANBURG
STATE VS.

Tamarus Detrelle Long

AKA:

Race: BLACK Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] W. 11th St

City, State, Zip: Spartanburg SC 29306

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

☐ CONVICTED OF or ☒ PLEADS

TO: Drugs / Manufacture, possession of other sub. in Sch. I, II, III or flunitrazepam or analogue, w.i.t.d. - 3rd 12 years

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188

☒ 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: Anthony Grady B. 101601 Tamarus Long John C. Reckert C: 5610
ANTHONY, GRADY B. SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ 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.☐ 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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 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(BUI Breath Test Fee) \$50 \$

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

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

TOTAL \$283.25

INDICTMENT/CASE#: 2016GS4203113

A/W#: 2015A4210103934

Date of Offense: 10/15/2015

S.C. Code § : 44-53-0370(b)(2)

CDR Code #: 0186

SENTENCE SHEET

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:

☐ 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.

Clerk of Court/ Deputy Clerk

Court Reporter: M. Woods

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2165

Sentence Date: 3 June 2017

COUNTY OF SPARTANBURG

STATE

VS.

Tamarcus Detrelle Long

AKA:

Race: BLACK Sex: M Age: 31

DOB: SS#

Address: W. 11th St

City, State, Zip: Spartanburg, SC 29306

DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

INDICTMENT/CASE#: 2016GS4203114

A/W#: 2015A4210103935

Date of Offense: 10/15/2015

S.C. Code § : 44-53-0445(A)

CDR Code #: 0107

SENTENCE SHEET

in violation of § 44-53-0445(A) of the S.C. Code of Laws, bearing CDR Code # 0107

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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: Anthony B. Grady 101661 Tamarcus Long John C. Reichenbach 65610
ANTHONY, GRADY SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ 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.☐ 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 ☐ OrderedTotal: \$ — plus 20% fee: \$ —Payment Terms: —☐ Set by SCDPPPS —Recipient: —

*Fine:

§ 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(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.25

TOTAL

\$253.25

PTUP —— days/hours Public Service EmploymentObtain 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 FundOther: —☐ 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.Clerk of Court/ Deputy Clerk C. AppleCourt Reporter: M. Wood

SCCA/217 (07/2016)

Presiding Judge R. Keith KingJudge Code: 2165Sentence Date: 8 June 2017

COUNTY OF SPARTANBURG

STATE

VS.

Tamarcus Detrelle Long

AKA:

Race: BLACK Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Williams St.

City, State, Zip: Spartanburg, SC 29306

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: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II -

INDICTMENT/CASE#: 2016GS4206473

A/W#: 2016A4210101900

Date of Offense: 5/3/2016

S.C. Code § : 44-53-0370(b)(1)

CDR Code #: 0183

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

: 12 years

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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: Anthony Grady B. 101661 Tamarcus Long John C. Reckel 65616
ANTHONY, GRADY B. SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ 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.☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 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 \$35.00

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

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

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

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

TOTAL \$283.25

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: _____

☐ 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.Clerk of Court/ Deputy Clerk C. PooleCourt Reporter: M. Woods

SCCA/217 (07/2016)

Presiding Judge A. Keith R. KellyJudge Code: 216.5Sentence Date: 6 June 2017

COUNTY OF SPARTANBURG

STATE

VS.

Tamarus Detrelle Long

AKA:

Race: BLACK Sex: M Age: 31

DOB: SS#

Address: Williams St.

City, State, Zip: Spartanburg, SC 29306

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

INDICTMENT/CASE#: 2016GS4206474

A/W#: 2016A4210101899

Date of Offense: 5/3/2016

S.C. Code § : 44-53-0445(A)

CDR Code #: 0107

SENTENCE SHEET

in violation of § 44-53-0445(A) of the S.C. Code of Laws, bearing CDR Code # 0107

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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: Anthony Grady B. 10/6/16 Tamarus Long Defendant John G. Reichel 6-56-16 Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ 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.☐ 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 ☐ OrderedTotal: \$ — plus 20% fee: \$ —Payment Terms: —☐ Set by SCDPPPS —Recipient: —*Fine: \$ —

§ 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(BUI Breath Test Fee) \$50 \$ —§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ —3% to County (if paid in installments) \$ 8.25TOTAL \$ 233.25PTUP —— days/hours Public Service EmploymentObtain 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 FundOther: ——————☐ 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.

Clerk of Court/ Deputy Clerk C. P. AllenCourt Reporter: M. Woods

SCCA/217 (07/2016)

Presiding Judge —Judge Code: 216-3Sentence Date: June 2017