

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

MARCUS A. NELSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001505

APPENDIX

JOANNA K. DELANY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

BRIANA L. SCHILL
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

Apr 27 2020

S.C. SUPREME COURT

INDEX

INDEX	i
TRANSCRIPT OF PLEA HELD AUGUST 21, 2018	1
APPLICATION FOR POST-CONVICTION RELIEF	29
RETURN.....	38
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	47
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD JULY 31, 2019	53
PLAINTIFF’S EXHIBIT #1	133
PLAINTIFF’S EXHIBIT #2	134
PLAINTIFF’S EXHIBIT #3	135
ORDER OF DISMISSAL	136
INDICTMENTS AND SENTENCE SHEETS.....	151

1 State of South Carolina) Court of General Sessions
2 County of Sumter) Third Judicial Circuit

3

4 State of South Carolina,) Transcript of Record
5)
6 vs.) 2017-GS-43-1351
7) 2017-GS-43-1352
8 Marcus Antonio Nelson,) 2018-GS-43-0511
9) 2018-GS-43-0512
10) 2018-GS-43-0513
11) 2018-GS-43-0514
12) 2018-GS-43-0624
13
14
15
16
17
18
19
20
21
22
23
24
25

August 21, 2018
Columbia, South Carolina

11 B E F O R E:

12 The Honorable R. Ferrell Cothran, Jr., Judge

13

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

15 Bronwyn K. McElveen, Assistant Solicitor
16 On behalf of the State

17 Charles Thomas Brooks, III, Esquire
18 On behalf of the Defendant

19

DCRP Recording

20

Transcribed by:
Stacy S. Johnson,
Circuit Court Reporter

21

22

23

24

25

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

I N D E X

PAGE

Certificate of Reporter

28

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held August 21, 2018,
2 beginning at 2:51 PM.)

3 MS. McELVEEN: Your Honor, this is the State of
4 South Carolina versus Marcus Antonio Nelson. There
5 are multiple indictments in this case.

6 Indictment 2017-GS-43-1351, charging him with
7 possession of a stolen vehicle and habitual traffic
8 offender violation.

9 Indictment 2017-GS-43-1352, charging him with
10 possession of a -- I'm sorry, failure to stop for a blue
11 light. In exchange for his plea, we are dismissing the
12 habitual traffic offender that came with that charge.

13 Indictment 2018-GS-43-0624, charging him with hit
14 and run with minor personal injury. Again, we are
15 dismissing a habitual traffic offender violation in
16 exchange for his plea.

17 Indictment 2018-GS-43-511, charging him with
18 habitual traffic offender.

19 Indictment ending in 512, distribution of cocaine
20 base, first offense.

21 Indictment 2018-GS-43-513, charging him with
22 possession of a pistol by a person convicted of a crime
23 of violence, and we are dismissing a distribution of
24 cocaine base in exchange for his plea on that.

25 And then Indictment 2018-GS-43-0514, distribution

1 of crack cocaine or cocaine base, first offense. In
2 exchange for the plea, we are also dismissing a third
3 habitual traffic offender violation with an Indictment
4 2016-GS-43-1260.

5 So, Your Honor, he should be pleading guilty to
6 two habitual traffic offenders, two distribution of
7 cocaine base, a hit and run with minor personal injury,
8 possession of a stolen vehicle, failure to stop for a
9 blue light, and that is, Your Honor, what he should be
10 pleading guilty to today in exchange for dismissing four
11 other charges.

12 THE CLERK: Sir, raise your right hand and state
13 your name.

14 THE DEFENDANT: Marcus --

15 THE CLERK: Keep your hand up.

16 THE DEFENDANT: Marcus Antonio Nelson.

17 THE CLERK: Do you -- keep your hand up.

18 (Whereupon, Marcus Antonio Nelson was duly sworn by
19 the Clerk of Court.)

20 THE COURT: Mr. Nelson, you want to plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you had enough time to talk to your
23 lawyer?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you satisfied with his

1 representation?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Anybody promised you anything or
4 threatened you in any way?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you under the influence of alcohol
7 or drugs today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you have any mental diseases that
10 would keep you from understanding what you're doing?

11 THE DEFENDANT: No, sir.

12 THE COURT: You understand for violating the
13 Habitual Offender Act I can give you up to five years in
14 prison and you're gonna lose your driver's license for
15 an additional five years? You understand that, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you've got two of those. And for
18 manufacturing or distribution of cocaine base, you're
19 looking at fifteen years in prison. You understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you've got two counts of
23 distribution, so that's a total of thirty years. Do you
24 understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And possession of a weapon by someone
2 convicted of a crime of violence is up to five years in
3 prison. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And possession of a stolen pistol {sic}
6 is up to five years. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And failing to stop for a blue light is
9 up to three years. You understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And hit and run with personal injury is
12 up to one year. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And possession of a stolen vehicle is
15 up to five years. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you understand I can run all these
18 consecutive?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 MR. BROOKS: The recommendation is concurrent.

23 THE COURT: I understand, but it's just a
24 recommendation.

25 You understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: By pleading, you're giving up certain
3 constitutional rights. You're giving up your
4 constitutional right to remain silent because you're
5 telling me you're guilty. You understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You're also giving up your constitutional
8 right to a jury trial on each one of these and in those
9 trials, you'd be presumed innocent. The State would have
10 the burden of proving you guilty beyond a reasonable doubt
11 to all twelve jurors. You'd be able to sit in the
12 courtroom in each trial and confront each witness that
13 would testify against you. Your lawyers -- your lawyer
14 could cross-examine the State's witnesses, he could
15 subpoena witnesses to testify on your behalf, he could
16 put up any defenses you have to these crimes, but when
17 you plead guilty you're giving all of that up. Do you
18 understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you want to appeal this, you've got
21 to file it within ten days or you give that right up. Do
22 you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you got any questions you want to ask
25 me?

1 THE DEFENDANT: No, sir.

2 THE COURT: The solicitor's gonna tell me what
3 happened.

4 MS. McELVEEN: Yes, sir.

5 Regarding the indictment ending in 1351, the
6 possession of a stolen vehicle and habitual traffic
7 offender violation, on July 28, 2017, approximately 9 PM,
8 officers with the city of Sumter observed a gray 2015
9 Mitsubishi Mirage with a defective brake light. A traffic
10 stop was conducted on the vehicle. A check through the
11 Department of Motor Vehicles indicated that the driver,
12 this Defendant, Mr. Marcus Antonio Nelson, was under
13 suspension and that he had been deemed a habitual traffic
14 offender. A further check through DMV records indicated
15 that the license plate that was on the vehicle was
16 registered to a Mercedes Benz. The VIN number of the
17 Mitsubishi Mirage indicated that the vehicle was stolen
18 from Prince George's County in Maryland. A hit through
19 NCIC confirmed that the vehicle was stolen and Prince
20 George's County was advised of the vehicle's location.
21 Mr. Nelson was placed under arrest for driving under
22 suspension, sixth offense, habitual traffic offender,
23 possession of a stolen vehicle, and he was transported
24 to Sumter-Lee Regional Detention Center.

25 THE COURT: I don't --

1 MS. McELVEEN: Your Honor, there is a notice from
2 the Department of Motor Vehicles he had been a habitual
3 traffic offender on multiple occasions. It looks like
4 the first one was in -- I'm sorry, Your Honor. I beg the
5 Court's indulgence. I'm sorry.

6 The first one, Your Honor, started September 3,
7 2015, and the suspension ended September 3rd of 2020.
8 Subsequently, he got another notice stating that he had
9 a habitual traffic offender that -- offense violation
10 term that -- or term of September 2017 until September
11 2022.

12 As to the indictments --

13 THE COURT: Ma'am, hold -- since there's so many,
14 let me deal with each one separately, okay?

15 MS. McELVEEN: Okay. Yes, sir.

16 THE COURT: Are those facts correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You -- are you pleading guilty because
19 you are guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I find there's a factual basis for your
22 plea. It's freely and voluntarily entered into and you've
23 had advice of competent counsel whom you tell me you're
24 satisfied, and I'll accept your plea on Indictment 1351.

25 All right. Yes, ma'am.

1 MS. McELVEEN: Thank you, Your Honor.

2 In regards to the indictment ending in 1352, the
3 failure to stop for a blue light, on July 22, 2017, at
4 11:20 PM, while conducting traffic enforcement on Broad
5 Street, Sumter Police Department observed a 1983 silver
6 Chevrolet C-10 truck pull into the Sunoco gas station on
7 Broad Street with only one working headlight. Once the
8 vehicle left the gas station heading on Broad Street, the
9 officer got behind the vehicle and observed a lane change
10 by moving to the far right lane to get onto US 521 North
11 without using a signal. Officers attempted to initiate a
12 traffic stop on the vehicle on US 521 underneath the 378
13 bridge with blue lights and sirens activated. The vehicle
14 increased speed in an attempt to avoid apprehension. The
15 officer pursued the vehicle northbound in speeds reaching
16 over a hundred miles per hour. The road conditions were
17 good and dry, the traffic conditions were light, and the
18 vehicle made a left turn onto Four Bridges Road and then
19 onto Brewington Road and then October Circle. At the
20 intersection of Brewington and October Circle, the
21 officer observed the passenger inside the vehicle throw
22 something out of the car. The car pulled in behind the
23 residence at 2260 after driving through the backyard. The
24 vehicle stopped, the driver fled the scene on foot and
25 the passenger also exited the vehicle, but stayed at the

1 scene. The officers pursued the driver on foot and
2 caught him close by. The driver was identified as
3 Marcus Antonio Nelson and the passenger was identified
4 as Jermaine Smith. There were Mastercard cards,
5 suspect Ectasy. Mr. Nelson was read his Miranda rights
6 and he did not claim possession of the pills, but he
7 definitely fled from police while sirens and lights were
8 activated, Your Honor, so he was charged with failure to
9 stop for a blue light that day.

10 THE COURT: Okay.

11 Are those facts correct, Mr. Nelson?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. What's not right about them?

14 THE DEFENDANT: I was the passenger in the vehicle.

15 MR. BROOKS: It -- it was reversed. It was the
16 other gentleman who was driving. That's what he tells
17 me. He was a passenger. So now the drugs taken out of
18 there, he's --

19 THE COURT: Well, I don't have a drug charge on
20 this, do I? I've just got failure to stop.

21 MS. McELVEEN: That's right. The drugs came back
22 actually as no illegal drug found in the lot.

23 MR. BROOKS: Okay.

24 THE COURT: So what do you want me to do with --

25 MS. McELVEEN: We can --

1 THE COURT: -- 1351? Is the police here that was
2 involved in that chase?

3 MS. McELVEEN: Your Honor, it was Hansen.

4 If he doesn't want to enter a guilty plea to this,
5 we can talk about a trial -- being on the trial list so
6 we can put it up for trial if he doesn't want to enter a
7 guilty plea today --

8 THE COURT: Okay.

9 MS. McELVEEN: -- to that one.

10 MR. BROOKS: Bear in mind, I do not represent him on
11 that.

12 MS. McELVEEN: I'm sorry?

13 MR. BROOKS: We don't represent him on that.

14 MS. McELVEEN: Oh, you don't?

15 MR. BROOKS: No. (Unintelligible.) He says he
16 didn't do that. You may want to talk to Mr. Kent about
17 the other gentleman.

18 MS. McELVEEN: Mr. Bridges?

19 MR. BROOKS: Mr. Kent represents the co-defendant.
20 There is a co-defendant.

21 MS. McELVEEN: I know Jermaine Smith very well.

22 MR. BROOKS: Okay. He -- my client says he was the
23 one that was driving.

24 MS. McELVEEN: Okay.

25 THE DEFENDANT: It was his truck.

1 MS. McELVEEN: It's his truck. Okay.

2 MR. BROOKS: Yeah.

3 MS. McELVEEN: Okay. We'll just figure that out.

4 Your Honor, Indictment 2018-GS-43-0624 -- I'm sorry.

5 On March 19, 2018, at approximately 8:05 in the
6 morning, officers with the city police department were
7 dispatched to a hit and run collision on Pinewood Road
8 involving a school bus. A school bus had stopped in the
9 roadway with damage on the rear bumper, a lot of debris
10 on the ground and a vehicle that had left the scene after
11 hitting the bus that had thirty-two children onboard.
12 After checking for injuries, the officers informed
13 dispatch that they needed EMS to respond. A witness to
14 the crash advised that he saw a black Ford Crown Victoria
15 strike the bus in the rear. While the Crown Victoria
16 was leaving the scene, he noticed that the airbags had
17 deployed and the driver of the vehicle was an African
18 American male. The officers gathered some of the debris
19 from the Crown Victoria and placed it into evidence.
20 Thirty-five of the occupants of the school bus were
21 transported to Palmetto Health Toumey for treatment.

22 The suspect vehicle on March 20, 2018, was located
23 as a resi -- at a residence on Wright Street abandoned.
24 The owner of the vehicle, Ms. Christine Singleton, on
25 Apollo Street, was located and interviewed. She advised

1 law enforcement that that morning around 6 AM, the
2 morning of the incident, she gave the keys to her black
3 2008 Ford Crown Victoria to Marcus Nelson, this Defendant,
4 also living at the same residence on Apollo Street -- or
5 at the same residence at Apollo Street.

6 On March 23, 2018, Mr. Nelson was located at a
7 residence on South Main Street. If you remember, there
8 was a call -- a public call on the news looking for him
9 for two and a half or so days. When they located him on
10 Mount -- on Main Street, he was transported to the
11 Sumter Police Department. After being Mirandized and
12 interviewed, officers from the South Carolina Department
13 of Probation and Parole took custody of Mr. Nelson and
14 transported him to the Sumter County Detention Center.
15 He was charged with too fast for conditions, leaving
16 the scene of an accident with injury, driving under
17 suspension, third or subsequent, the habitual traffic
18 offender that we're dismissing in exchange for his plea,
19 and operating an uninsured vehicle.

20 THE COURT: Are those facts correct, Mr. Nelson?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You're guilty of that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I find there's a factual basis and your
25 plea is freely and voluntarily entered into and you've

1 had advice of competent counsel whom you tell me you're
2 satisfied. I'll accept your plea.

3 MS. McELVEEN: Indictment --

4 THE COURT: All right.

5 MS. McELVEEN: Indictment ending in 511, another
6 habitual traffic offender violation. January 29th of
7 2018, officers with the police department again -- and
8 this time, again, Corporal Hansen, were travelling on
9 Green Street and observed a 2008 Crown Victoria with a
10 paper tag pull into the driveway of [REDACTED] Green Lane,
11 observed that the driver was not wearing his seatbelt.
12 The officer after the car parked watched the driver get
13 out of the vehicle and recognized him as Marcus Nelson.
14 They knew that his driver's license was suspended, that
15 he had been deemed a habitual traffic offender. He --
16 the officer turned around and made contact with
17 Mr. Nelson, arrested him for driving under suspension,
18 sixth offense, and violation of the habitual traffic
19 offender statute. He had been declared a habitual traffic
20 offender multiple occasions, but one to include the dates
21 of September 8, 2017, until September 8, 2022.

22 THE COURT: Are those facts correct, Mr. Nelson?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Then I find there's a factual basis for
25 your plea, that it's freely and voluntarily entered into

1 and you had advice of competent counsel whom you tell me
2 you're satisfied. I'll accept it.

3 MS. McELVEEN: And, your Honor, in regards to the
4 indictment ending in 512, the drug distribution charge,
5 on May 9, 2017, a Sumter County confidential informant
6 was supplied by Mr. Marcus Nelson an off-white rock-like
7 substance, represented as crack cocaine, in exchange
8 for a payment of \$80 in documented county funds.

9 THE COURT: Is that --

10 MS. McELVEEN: The transaction --

11 THE COURT: -- May 9th or May 8th? My paperwork's
12 showing 8.

13 MS. McELVEEN: I'm sorry, May 8th. You're correct,
14 Your Honor. May 8th.

15 THE COURT: Okay. I'm sorry. Go ahead.

16 MS. McELVEEN: And the transaction occurred in the
17 parking lot of the El Cheapo located on South Lafayette
18 Drive. The drugs were entered into evidence and tested
19 and determined to be .92 of a gram of crack cocaine or
20 cocaine base. Mr. Nelson was identified by law
21 enforcement and by the confidential informant and he
22 was charged with distribution of crack cocaine, first
23 offense.

24 THE COURT: Are those facts correct, Mr. Nelson?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Then I find there's a factual basis for
2 your plea, it was freely and voluntarily entered into
3 and you've had advice of competent counsel of whom you
4 tell me you're satisfied. I'll accept your plea.

5 MS. McELVEEN: And then, finally, Your Honor,
6 Indictment 2018-GS-43-514, on May 19, 2017, again, using
7 a confidential informant, the Sumter County Sheriff's
8 Office was able to make a controlled purchase of a
9 white rock-like substance represented as crack cocaine
10 from this Defendant, Mr. Marcus Antonio Nelson, with a
11 payment of \$100 in documented county funds. Again, the
12 transaction took place in the parking lot of the
13 El Cheapo on -- at 404 South Lafayette Drive. The drugs
14 were, again, entered into evidence and were tested and
15 came back as 1.48 grams of crack cocaine or cocaine base.

16 THE COURT: Are those facts correct, Mr. Nelson?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Then I find there's a factual basis to
19 your plea, it was freely and voluntarily entered into,
20 you've had advice of competent counsel of whom you tell
21 me you're satisfied. I'll accept it.

22 MS. McELVEEN: And, Your Honor, the last of these
23 -- there are two other indictments, 2018-GS-43-513,
24 a distribution of cocaine base. He also has a
25 corresponding possession of a person -- possession of

1 a pistol by a person convicted of a crime of violence.
2 We are dismissing the distribution. But in regards to
3 the weapons charge, August 11th of 2017, approximately
4 2 PM, a confidential informant made a sale and during
5 that sale Mr. Marcus Nelson walked up to the CI, this
6 confidential informant exited the car and met with him,
7 and the confidential informant gave Mr. Nelson \$600 in
8 documented county funds for the purchase of a silver
9 H&R Arms Co. revolver with a black handle load -- loaded
10 with five 32 caliber bullets -- or 32 caliber bullets in
11 the chamber and, of course, there was a purchase of some
12 drugs at that point as well; however, the -- the drug --
13 I mean, the gun was also purchased during the controlled
14 purchase and Mr. Nelson has a crime of violence on his
15 record.

16 I'd be happy to read his record when the Court is
17 ready.

18 THE COURT: Are those facts correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Then I find there's a factual basis for
21 your plea, it's freely and voluntarily entered into and
22 you've had advice of competent counsel of whom you tell
23 me you're satisfied, and I'll accept your plea.

24 Okay. Anything else you want to tell me?

25 MS. McELVEEN: His record, Your Honor. And I know

1 that law enforcement would like to address the Court
2 when you're ready.

3 THE COURT: Okay.

4 And I see there's a recommendation checked. What is
5 the State's recommendation?

6 MS. McELVEEN: Concurrent, Your Honor.

7 THE COURT: Okay. Tell me about his record.

8 MS. McELVEEN: Yes, sir. He has a November 1999
9 strong arm robbery, which I believe is the crime of
10 violence for the gun charge, Your Honor. April 2003,
11 possession of marijuana. Possession of marijuana second
12 or subsequent, 2006. Unlawful possession of a pistol
13 in 2007, unlawful carrying of a pistol in 2007.
14 Possession of marijuana, 2011. Habitual traffic offender,
15 2014. December 2012 -- well, he had multiple driving
16 under suspension charges, Your Honor. Assault and
17 battery, third degree, 2014. Another driving under
18 suspension in 2014, unlawful possession of a weapon in
19 2014. Two more driving under suspensions; one from 2016,
20 one from 2017. July 2016, receiving stolen goods, and
21 another driving under suspension in 2017.

22 THE COURT: Okay. Anything else law enforcement
23 wants to tell me?

24 MS. McELVEEN: Yes, Your Honor.

25 Officer Porter, would you like to speak now?

1 OFFICER PORTER: Yes.

2 MS. McELVEEN: Officer James Porter on behalf of
3 the City of Sumter, Your Honor.

4 THE COURT: Yes, sir.

5 OFFICER PORTER: I responded to the scene of the
6 collision that morning. I was first on-scene. A lot of
7 it I remember well. There were a lot of kids in pain.
8 We had over -- you know, several fire trucks and at least
9 five ambulances responded to the scene to take these kids
10 to safety. The bus was at capacity; over fifty students
11 involved, thirty-five transported. After the second trip
12 of ambulances, we decided just to take the whole bus to
13 the ER. One kid was back-boarded and neck braced and
14 taken to the hospital with his injuries. Mr. Nelson
15 didn't show any compassion or try to render aid, instead
16 he wanted to save himself. There was an outcry and
17 outrage as expected by this collision, all the news
18 channels ran it on TV, which lead to tips to find the
19 vehicle. He's a danger to society and we would request
20 as much active time as possible. His record of habitual
21 offender, the DUS's, he's not gonna stop driving. We
22 just request some active time, Your Honor.

23 THE COURT: Thank you, sir.

24 MS. McELVEEN: Your Honor, Jerome Williams with the
25 county. He was part of the drug sales -- the drug

1 purchases.

2 THE COURT: Yes, sir.

3 DEPUTY WILLIAMS: Yes, sir.

4 Just to follow up with what Officer Porter said,
5 we're just requesting as much as active time as possible.

6 THE COURT: Okay. Thank you, sir.

7 MS. McELVEEN: And, Your Honor, Officer Hudson with
8 the police department.

9 THE COURT: Okay. Yes, sir.

10 OFFICER HUDSON: Your Honor, in reference to the
11 cases, the city has been working several of them in
12 reference to Marcus Nelson. Just like what the other
13 two officers said, it is a total disregard for the
14 citizens of Sumter, a total disregard for law
15 enforcement, a totally disregard for all of the statutes.
16 As far as driving statutes, he just don't -- it shows
17 that he just don't care. And just also putting a little
18 bit on -- the icing on the cake for Porter, Officer
19 Porter, if he had any compassion, staying for the kids,
20 and that only just shows that he has no compassion, that
21 he fled the scene. And just like Officer Porter said, he
22 cares more about himself than others and that just shows
23 a total disregard for the people in the City of Sumter
24 and it's our wish -- it is our wish of the City of Sumter
25 that he gets the full max, fifteen years, for all the

1 charges that he faces.

2 THE COURT: Thank you, sir.

3 MS. McELVEEN: Thank you, Your Honor.

4 THE COURT: Anybody else?

5 Yes, sir.

6 MR. BROOKS: It's our time now, Judge?

7 THE COURT: Yes, sir.

8 MR. BROOKS: Judge, I understand the job that law
9 enforcement's got to do. We would ask you to take into
10 account Mr. Nelson's family are lifelong residents here
11 in Sumter County. He's had some significant loss in his
12 family. He worked at a car -- auto shop that was run by
13 his father and that's where a great deal of these 2017
14 charges came from. His father, who ran the shop, passed
15 away in December. He had a sister recently pass away
16 from actually congestive heart failure in March and
17 actually Mr. Nelson has significant health issues. He
18 has congestive heart issues, he's had a stent placed in
19 his heart, he has obviously all those problems that come
20 along with having those heart problems with his -- with
21 his body. He's only thirty-six years of age and I was
22 telling him that he looks older than he really is. I've
23 actually represented him before in the past.

24 Judge, we're asking Your Honor to keep this in mind
25 as far as looking at some type of concurrent sentence and

1 understanding that, you know, he has his family who's
2 seated in the -- were seated in the back -- yeah, seated
3 in the back back there who are obviously in strong support
4 of him. You know, we understand that, you know, law
5 enforcement has got to make a good strong showing here for
6 the citizens of Sumter, but I -- and I'm not trying to
7 minimize Mr. Nelson's situation, but I do understand, and
8 I want the Court to understand, that Mr. Nelson is --
9 about eighty percent of this is driving-related, eighty
10 to ninety percent of this is driving-related, and I told
11 him, you know, you've just basically got to stay from
12 behind the wheel as a lot of time these driving offenses
13 tend to just snowball. You end up getting one ticket and
14 you don't pay it and it ends up becoming a suspension,
15 then you're driving and you get a DUS and then you get
16 multiples and then it turns into HTO's and all of this.

17 I do know as far as the children's situation, as far
18 as Mr. Nelson is concerned, he has not heard anything
19 about -- we don't have any necessarily victims here
20 voicing their position. I -- I don't think, you know,
21 there's a situation where there was any particular loss
22 of life. I do understand that it had to be addressed as
23 a serious matter and my client's sorry about that. He
24 isn't -- it wasn't his intent to run and hit a bus or a
25 vehicle full of kids, but he is sorry for the fact that

1 it happened and he's sorry for the fact that, you know,
2 he did flee the scene. And a lot of times what happens,
3 and this is not an excuse, Judge, but just a reality,
4 when they know they've got some driving issues as far as
5 HTO's and things of that sort, a lot of times guys end
6 up panicking, they do the wrong the thing and then they
7 flee the scene and it actually compounds the problem.

8 So Mr. Nelson is very remorseful about all of this
9 situation and when the solicitors come to us with a
10 package deal, my client is basically coming and throwing
11 himself on the mercy of the Court. He's pled to all these
12 offenses with the exception of hearing the one incident
13 where he says hey, he was there, but it was the other
14 gentleman, it was the co-defendant, that was actually
15 driving and he was in the passenger seat, and he's put
16 under oath to tell the truth and that's why he stood up
17 and said that.

18 So, Judge, we just ask you to keep that in mind
19 and consider Mr. Nelson's health issues and the health
20 challenges he has when passing the sentence.

21 THE COURT: Okay. Thank you, sir.

22 Okay. On Indictment 2017-GS-43-1351, possession
23 of stolen vehicle, the sentence of the Court is you're
24 committed to the State Department of Correction for a
25 term of five years.

1 On Count II, violation of the Habitual Offender Act,
2 the sentence is five years to run concurrent. I'm giving
3 him credit for any time served.

4 On Indictment 2018-GS-43-624, hit and run, the
5 sentence of the Court is you're committed to the State
6 Department of Correction for a term of one year. That's
7 to run concurrent and you're given credit for time
8 served.

9 On Indictment 2018-GS-43-0511, violating the
10 Habitual Offender Act, the sentence of the Court is
11 you're committed to the State Department of Correction
12 for a term of five years to run concurrent with credit
13 for time served.

14 On Indictment 2018-GS-43-0512, for distribution
15 of crack cocaine, the sentence of the Court is you're
16 committed to the State Department of Correction for a
17 term of ten years to run concurrent with credit for time
18 served.

19 And Indictment ending in 514, for distribution, the
20 sentence is the same; ten years to run concurrent with
21 credit for time served.

22 I gave you the benefit of pleading guilty and I
23 didn't give you the maximum, but I also gave you a
24 substantial sentence based on all that's before me and
25 your total disregard for the law in driving a vehicle.

1 Good luck to you.

2 MS. McELVEEN: Your Honor, there's I think
3 Indictment 2018-GS-43-513, the possession of a weapon by
4 some -- by a person convicted of a crime of violence.

5 THE COURT: I'm sorry. And I've got that on here
6 and I --

7 MS. McELVEEN: I'm sorry, Your Honor. I appreciate
8 you saying --

9 THE COURT: -- and I didn't announce that.
10 And the sentence on that is five years to run
11 concurrent.

12 MS. McELVEEN: Thank you, Your Honor.

13 THE COURT: And wait a minute. Yeah, I left that out.
14 I'm sorry.

15 MS. McELVEEN: Thank you, Your Honor.

16 THE COURT: I just didn't -- now one -- one of the
17 indictments he didn't plead to if I can find what I did
18 with it.

19 MS. McELVEEN: Your Honor, the indictment ending in
20 1352?

21 THE COURT: Yeah, here it is. That's the one he
22 didn't plead to.

23 MS. McELVEEN: Thank you, Your Honor.

24 THE COURT: Okay.

25 MS. McELVEEN: And we will -- I'd spoke with

1 (unintelligible) and he said that we can dismiss that
2 one.

3 THE COURT: Okay.

4 MS. McELVEEN: Thank you, Your Honor.

5 (Whereupon, the proceedings were concluded at
6 3:19 PM.)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

CERTIFICATE OF TRANSCRIPTION

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of South
Carolina, do hereby certify that I transcribed the
proceedings in the captioned case that were reported by
the Digital Court Reporter Program for the State of South
Carolina, in the Court of General Sessions, in and for
the State of South Carolina, on the 21st day of August,
2018, to the best of my ability.

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

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

March 15, 2019

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

FORM 5

RECORDED

STATE OF SOUTH CAROLINA

2019 JAN 22 AM 10:45

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

Marcus Antonio Nelson, #262262,

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

v.

State of South Carolina

Respondent,

CERTIFIED TRUE COPY
OF ORIGINAL FILE

2017-CF-43-0086

Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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 Sumter County detention Center
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Distribute of crack cocaine 1st offense
 - (b)
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 21st, 2018 sentenced to 10 years non violent
 - (b)

- (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. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- m iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) After plea lawyer failed to communicate stating his job was done.
- (b) Conflict of interest.
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Denied Effective Assistance violating my Sixth Amendment⁴.
- (b) Deprived of the right to a trial by jury.
Deprivation of my Due Process Clause 14th Amendment.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachments
- (b) See Attachments
- (c) See Attachments
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. ~~N/A~~
- iv. ~~N/A~~
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. ~~N/A~~
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
 - i. N/A
 - ii. ~~N/A~~
 - iii. ~~N/A~~
 - iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. ~~N/A~~
 - ii. N/A
 - iii. N/A
 - iv. N/A
- 14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No.
- 15. If you answered "yes" to (14) identify:
 - (a) which grounds have been presented:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. ~~N/A~~
 - iii. N/A
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) Counsel was ineffective.
 - (b) Counsel failed to advise of appeal options.
 - (c)
- 17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes.
 - (b) your trial, if any? No.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None.
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. Mr. Charles Brooks
Brooks Law Firm
 - ii. 309 Broad St., Sumter, S.C. 29150
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea and Sentencing.
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
Vacate conviction and sentence for new trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

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

Marcus A. Nelson, #262262,

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

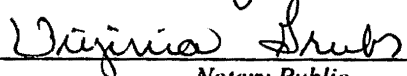
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Marcus Antonio Nelson, #262262
Applicant

SWORN or affirmed to and subscribed before me this

14 day of January, 2019.



Notary Public

My Commission Expires: 12/12/27

RECORDED
2019 JAN 22 AM 10:45
JAMES F. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of SUMTER)

Marcus A. Nelson, #262262,
 I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

M. Nelson
 Marcus Antonio Nelson, #262262

SWORN to and subscribed before me this 14
 day of January, 2019.

Virginia Shady (L.S.)
 Notary Public

My Commission Expires: 12/12/22

RECORDED
 2019 JAN 22 AM 10:45
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

~~ATTACHMENT~~ RECORDED

11. State concisely and in the same order the facts which support each of the grounds set out in (10). CAMPBELL
CLERK OF COURT
SOUTHERN COUNTY, S.C.

1. Whether counsel was ineffective for failing to render competent legal advice?
2. Whether counsel's performance was deemed reasonable?
3. Whether counsel was ineffective for the lack of communication about relevant law as required in the SCACR #407 1.4 ?
4. Whether counsel's performance was deemed a violation of the Petitioner's Sixth Amendment right to receive effective assistance?
5. Did counsel coerce the Petitioner into a plea involuntarily?
6. Whether counsel was ineffective for depriving the Petitioner of his Sixth and Fourteenth Amendment right to trial by jury when the Petitioner had insisted on going to trial?
7. Whether counsel was ineffective for failing to properly investigate or to present a defense?
8. Whether the actions of counsel was a violation of the Petitioner's Fourteenth Amendment Due Process Clause?
9. Whether counsel violated the rules of Professional Conduct and Responsibilities of Rule#407 1.1 Competence, 1.2 Representation between client and lawyer, 1.3 diligence, 1.4 Communication and 1.7 Conflict of interest?

ATTACHMENT

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

10. Whether counsel's action prejudice the Petitioner?

11. Whether counsel rendered effective assistance when he deprived the Petitioner of his rights to appeal? See* Lozada v. Deeds, 498 U.S. 430, 112 L.Ed 2d. 956, 111 S.Ct. 860 (1991), and * Roe v. Flores-Ortega, 528 U.S. 470, 145 L.Ed. 2d. 985, 120 S.Ct. 1029 (2000).

12. Whether counsel was ineffective for failing to consult with the Petitioner about his options of going to trial?

13. Whether there was an conflict of interest between client and lawyer?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Marcus Antonio Nelson, SCDC#262262,	)	Case No.: 2019-CP-43-00086
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR A MORE
	)	DEFINITE STATEMENT
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed January 22, 2019, by Applicant Marcus Antonio Nelson, Respondent (the State) would show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections following his guilty plea in Sumter County. During its May 2018 term, the Sumter County Grand Jury indicted Applicant for two separate counts of distribution of crack cocaine (2018-GS-43-0512, -0514). Applicant was represented by Charles T. Brooks, III, Esquire. Assistant Solicitor Bronwyn K. McElveen of the Third Circuit Solicitors Office prosecuted the case.

On August 21, 2018, Applicant appeared in the Sumter County Court of General Sessions before the Honorable R. Ferrell Cothran, Jr., where he pled guilty as indicted. Judge Cothran sentenced Applicant to ten years imprisonment for each count, with the sentences to be served concurrently. Applicant did not appeal his guilty pleas or sentences.¹

¹ At the same plea proceeding, Applicant also pled guilty to numerous other offenses (possession of a stolen pistol, possession of a stolen vehicle, and habitual traffic offender), but is not challenging any of those pleas or convictions in this application. See PCR Application.

II. Allegations Raised and Relief Sought in Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on ineffective assistance of counsel and generally lists various vague questions about counsel's performance:

1. Whether counsel was ineffective for failing to render competent legal advice?
2. Whether counsel's performance was deemed reasonable?
3. Whether counsel was ineffective for the lack of communication about relevant law as required in the SCACR §401 1.4 ?
4. Whether counsel's performance was deemed a violation of the Petitioner's Sixth Amendment right to receive effective assistance?
5. Did counsel coerce the Petitioner into a plea involuntarily?
6. Whether counsel was ineffective for depriving the Petitioner of his Sixth and Fourteenth Amendment right to trial by jury when the Petitioner had insisted on going to trial?
7. Whether counsel was ineffective for failing to properly investigate or to present a defense?
8. Whether the actions of counsel was a violation of the Petitioner's Fourteenth Amendment Due Process Clause?
9. Whether counsel violated the rules of Professional Conduct and Responsibilities of Rule#407 1.1 Competence, 1.2 Representation between client and lawyer, 1.3 diligence, 1.4 Communication and 1.7 Conflict of interest?
10. Whether counsel's action prejudice the Petitioner?
11. Whether counsel rendered effective assistance when he deprived the Petitioner of his rights to appeal? See* Lozada V. Deeds, 498 U.S. 430, 112 L.Ed 2d. 956, 111 S.Ct. 860 (1991), and * Roe v. Flores-Ortega, 528 U.S. 470, 145 L.Ed. 2d. 985, 120 S.Ct. 1029 (2000).
12. Whether counsel was ineffective for failing to consult with the Petitioner about his options of going to trial?
13. Whether there was an conflict of interest between client and lawyer?

Applicant wholly failed to provide any specific allegations or any facts to support these allegations. As requested relief, Applicant states he wants his convictions vacated and to receive a new trial.

Attached herewith and incorporated herein by reference are the records of the Sumter County of Court regarding the subject convictions challenged in this application, the plea

transcript, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts his plea counsel was constitutionally ineffective. However, Applicant wholly fails to state with any specificity facts to support this general allegation. Based on this, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective. Respondent moves for Applicant, through his appointed counsel, to amend this allegation to include sufficient, specific facts to support his claim of ineffective assistance of counsel.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, 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 an attorney provided representation within the range of competence required in criminal cases.

Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of

cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Statements made during the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

In Applicant’s case, the record fully supports the knowing and voluntary nature of Applicant’s plea. Applicant indicated he understood the potential sentences for each offense. Applicant further indicated he understood all of his constitutional rights. He also told the plea court he was pleading guilty freely and voluntarily and that he had not been threatened, coerced, or promised anything to induce his guilty plea. He also informed the plea court he was satisfied with counsel’s services.

Accordingly, the record refutes Applicant’s allegation his plea counsel was ineffective. However, allegations regarding ineffective assistance of counsel may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Motion for More Definite Statement

In his application, Applicant fails to set forth with specificity the facts and circumstances upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245

S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to these allegations. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the 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 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.

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

VI. 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.

VII. Request for Applicant to file an Amended Application

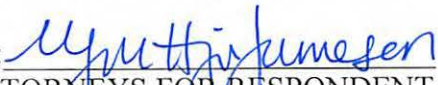
WHEREFORE, having made its return, the State requests applicant, through his counsel, amend the application to provide the required specificity for his allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application and requests a hearing not be scheduled until after an amended application is so filed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

april 2, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2019-CP-43-00086
	)	
MARCUS ANTONIO NELSON, #262262,	)	
	)	
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 and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Timothy L. Griffith, Esquire
Timothy L. Griffith, Attorney at Law
360 W. Wesmark Blvd., Second Floor
Sumter, South Carolina 29150

DATED this the 2nd day of April 2019.


 Kaitlyn S. Slice, Legal Assistant
 For Respondent

FORM 5

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	2018-CP-43-0086
Marcus Antonio Nelson , # 262262	)	
Full name and prison number (if any) of Applicant.	)	AMENDED
	)	
v.	)	APPLICATION FOR
	)	
State of South Carolina	)	POST-CONVICTION RELIEF
	)	

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Palmer Pre Release Center
2. Name and location of Court which imposed sentence Sumter General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Distribution of Crack Cocaine 1st offense
 - (b)
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8/21/2018 - 10 Years non violent
 - (b)

- (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) Attorney failed to file appeal even though he was asked to do so
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Failure to appeal - Brooks did not appeal even after he asked him to Nelson claims Mr.

Brooks told him and family- his job was done.

(b) His right to see his discovery was denied. He never saw his rule 5 and Brady on the Drug charge.

(c) He had told his attorney he did not want to plead to the drug charge but would to all the other charges. He was denied his right to trial.

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

(a) Attorney failed to file appeal

(b) Denied his right to see his discovery, the accusations against him and evidence

(c) He plead guilty when his attorney told him to just say yes when the judge asked him questions and he did not realize the drug charge was going to be brought up – he thought he was there for all of the other charges and had told his attorney that he would go to trial on the drug charge.

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. _____

(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?

No

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. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Counsel was ineffective in failing to appeal, failing to share discovery with the defendant, and in failing to allow the defendant to proceed to trial on the drug charge after he was told defendant did not want to plead to that charge.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications _____ with respect to this conviction, which you filed? _____
18. If you answered “yes” to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Mr. Charles Brooks Esquire, Brooks Law Firm
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea and sentencing
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
New Trial
20. Are you now under sentence from any other court that you have not challenged?

Yes

RESPECTFULLY SUBMITTED 07/24/2019

Timothy L. Griffith
360 W. Wesmark Blvd.
Sumter, SC 29150
803 607-9087

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SUMTER) COURT OF COMMON PLEAS
3 2019-CP-43-00086

4 Marcus A. Nelson,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 State of South Carolina,)
8 Defendant.)

9 July 31, 2019
10 Sumter, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.
15
16

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

18 TIMOTHY L. GRIFFITH, ESQ.
19 Attorney for the Plaintiff

20 BRIANNA L. SCHILL, ASSISTANT ATTORNEY GENERAL
21 Attorney for the Defendant
22
23
24

25 DEBORAH M. McCURDY, RPR
Official Court Reporter

INDEX OF WITNESSES

MARCUS A. NELSON

Direct By Mr. Griffith 7

Cross By Ms. Schill 17

CHARLES T. BROOKS, III

Direct By Ms. Schill 26

Cross By Mr. Griffith 43

Redirect By Ms. Schill 58

BRONWYN MCELVEEN

Direct By Ms. Schill 62

Cross By Mr. Griffith 68

APPLICANT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Letter	43	43
2 AND 3	Photographs	69	

JULY 31, 2019

(WHEREUPON, the hearing began at 10:34
a.m.)

THE COURT: Are you ready?

MS. GRIFFIN: Ready, Your Honor.

MS. SCHILL: May it please the Court, Your
Honor?

THE COURT: Sure.

MS. SCHILL: The next case is Marcus Antonio
Nelson v. The State of South Carolina, Case
Number 2019-CP-43-00086.

The Applicant is presently confined in the
South Carolina Department of Corrections pursuant
to orders of commitment of the Sumter County Clerk
of Court.

During its May 2018 term, the Sumter County
Grand Jury indicted Applicant for two separate
counts of distribution of crack cocaine, traffic
hit and run due to the driver involved in the
accident with minor personal injury, two counts of
habitual traffic offender, sale or delivery of a
pistol to and possession by certain persons
unlawfully, and possession of a stolen vehicle.

Applicant was represented by Charles T.
Brooks, III, Esquire. Assistant Solicitor Bronwyn

1 McElveen, of the Third Circuit Solicitor's Office,
2 prosecuted the case.

3 On August 21st, 2018, Applicant appeared in
4 Sumter County Court of General Sessions before The
5 Honorable R. Ferrell Cothran, Jr., where he pled
6 guilty as indicted.

7 Judge Cothran sentenced Applicant to ten years
8 imprisonment for each count, with the sentences to
9 be served concurrently. And also several charges
10 were dismissed as a result of the guilty plea.
11 Applicant did not appeal his guilty pleas or
12 sentences.

13 On January 22, 2019, Applicant filed his
14 timely PCR application alleging various allegations
15 of ineffective assistance of counsel and
16 involuntary guilty plea.

17 On July 29, 2019, Applicant amended his
18 application asserting, one, failure to appeal; two,
19 Rule 5 Brady violations; and, three, involuntary
20 guilty plea.

21 The State would like to note that Applicant
22 appears only to be contesting the drug charges in
23 his application.

24 And Applicant is present today represented by
25 Mr. Timothy Griffith. And the State would just ask

1 that the Court engage in a colloquy with the
2 Applicant regarding the consequences of proceeding
3 with his application.

4 THE COURT: Is that right, Mr. Griffith?

5 MR. GRIFFITH: Yes, Your Honor.

6 Mr. Nelson, if you would stand.

7 (Mr. Nelson complies.)

8 THE COURT: How are you doing?

9 THE DEFENDANT: All right, sir.

10 THE COURT: Do you wish for the Court to --

11 MR. GRIFFITH: Your Honor, just to inform my
12 client that the charges that he had, if he were to
13 win his PCR, the dismissed charges would also come
14 back, Your Honor.

15 THE COURT: Yes, sir.

16 Mr. Nelson, I have reviewed the transcript of
17 your guilty plea, and it appears that as a
18 condition of the State agreeing to accept certain
19 guilty pleas of certain charges, that they also
20 dismissed a number of charges against you as a
21 condition of you entering those pleas, four or
22 five, I believe, and one including distribution of
23 cocaine.

24 Do you understand that if the Court grants
25 your application for post-conviction relief, you

1 would be entitled to a new trial on all of those
2 charges?

3 THE DEFENDANT: (Nods affirmatively.)

4 THE COURT: Including the ones that were
5 dismissed?

6 MR. NELSON: (Nods affirmatively.)

7 THE COURT: You would go back to where you
8 were the day that you entered those pleas?

9 MR. NELSON: Yes, sir.

10 THE COURT: You understand all that?

11 MR. NELSON: Yes, sir.

12 THE COURT: Do you still wish to go forward --

13 MR. NELSON: Yes, sir.

14 THE COURT: -- with post-conviction relief?

15 MR. NELSON: Yes, sir.

16 MR. GRIFFITH: Thank you, Your Honor.

17 Your Honor, I would call Mr. Marcus Nelson to
18 the stand.

19 (Witness approaches.)

20 THE BAILIFF: Place your left hand on the
21 Bible, raise your right hand, state your full name.

22 THE WITNESS: Marcus Antonio Nelson.

23 THE BAILIFF: Do you solemnly swear and affirm
24 the testimony to this Court to be the whole truth,
25 and nothing but the truth, so help you God?

1 MR. NELSON: Yes, sir.

2 THE BAILIFF: Step around, sir. Be careful.

3 (Witness seated.)

4 THE BAILIFF: State your full name, and spell
5 your last name for the record, please, sir.

6 THE WITNESS: Marcus Antonio Nelson,
7 N-E-L-S-O-N.

8 MARCUS A. NELSON,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. GRIFFITH:

12 Q Thank you, Mr. Nelson.

13 MR. GRIFFITH: And may it please the Court?

14 BY MR. GRIFFITH:

15 Q Mr. Nelson, you pled guilty to a list of charges,
16 didn't you?

17 A Yes, sir.

18 Q Okay. And do you remember when that was?

19 A August 21st, 2018.

20 Q Okay. So it hasn't been very long ago, it was
21 about a year ago, wasn't it?

22 A Yes, sir.

23 Q And you have been incarcerated ever since that
24 time, is that correct?

25 A Ever since March 23rd.

1 Q Okay. And so that was -- it was a long list. And
2 you remember when you came to plead, you agreed to
3 plead to some of those charges, is that correct?

4 A Yes, sir.

5 Q But you remember that you had also some drug
6 charges?

7 A Yes, sir.

8 Q Did you want to plead guilty to those charges?

9 A No, sir.

10 Q Did you tell your attorney that you did not wish to
11 plead guilty to those charges?

12 A Yes, sir.

13 Q But in the transcript, the judge asked you if you
14 were pleading guilty, and do you remember
15 responding to the judge that you wanted to plead
16 guilty?

17 A Yes, sir.

18 Q Well, can you explain to the Court why you told the
19 judge you wanted to plead guilty on those drug
20 charges?

21 A Well, I thought I was going to -- Mr. Brooks came
22 in the holding cell back there to the little room
23 me and you just left out on Tuesday or Wednesday, I
24 think it was a Wednesday, and said that he had
25 talked to McElveen and she said -- he told me that

1 she said if I plead to all charges, that I was
2 pleading to an open plea zero to five.

3 Q That you were what?

4 A Pleading to an open plea zero to five years.

5 Q Okay.

6 A So that is when I told him I wasn't pleading to no
7 drug charge, I will plea to everything else but
8 drug charges, because I didn't know what I was up
9 against. You know, I didn't have no motion or
10 nothing.

11 Q Okay. And speaking of the motion, did you ever see
12 your Rule 5, your discovery, the evidence that the
13 State had against you on the drug charges?

14 A No, sir. Never.

15 Q Did you see all the evidence on the other charges?

16 A Yes, sir, I already had those.

17 Q Okay. And did you have time to talk to your
18 attorney about all the other charges?

19 A Well, I was guilty on all the other charges, the
20 driving charges, and stuff like that. I was guilty
21 because I was driving.

22 Q Okay. You had an attorney before you had Mr.
23 Brooks, isn't that correct?

24 A Yes, sir.

25 Q And who was that attorney?

1 A Mr. Jason Bridges.

2 Q Okay. Did you talk to him about the drug charges?

3 A Yes, sir.

4 Q And did he ever show you any discovery on the drug
5 charges?

6 A No, he was waiting on Ms. McElveen to issue him a
7 DVD, audio/video tape and a motion that we never
8 received.

9 Q So he never received any of the discovery? Do you
10 remember talking to Mr. Brooks about the drug
11 charges?

12 A No, I just told him that I wasn't -- he told me
13 that I had some drug charges and that going to a
14 jury could be dangerous, but I told him I wanted to
15 go to jury because I wanted my motion to see what I
16 had.

17 Q Did he ever discuss the evidence against you?

18 A No. No, sir.

19 Q On the drug charges?

20 A No, sir.

21 Q Did he ever show you any videos, or anything like
22 that?

23 A No, sir.

24 Q Did -- when you and I talked at the prison, do you
25 remember having the drug charges?

1 A No, sir.

2 Q When did you find out you had drug charges?

3 A About, I'd say about three months later when they
4 say that I had caught the charges. I was on my way
5 to Columbia one night and the county sheriff,
6 deputy sheriff pulled me over. I was driving a car
7 that I bought from auction with a flickering
8 headlight, a 2008 Altima, and he spun around,
9 thought I was trying to flag him down, and ran me
10 and a friend of my name and told me that the drug
11 units was looking for me, that I had a distribution
12 of crack cocaine charge.

13 Q So you knew about the charge before you went to
14 jail, is that correct? Or was it after you went to
15 jail?

16 A No, it was after I went to jail. I didn't find out
17 about the drug charge until the night he stopped
18 me.

19 Q Okay.

20 A And he said they was looking for me for about two
21 or three months.

22 Q So you were never picked up on the drug charge?

23 A No, sir.

24 Q And given the circumstances, would you have gone to
25 trial on those drug charges?

1 A Yes, sir.

2 Q And why would you like to go to trial?

3 A Because I was never issued nothing stating that I
4 was guilty of drug charges or no evidence stating
5 that what I was up against. So why would I plea to
6 something that, you know -- it wouldn't make sense.

7 Q So if you saw evidence that the State had on the
8 drug charges, would you still want to go to trial
9 on those drug charges?

10 A Yes.

11 Q And because you believe you are innocent?

12 A Yes, sir.

13 Q So, but yet you told Judge Cothran that you were
14 pleading guilty on those charges? Do you remember
15 doing that?

16 A I remember pleading to the driving, habitual
17 offender charges.

18 Q Let me show you this. This is the transcript.

19 A All right.

20 Q Do you remember looking at this a minute ago on --
21 this is the --

22 MR. GRIFFITH: I'm sorry, Your Honor, may I
23 approach?

24 THE COURT: You may, certainly.

25 BY MR. GRIFFITH:

1 Q -- 5/12. And then here she talks about another
2 charge. But look right here.

3 A All right.

4 Q Do you remember the judge -- or you see in the
5 transcript there, the judge asked you if you wished
6 to plead guilty on those charges. And what did you
7 reply?

8 A I replied yes.

9 Q Okay. Now, you and I talked about this at the
10 prison. And tell us why you said, yes, you did
11 those?

12 A Because my lawyer coerced me into telling me that
13 if I said no, Judge Cothran might or wouldn't
14 accept the plea.

15 Q Well, did you want him to accept the plea on the
16 drug charges?

17 A No, because I didn't want to plead to drug charges.

18 Q All right. But you told the judge that, yes, you
19 were guilty on those drug charges. Why is that?

20 A Because that is what my lawyer told me to do, to
21 enter the plea.

22 Q You were pleading guilty on a bunch of things,
23 weren't you?

24 A Yes, sir.

25 Q On a long list of --

1 A Driving charges.

2 Q -- driving, and things like that?

3 A Yes.

4 Q Do you remember asking Mr. Brooks to appeal your
5 case?

6 A Yes.

7 Q Or your family did?

8 A Yes, my wife did.

9 Q And what happened?

10 A He stated to her that his job was done.

11 Q So no appeal was filed?

12 A No, sir.

13 Q Were you paying Mr. Brooks or was he appointed?

14 A No, he was a paid attorney.

15 Q Okay. But did you pay him for an appeal?

16 A We didn't never discuss that. He wouldn't never
17 come back to see me after Judge Cothran sentenced
18 me.

19 Q How many times did you see him before your hearing?

20 A One time.

21 Q Had he represented you before that on some other
22 things?

23 A About 20 years prior when I was a youth.

24 Q A youth?

25 A Yes. He was a state issued lawyer then.

1 Q So if you win your PCR, you would like -- you would
2 like a new trial?

3 A Yes, sir.

4 Q You would like to be granted a new trial?

5 A Yes, sir.

6 Q Okay. Do you have anything else you want to tell
7 the Court?

8 A I would have never have -- I would have never pled
9 to no drug charges without, you know, having my
10 motion. You know, I felt like with me taking a
11 plea like that, running up under the gun like that
12 without showing any substantial evidence, you know,
13 I ain't felt like that was right. You know,
14 anybody being held accountable for something would
15 like to be shown his evidence or whatever they got
16 against them.

17 Q And have you ever seen the evidence against you?

18 A No, sir.

19 Q Was it ever given to you?

20 A I got a motion seven months -- six months after I
21 received a sentence in prison.

22 Q Was it about the drug charge?

23 A It ain't had nothing in it stated about no drugs.
24 Just saying that I supposed to have sold and that
25 they had audio/video and a picture of me sitting in

1 my vehicle. No hand-to-hand, no pictures of no
2 drugs, or nothing.

3 Q But were there statements in there that --

4 A Yes, it had a statement in it.

5 Q -- that said you sold drugs?

6 A They had a statement. They had a few statements.

7 Q So you have seen some evidence that the Court --
8 that the State would use against you if you were to
9 go to trial?

10 A Yes.

11 Q On that?

12 A Yes. They had some Xerox copy money that they sent
13 in the motion. And the serial numbers that they
14 sent, none of the serial numbers matched none of
15 money that they sent, on none of the money. I have
16 it behind you right there on the table in the
17 envelope.

18 Q So you would still, after you saw that evidence
19 that the State did have, the statements, and those
20 kind of things, you would still like to have a new
21 trial --

22 A Yes, sir.

23 Q -- on those charges?

24 A Yes, sir.

25 Q Is that correct?

1 A Yes, sir.

2 Q You do understand too that there would be two drug
3 charges?

4 A Yes, sir.

5 Q Plus four others that were dismissed, is that
6 correct?

7 A Yes, sir.

8 Q Or something else, some number of other charges?

9 A Yes, sir.

10 Q Okay. All right.

11 MR. GRIFFITH: I have no further questions,
12 Your Honor.

13 BY MR. GRIFFITH:

14 Q Wait. Do you have anything else you would like to
15 tell the Court?

16 A No, not really.

17 Q Okay.

18 MR. GRIFFITH: I have no further questions.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MS. SCHILL:

22 Q Hi, Mr. Nelson. How are you doing?

23 A All right.

24 Q Was your testimony you only met with your attorney
25 once, Mr. Brooks?

1 A Ma'am?

2 Q Did you testify that you only met with Mr. Brooks
3 once?

4 A Yes, ma'am.

5 Q And I guess I am a little confused. Did you say
6 you didn't review discovery with him at all or
7 that --

8 A Never.

9 Q Okay. Then how did you know about the Xerox money
10 and the serial numbers and such?

11 A When I got to prison, I had took a law class up at
12 Allendale, and they had this lawyer, I can't
13 remember his name right now, I want to say Thomas
14 Thompson, or something, that was teaching the
15 class. And he asked me about my motion, and I told
16 him I didn't have it.

17 He said, What you mean you don't have it?

18 I said, I don't have it.

19 He said, How you come to prison and don't have
20 a motion?

21 I said, I don't know what you talking about.

22 And he said when the class over, he want to
23 speak with me. So when class was over, he was
24 asking me about my charges. And I explained to him
25 what was what.

1 And he said, Well, how do you plead to a
2 charge that you don't know whether you was guilty
3 or not?

4 So he told me what to do. And I filed -- did
5 what he told me to do. And that's when Mr. Charles
6 Brooks sent me the motion, discovery.

7 Q Okay. So it is your testimony that you received
8 your discovery after you pled guilty?

9 A Yes, ma'am.

10 Q Okay. And you are testifying that you didn't see
11 any discovery regarding the drug charges at all
12 prior to pleading guilty?

13 A At all. At all.

14 Q Okay. Did Mr. Brooks discuss with you the
15 advantages and disadvantages of pleading guilty
16 versus going to trial?

17 A He just told me it would have been dangerous going
18 to trial, that I didn't want to do that. And I
19 explained to him that is something I wanted to do
20 because I didn't know what was going on.

21 Q So is it your testimony that you wanted to go to
22 trial on every -- on the drugs, but not on any of
23 the other ones?

24 A No, ma'am.

25 Q Okay. But do you recall receiving benefits in

1 exchange for pleading guilty to crimes, to include
2 drug crimes?

3 A Ma'am?

4 Q Do you recall having four charges dismissed in
5 exchange for pleading to other charges, including
6 the drug crimes?

7 A I didn't know about that until I got in front of
8 the judge.

9 Q Okay. So you are testifying that Mr. Brooks never
10 explained the plea offer to you?

11 A Not as far as I remember. All I know is I was
12 taking an open plea, zero to five on like eight
13 charges.

14 Q Okay. So you thought you were only going to get up
15 to five years?

16 A Yes, ma'am.

17 Q Did you believe that on the basis -- do you think
18 the Solicitor offered that, or are you saying Mr.
19 Brooks just told you --

20 A He said he talked to Ms. McElveen. And he said Ms.
21 McElveen told him if I plead to all my charges,
22 that she would give me a plea to zero to five.

23 And I told him personally that I wasn't
24 pleading to no drug charges, that I would plea to
25 everything else, that I want to go to trial. And

1 he said we wasn't going to trial. And so.

2 Q Okay. But do you recall the judge telling you
3 during your guilty plea hearing that you were
4 facing up to 15 years for your two drug charges?

5 A Yeah, at the end. He sentenced me for the driving
6 and the hit and run first. I got like zero to
7 five, time served, for the driving, and a hit and
8 run charge, he gave me a zero to one, with time
9 served on that. That is when he gave me the --
10 that's when we went to the drug charges.

11 Q Okay. So you are saying you don't recall that? Do
12 you recall the judge telling you that you would
13 receive up to -- you can receive up to 15 years in
14 prison for your two drug charges at your guilty
15 plea hearing?

16 A I don't remember. I just remember him saying it
17 carries zero to 15, and I was sentenced to 10 years
18 in the Department of Corrections for the drug
19 charges.

20 Q Okay. So if the judge told you that you could
21 receive up to 15 years for your two drug charges,
22 why did you think you would only get five?

23 A Because he said from zero to 15 on the -- that's
24 what he stated after I had done plead to the other
25 four -- the five charges, that the drug charges

1 carry zero to 15. But my sentencing sheet got zero
2 to 15 right on the top of it also.

3 Q Do you recall the judge telling you that he could
4 run all of the sentences for your charges
5 consecutively as opposed to concurrently?

6 A Yes, ma'am.

7 Q Do you recall telling the judge that you didn't
8 have any questions for him shortly after he went
9 through all your charges and what you were pleading
10 guilty to?

11 A Yes, ma'am.

12 Q Do you recall giving up your constitutional rights
13 during the guilty plea hearing?

14 A Yes, ma'am.

15 Q Do you recall telling the judge that you were not
16 threatened, coerced, or promised anything else to
17 plead guilty?

18 A Yes, ma'am.

19 Q Do you recall telling the judge you weren't
20 suffering from any mental illnesses that would
21 prevent you from understanding your plea of guilty?

22 A Yes, ma'am.

23 Q Do you recall telling the judge you weren't under
24 the influence of any drugs or alcohol?

25 A Yes, ma'am.

1 Q Do you recall telling the judge you were satisfied
2 with your representation from him?

3 A Yes, ma'am.

4 Q Do you recall telling the judge you didn't need any
5 more time to discuss anything with your attorney?

6 A Yes, ma'am.

7 Q Do you recall telling the judge you agreed with the
8 facts summarized by the Solicitor regarding your
9 drug charges?

10 A Say that again?

11 Q Do you recall agreeing to the facts that were given
12 by the Solicitor regarding your drug charges?

13 A I don't even remember getting no facts on the drug
14 charges, just stated that I had some distributions,
15 and something she had said.

16 Q Okay. So you don't remember that? I'll give you a
17 copy of your transcript. I ask you to turn to Page
18 16, beginning on Line 3.

19 The Solicitor, Ms. McElveen, talked about the
20 indictment ending in 512, the drug distribution
21 charge. It goes through a series of facts. And
22 then on Line 24, the Court asked: Are the facts
23 correct, Mr. Nelson?

24 And how did you reply?

25 A Yes, sir.

1 Q I am going to ask you about the second drug charge.
2 That is on Page 17, indictment ending in 514.
3 Beginning on Line 5, Ms. McElveen, once again, goes
4 through a set of facts. And on Line 15 the Court
5 asks: Are those facts correct, Mr. Nelson? And
6 how did you reply?

7 A Say that one more time?

8 Q On Line 15, the Court asked you: Are those facts
9 correct, Mr. Nelson?

10 A Yes, sir.

11 Q And how did you reply?

12 A Yes, sir.

13 Q Okay. So you agreed to the facts. Do you recall
14 the judge telling you about your right to appeal?

15 A Yes, ma'am.

16 Q Yes? Okay. So is it your testimony that you or
17 your wife told or asked Mr. Brooks to appeal?

18 A Yes. She asked him -- she said in the hallway he
19 told her that her job was done -- that his job was
20 done.

21 Q Okay. And what basis did you want to appeal? What
22 basis?

23 A With the time that Judge Cothran told me I had ten
24 days to appeal?

25 Q Yes? What did you want -- what aspect of your plea

1 did you want to appeal?

2 A On the time?

3 Q Just as to the sentence?

4 A Yes.

5 MS. SCHILL: Beg the Court's indulgence, Your
6 Honor.

7 (Pause.)

8 MS. SCHILL: I have no further questions, Your
9 Honor.

10 THE COURT: Redirect?

11 MR. GRIFFITH: No redirect, Your Honor. I
12 have no further witnesses.

13 THE COURT: Thank you. You may step down.

14 (Witness steps down.)

15 THE COURT: The Applicant rests.

16 MS. SCHILL: Your Honor, the State would call
17 Mr. Brooks to the stand.

18 (Witness approaches.)

19 THE BAILIFF: Place your left hand on the
20 Bible, raise your right hand, and state your full
21 name, sir.

22 THE WITNESS: Charles T. Brooks, III.

23 THE CLERK: Do you solemnly swear and affirm
24 the testimony to the Court will be the whole truth,
25 and nothing but the truth, so help you God?

1 THE WITNESS: Yes, sir.

2 THE BAILIFF: Step around, sir.

3 (Witness seated.)

4 THE BAILIFF: State your full name, and spell
5 your last name for the record, please, sir.

6 THE WITNESS: Charles T. Brooks, III,
7 B-R-O-O-K-S.

8 CHARLES T. BROOKS, III,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SCHILL:

12 Q Thanks for being here, Mr. Brooks. How long have
13 you been practicing law?

14 A Twenty...I'm getting old now. Since '96.

15 Q Okay. How much of that has been criminal law?

16 A I'd say a pretty fair amount. I used to be an
17 Assistant Public Defender -- it was a contractual
18 system -- for about four years here in Sumter. So
19 a pretty -- I handled a wide variety of criminal
20 cases, handled murders before, and criminal sexual
21 conduct, burglary first. So I handled quite a bit
22 of criminal cases here.

23 Q Okay. How did you become involved in the
24 Applicant's case?

25 A Marcus. Well, he stated earlier, I had some

1 experience representing Marcus before. I think I
2 represented him as a juvenile in Family Court and
3 kind of got a little familiarity with him and his
4 family. And Marcus had a few bumps and bruises
5 with the law, so I had known him before and had
6 represented him before. So that would explain why
7 I had some rapport with him and his family.

8 Q How many times did you meet with Applicant?

9 A Okay. On this particular case -- and this might
10 explain to you basically what happened -- prior to
11 my getting involved, he was represented by a member
12 of the Public Defender's Office, I think
13 Mr. Bridges, and he had gotten in jail on a bench
14 warrant. And his family had come to me -- I can
15 actually remember the days of the week -- they had
16 come to me and started talking to me like on a
17 Wednesday. And then on the Thursday afternoon they
18 came in and paid me, because it was our intent to
19 try to get the bench warrant lifted. And when they
20 paid me Thursday afternoon, then I immediately
21 found out who the Prosecutor was, contacted
22 Ms. McElveen. And sometimes we get cases like this
23 all the time where people in jail need bond
24 hearings or need hearings to lift bench warrants.

25 So I contacted her via e-mail and said,

1 Bronwyn, hey, I just got hired by Marcus Nelson's
2 family. We want to try to get a bench warrant
3 lifted.

4 And being the Prosecutor that she normally is,
5 she contacted me back and said, No, I am not
6 agreeing to lift the bench warrant, he is on the
7 trial list, I'm going to call his case up for
8 trial, and I am not agreeing to lifting the bench
9 warrant, and you can get the discovery, some other
10 little choice words, you know. Basically, she let
11 me know she was not going to consent to lift the
12 bench warrant.

13 So I said, Okay. I looked on the public index
14 and I said, He's got a slew of charges. What is
15 the situation?

16 And she had e-mailed me the same offer that
17 she had given to Mr. Bridges, I think it was back
18 in May that she had -- the e-mail that she had sent
19 to Mr. Bridges saying, As a Prosecutor, I am
20 willing to drop this and he plead to this, and a
21 whole slew of charges. Because Marcus had a large
22 number of charges, okay?

23 And, anyway, I think I had arranged with
24 Bronwyn -- I had come over on Monday -- they had
25 jury qualifications -- I had come over on Monday,

1 and I had gotten her discovery, like her -- I don't
2 want to say her file, but all the discovery she
3 had. She hands it to me and she said she would
4 have Marcus transported here to the courthouse
5 since he was on the trial list.

6 So I got all her discovery. Then I went
7 downstairs that afternoon and I met with Marcus for
8 about two hours. We are sitting in the holding
9 cell. And I was just kind of -- as my first time
10 looking at it, I'm going through it. Hey, this is
11 a distribution. This is what the file says. It
12 says on such and such day you did so and so. The
13 driving -- just went through it.

14 And he is like, Yeah, I did that. Or, I did
15 these other offenses. I think you asked him
16 earlier when he was on the stand that he admitted
17 to, you know, various other charges.

18 And I said, Okay, Marcus, look, they are not
19 going to consent to lift your bench warrant and
20 they have got you on this trial list. And I don't
21 want to just abandon you because I have known you
22 before. I said, Look, this is what you are looking
23 at, okay? You have got these drug charges, which,
24 you know, they kind of have some maximum, they are
25 like, you know, 10 to 15 years, but you have got

1 all these other smaller -- I said less serious
2 charges, the hit and runs, the -- I can't remember
3 all of them, but they were like all within a 5-year
4 parameter. I said, Well, Marcus, now, you have got
5 a record, because I know your record, I'm familiar
6 with you, you have got a record. I said, Man, the
7 best thing we can do, we have got Judge Cothran,
8 maybe we can shoot and get him -- get five for you,
9 because I know you have got a heart condition, you
10 know, he had some, you know, some medical
11 challenges.

12 So he said, you know, Some of these drug
13 charges, I don't think I did.

14 And I said, Well, Marcus, I'm not saying you
15 did them, the only thing I'm saying is this is what
16 she is offering. She's offering this, she is
17 willing to run these things concurrent, and she is
18 going to dismiss a various amount of charges.

19 And it was kind of one of those, as you
20 normally have as a Defense lawyer, you get these
21 packages, okay, package deals, where it would
22 really be a disservice to him if he said, Well, I
23 don't want to plead to the drug charge, then I can
24 go back and go to trial and get 15 years. And I
25 think Ms. McElveen had like three of them, three or

1 four or them, you know, pending; whereas, if she is
2 giving you a package deal and you are not going to
3 have to deal with these drug charges and you get
4 them all behind you too, then that makes no sense.
5 It doesn't make sense to go plead to something and
6 get five, maybe even five plus five plus five, and
7 then have to come back and deal with the drug
8 charges. That doesn't make any sense. That is
9 doing himself a disservice.

10 So he said, Okay, all right.

11 And I said, I do think maybe we can get five.
12 This is Judge Cothran. Judge Cothran generally has
13 a reputation, you know, particularly with the
14 criminal Defense bar being a little lenient, so I
15 said, We have got the best judge. I said, You
16 don't want to fool with -- I can't remember who the
17 judges we had at the time or had some prospective
18 judges coming in. I said, This is probably as good
19 as it is going to get. And you don't want her
20 to -- you know, it has always been my experience,
21 you don't ever want the Solicitor basically what I
22 call taking shots at you. They can pick one of
23 these cases and try you. And then if they lose on
24 it, it doesn't matter, they still got all these
25 other ones pending and they can keep you in jail

1 and continue taking shots at you and you are still
2 in jail and continue taking shots at you. That
3 doesn't do him any benefit. Because his problem
4 was he had so many charges. And he had a record.
5 This is not his first rodeo with the law.

6 So he agreed. He said, Okay, you know, you
7 think we can get that?

8 And I said, I think we can probably get five,
9 you know, with Judge Cothran. But you are looking
10 at, you know, because of the drug charges, you
11 know, you can get 10 or 15 years, but Ms. McElveen,
12 you know, I have done gone out here and talked to
13 her as much as I can, and I am going to try to
14 squeeze her some more. And, ultimately, I would
15 like to think it is because Ms. McElveen likes me,
16 she dismissed some additional stuff that she didn't
17 say that she was going to do, okay?

18 And, anyway, we got into court and went
19 through the whole plea. And Judge Cothran, I don't
20 know, maybe he woke up on the wrong side of the bed
21 that morning or something, he said, Ten years.
22 But, you know, when he gave him ten years, I was
23 stunned and Marcus was stunned.

24 But then I kind of thought about it, because I
25 want to say I had -- somewhere around there I had

1 another client who had gotten five years, and SCDC
2 tends to turn these guys around even quicker now
3 with good behavior, so maybe that is what Judge
4 Cothran was thinking. I mean, I wasn't in his
5 head, but because I deal with him a lot, and we
6 normally see him a lot around here, and we know
7 him, and you kind of get a feel for what a person
8 is going to do when they are on the bench based on
9 their habits, and things like that. So I kind of
10 started thinking, Maybe this is what he is
11 thinking, Hey, this guy pretty much needs to do
12 about two years and then in two years he will get
13 out. Sometimes -- sometimes just off-the-record we
14 have heard Judge Cothran just say things and talk
15 to other members of the bar and say some things
16 like that.

17 So, and I don't -- I don't recall any issue
18 about doing an appeal, and there really wasn't any
19 appealable issue. Now, they may have said
20 something -- you know, his wife may have said
21 something about appealing it, but there really
22 wasn't an appealable issue other than you didn't
23 like the time that Judge Cothran had given you. I
24 didn't like the time he gave him either. But that
25 is not an appealable issue. And having been

1 practicing as long as I have, I know that when you
2 file these appeals, particularly on guilty pleas,
3 the appellate court, they want you to tell them
4 what is the basis of it, and we really didn't have
5 any basis of it.

6 So that basically is my representation of him
7 in a nutshell. And I think after talking and
8 refreshing my memory with Ms. McElveen, all of that
9 took place from the time of getting the money from
10 his family to the time he did the plea, I want to
11 say that was like three or four days. Let me
12 count, let me see, Thursday afternoon, I started
13 talking with Ms. McElveen Friday, Saturday, Sunday,
14 and I got her discovery on Monday, and then I think
15 the plea says the 21st, which would have been
16 Tuesday. So, you know, that is less than a week.

17 But, you know, having been -- having had the
18 experience you have, when you get these package
19 deals, you know, it doesn't do yourself any benefit
20 to go and say, Well, I am going to plead to this,
21 but I am going to keep this out. That doesn't make
22 any sense. He would be worse off than he is now.

23 So, that is the situation.

24 Q Okay. Do you recall what specifically he received
25 and what discovery, what the evidence was?

1 A What I remember is Ms. McElveen saying, Here, here
2 is my file. Here is all the discovery I've got.
3 And I had, you know, it was a stack of documents.
4 I'm kind of making a gesture here of about, I'd say
5 a pound or two. She handed it to me, Here is all
6 the discovery. And, I mean, we were -- we
7 probably weren't in this courtroom, we were
8 probably in the one next door in 3B, and then, you
9 know, we go downstairs to the first floor, I tell
10 the officers I want to see Marcus Nelson and they
11 bring him into the holding cell. I sit down there.
12 And I think the chair is somewhat similar to this.
13 I kick back and like I spent maybe, like I said,
14 two hours just kind of going through the discovery
15 with him saying, Hey, this offense is driving under
16 suspension. Here they picked you up on this date
17 according to the incident report. The incident
18 report says, A-B-C.

19 Yeah, yeah, I did that one, Mr. Brooks. I'm
20 guilty of that one. I'm guilty of that one.

21 And then, you know, distribution, on this
22 particular day they are saying so and so.

23 So it wasn't a situation where I handed him or
24 made copies of the discovery for him to have and
25 look at, because I didn't have it. Now, if he was

1 complaining about not receiving his discovery, then
2 he would have to talk to Mr. Bridges, who had
3 represented him for the bulk of that time and who
4 presumably would have gotten all of that discovery
5 way ahead -- prior to my getting involved in the
6 case.

7 Q Okay. But you had discovery, though?

8 A Yes, yes, I had the discovery.

9 Q You reviewed it with him?

10 A I reviewed it with him sitting down. And what I
11 would do is I would recite the discovery and say,
12 Hey, this one says distribution, on such and such
13 day they are saying you did X-Y-Z.

14 Q Okay. Was there a video in this case or not?

15 A I would -- now, if the discovery says it was a
16 video or audio, I would go by what was in the
17 discovery, but we didn't -- you know, what we were
18 trying to do or what I was hoping to do is try to
19 take care of the package because that would benefit
20 him and not, you know, basically reject that and
21 then get something worse.

22 Q Uh-huh.

23 A Because the worst thing for him would have been for
24 her to start trying him on one of these charges at
25 a time, particularly the drug charges. That would

1 have put him in a real bad situation. And that is
2 what I was explaining to Marcus, that -- and I know
3 he kind of felt like, Well, they need to have a
4 little more in discovery to get me. And I'm like,
5 Nah, you know, all they got to do is roll up in
6 here with officers and if they have got the CI
7 involved and they roll up in here with him and they
8 put it to a jury, you could be found guilty and you
9 could be going to prison 15 years.

10 So the questions about whether or not
11 Ms. McElveen had had that in a position to be able
12 to tee it up for trial, so to speak, that is
13 something you would have to ask her, but I had to
14 operate under the presumption that she was ready to
15 try it because -- and, now, in the grand scheme of
16 things, knowing Ms. McElveen, there is a little bit
17 of huffing and puffing and a little posturing, I'm
18 ready to try it. But I had to err on that said
19 because she knew more about it than I did since I
20 had got involved in it late and he is on the trial
21 list, okay? So I had to operate as if this thing
22 is potentially going to come up this week. And
23 that is what I had to explain to him.

24 Now, I recognize the solicitors, and I know
25 Ms. McElveen pretty well, sometimes there is a

1 little, as I call it, wolfing, saying it is a
2 little bit more than it really is. She may do that
3 from time to time. But, I mean, that is kind of
4 the situation we had.

5 Q Okay. I just want to ask you a couple of other
6 questions just for the record. So I just want to
7 be clear, you informed him that he would be
8 pleading guilty to the drug charges?

9 A What I informed him is that he was going to be
10 pleading guilty to the drug charges he ultimately
11 pled guilty to. In exchange, Ms. McElveen dropped
12 some.

13 Q Uh-huh.

14 A And she dropped a whole host of other things. And
15 then she dropped some additional charges that she
16 told me that she wasn't going to, you know, that
17 she wasn't going to drop anyway.

18 Q Okay. Did you coerce him into pleading guilty any
19 way, shape, or form?

20 A No, ma'am.

21 Q Okay. And I know you mentioned, you know, he might
22 have gotten five years. Did you ever promise him
23 five years saying, You are not going to get
24 anything above five years?

25 A No, you can't -- yes, I couldn't promise him that.

1 All I could tell him is I thought -- did I -- was I
2 a bit disappointed, stunned by Judge Cothran giving
3 ten? Yes. But I couldn't promise him that. All I
4 said is, What I think what you should probably get
5 is somewhere around five, but you have this
6 exposure based -- but, here is the thing, you are
7 not going to go home, okay? That's what I told
8 him. You are not going home, because you have got
9 a bad record and you have got these charges here.
10 You are not going to go home. So you are going to
11 get some kind of time. What we are trying to do is
12 trying to minimize it the best we can. And that's
13 why I said, Really in my mind I'm thinking we can
14 try to shoot for five.

15 That is where he probably got the whole idea
16 of thinking, you know, I'm just going to get a zero
17 to five.

18 A lot of the stuff that he had that he
19 ultimately said to me, and he said here today, was
20 in the area of five years. The problem is, if you
21 don't take it as a package deal, and let's say you
22 ultimately anger the Prosecutor, the Prosecutor can
23 turn around and say, Okay, I'm going to try these
24 one at a time, and then you end up getting five,
25 plus five, plus five. And you could ultimately

1 get, you know, some staggering amount of time. You
2 know, I think with talking to Ms. McElveen, he
3 could have gotten 80 years. And I think if he gets
4 his PCR granted, I think that is what he would
5 face.

6 Q Okay. Do you think it was in Applicant's best
7 interest to plead guilty?

8 A Yes, ma'am.

9 Q Whose decision is it ultimately to plead guilty or
10 to go to trial?

11 A The client's.

12 Q Okay. And if he had wanted to go to trial, what
13 would you have done?

14 A Well, I guess I would have sat on down and played
15 court with Ms. McElveen and tried whatever case she
16 would have been ready to try. That is ultimately
17 what we have to do. But, you know, I did explain
18 to him, and I think Marcus understood that that
19 really was in his best interest because of the
20 number of charges that I explained and the
21 cumulative time that he could have received and he
22 could have gotten way more time than Judge Cothran
23 had actually sentenced him to.

24 Q Okay.

25 MS. SCHILL: Beg the Court's indulgence, Your

1 Honor.

2 (Pause.)

3 BY MS. SCHILL:

4 Q Just one last question for you. I just wanted to
5 make it clear for the record. So the discovery
6 that you reviewed with the Applicant was pertaining
7 to his drug charges, correct, the indictments
8 ending in 512, 513, 514?

9 A I went over everything with him, everything she --
10 she handed me everything that she had.

11 Q Okay.

12 A And it was -- it included the drug charges.

13 Q It included drug charges, okay.

14 A And it was also -- because we went over some
15 things -- because there were some things in there
16 that I went over with him that he said, Yeah, I'm
17 guilty of that, and that was like the charges that
18 you can get like five years for, habitual traffic
19 offender and some -- it was -- he just had a slew
20 of charges. We just kind of -- I sat down there,
21 and I want to say we took about two hours and I
22 went through the discovery.

23 What I would do is, I pulled up the discovery
24 and I said, Okay, this is Crime One. It says you
25 did this, this, and this.

1 Okay, yeah, yeah, I did that one.

2 Crime Two, you did this? Okay, yeah, yeah, I
3 did it.

4 Crime Three? Well, I don't know if they got
5 the evidence on it, Mr. Brooks.

6 And I said, Look, this is your problem, and I
7 explained to him the packages, and that kind of
8 thing. And then we just went through all of them.
9 And then I said, Hey, she is going to dismiss these
10 and you plead to these, and so on and so forth.

11 I hope that kind of encapsulizes it for you.

12 MS. SCHILL: No further questions, Your Honor.

13 MR. GRIFFITH: With the Court's indulgence,
14 Your Honor, I have a letter I'd like to enter in
15 evidence, but I need to show it to counsel.

16 THE COURT: Certainly. Go ahead.

17 MR. GRIFFITH: I just recently got it, or I
18 would have shown it to her sooner.

19 (Pause.)

20 MR. GRIFFITH: Your Honor, I would like to
21 enter as an exhibit, just to clarify some of the
22 information that has been given, a letter from
23 Mr. Bridges, Jason Bridges, his former attorney, to
24 Mr. Nelson that he just received. And so as
25 Exhibit 1 or A.

1 THE COURT: Any objection?

2 MS. SCHILL: No, Your Honor.

3 THE COURT: It will be admitted without
4 objection.

5 (WHEREUPON, Applicant's Exhibit No. 1
6 was marked for identification and
7 received into evidence.)

8 CROSS-EXAMINATION

9 BY MR. GRIFFITH:

10 Q Mr. Brooks, let me give you this exhibit. I only
11 offer that exhibit, Mr. Brooks, to show that
12 Mr. Bridges actually, according to him and
13 according to that letter, had not received the
14 discovery on the drug charges prior to your taking
15 over the case, but -- I'm sorry, have you had time
16 to look at it?

17 A Yes, yes, I'm good.

18 Q But when you received the discovery from
19 Ms. McElveen, did it include the drug charge
20 evidence?

21 A The discovery she gave to me, it had some drug
22 indictments in there.

23 Q It had indictments for drug charges?

24 A And when I say indictments, it had information
25 about drug cases against him.

1 Q Okay. Did it actually have the full discovery of
2 the drug cases?

3 A Audio and video? Of course she didn't hand me the
4 audio and video.

5 Q Did it have statements from witnesses?

6 A I don't know. I can only say it may have mentioned
7 it. You know, it has been a while since, you know,
8 we did this, so I can't tell you if the statements
9 were in there.

10 Q Okay. So basically what you got was just a list of
11 the indictments on that charge?

12 A No, no, no. I mean, it would have -- it would have
13 had the incident reports, the officer's narrative,
14 because I read that to him. Officer X says that on
15 such and such day, you know, this happened, and
16 this is your involvement in it. Because there was
17 a story to tell. There was enough information for
18 me to say, This is what they are saying you did.

19 Q Do you keep those records, Mr. Brooks?

20 A Whatever discovery I had, and then, of course, when
21 he asked for it later being incarcerated, I sent
22 him the entire file.

23 Q So you didn't keep any of it, a copy of any of it?

24 A I mean, let me ask -- let me see if I can answer
25 your question this way. I had the file. When he

1 asked for it, I sent it to him.

2 Q So you don't have anything that you can show us, is
3 what I'm saying?

4 A You are asking me to show you something today? No.

5 Q Okay.

6 A I am here. Now, if you have got something you want
7 to show me, that's fine, but when he asked for his
8 file, I gave him his file and I maintained that,
9 you know, after the file because usually somebody
10 goes to prison they will want to ask for their file
11 and, you know, we make a copy and send it to him.

12 Q We make a copy and send it to them, is what you
13 just said?

14 A Right.

15 Q Well, that is what my office does too. We keep a
16 copy.

17 A Correct.

18 MR. GRIFFITH: Then I would enter Exhibit 1,
19 Your Honor, as evidence that Mr. Nelson did not
20 receive that discovery from Mr. Bridges, his prior
21 attorney.

22 BY MR. GRIFFITH:

23 Q And, Mr. Brooks, then you have no record with you
24 showing that you had that information to show to
25 Mr. Nelson, the actual statements, or anything like

1 that? I understand you are telling us --

2 A Yeah, I -- you know, what I showed him was, or
3 discussed with him, because I couldn't really show
4 it to him sitting down in the holding cell, because
5 it is not like -- you know, our holding cell is
6 logistically situated where you can slide papers to
7 them -- that is something I complained to Jamie
8 Campbell about one day, that is just an aside.

9 Q Please do.

10 A But you can't really slide them the paperwork. The
11 only thing you can do is really say, Hey, this is
12 what is here, this is what they are saying, and so
13 on and so forth. That is what I did with him.
14 Granted, I wasn't in the case very long.

15 Q So you talked to him here at the courthouse?

16 A Correct.

17 Q In one of these holding cells?

18 A That's correct.

19 Q So you didn't talk to him over at the jail?

20 A That's correct.

21 Q So you never handed him any document?

22 A That is correct.

23 Q So he never had the opportunity to look at any
24 documents with his own eyes?

25 A During my brief representation of him, that's

1 correct.

2 Q And since Mr. Bridges did not have that evidence,
3 then obviously he didn't see it from him?

4 A Well, I don't know what Mr. Bridges had or didn't
5 have. I can only assume from Ms. McElveen's
6 contact with me that, you know, her e-mail to me
7 was something of the nature, I presented this to
8 Mr. Bridges before, he has had the discovery, but
9 you can look at my discovery, blah, blah, blah,
10 blah, blah, something along those lines.

11 Q Okay.

12 A So I can't tell you what Mr. Bridges has or didn't
13 have.

14 Q So then there is no evidence that Mr. Nelson
15 actually got a copy of that to look at, is there?

16 A Prior to his plea.

17 Q Prior to his plea he got no evidence, there is no
18 evidence he got --

19 A As far as my representation of him, because of the
20 short amount of time of being involved, it was only
21 me sitting down with him in the holding cell going
22 through discovery, all the cases that Ms. McElveen
23 had given to me.

24 Q Okay. Thank you. Did you discuss with
25 Mr. Nelson -- you told us you talked about the drug

1 charges, that they were there. Did he mention to
2 you that he did not wish to plead guilty on those
3 charges?

4 A You know, he did say that. He did say, I don't
5 know -- I don't know if they have got any evidence,
6 they are strong arming about that, I'm a little
7 unsure about that one, Mr. Brooks.

8 And that is when I said -- and I leaned back
9 in the chair just like this -- and I said, Now,
10 Marcus, you have told me that you are willing to
11 plead to all these other things. Here is this
12 woman, who she can be a problem to deal with, and
13 she basically is saying, Look, I'm giving you a
14 package deal. It would really not be in your
15 interest to then say, Oh, well, I'm going to plead
16 to these, and then this lady going to try you on
17 this. You got the time on this, and then she takes
18 a shot at you on any one of these drug cases and
19 you get 10, 15 years, you done got a whole lot more
20 time. Then you mad with me because I have done
21 something to put you in jail for 20 plus years when
22 you add it all up.

23 So Marcus said, Well, you know, that does make
24 sense. That does make sense.

25 I said, That is why she recognizes some of the

1 cases she has are very strong cases, some of the
2 cases she has as a Prosecutor may not be as strong.

3 That is why the Prosecutor says, I am willing
4 to give you this package deal. You plead to these,
5 I am going to dismiss this, so on and so forth.

6 Marcus's problem was his record, the
7 cumulative nature of his charges, okay? He had a
8 lot of them. And, of course, he had some medical
9 challenges. Those were his big problems. And I
10 know you don't want to sit in jail for 20 years,
11 okay? You know, he had -- it wasn't one thing that
12 was really as serious, it was just a cumulative
13 nature, you know. Like I said, I think he had
14 where he could have ultimately gotten 80 years on
15 his charges if you maxed them all out and ran them
16 all concurrent -- I mean, consecutive, excuse me.

17 Q I understand.

18 A So that is why I said -- and, you know, I said,
19 Well, hey, listen, man, you don't want to play with
20 this, man. We need to go in here and we need to
21 argue down. We need to take this package. We need
22 to go in here and argue down and let's shoot for
23 five, I said, now, because you are not going home.
24 You are not going home. You will get credit for
25 the time you have done because you have been

1 sitting here on a bench warrant, but you are not
2 going to go home. And I said, Let's see if we can
3 shoot for five because you have got the medical
4 challenges, and that kind of thing. I said, We got
5 Judge Cothran and, you know, when I go in there and
6 kind of talk to him a little bit, and I said, Look,
7 now, you know, Ms. McElveen, she is not going to --
8 you know, I have got her where she ain't going to
9 talk as mean and nasty as she can be, you know, in
10 this plea. So I got that, you know, kind of got
11 that tiger to kind of calm down a little bit. And
12 we need to go ahead. Because I think Ms. McElveen
13 was kind of irritated in the sense that I think his
14 stuff had been pending for some time.

15 Q Well, Mr. Brooks, so you basically convinced him to
16 take the plea?

17 A Well, I mean, as the Defense lawyer, you lay it out
18 there. You say, Hey, here is Door Number 1, here
19 is Door Number 2.

20 Q Did you tell him that he should take the plea?

21 A He asked me what I think he should do. I said,
22 This is what I think you should do.

23 Q Okay.

24 A But you ain't got to do it. You can do whatever
25 you want to do, because I'm not doing any of the

1 time for you.

2 Q And during the time you were talking to him, so he
3 didn't have any of this stuff in his hand, and he
4 had told you he did not want to plea on the drug
5 charges, did you tell him -- and you mentioned this
6 previously in your testimony -- that you thought it
7 would be a zero to five situation? You told that
8 to him, is that correct?

9 A No, no, no. No, no, no. This is what I told him.
10 Let me clarify this. He said, I don't think I want
11 to plead to these drug charges. And I explained to
12 him why that would be a very unwise decision,
13 because she is going to dismiss this. If you are
14 going to go to prison, because you are going to
15 prison, you need to get all this behind you,
16 because you don't want to get over to prison, then
17 come back and have to deal with this and face
18 maximum exposure on these charges. That doesn't
19 make any sense. She is willing to dismiss this.

20 Q When did this zero to five come in, Mr. Brooks?
21 Where does that come in? You mentioned that in
22 your testimony, zero to five.

23 A Because there were some charges -- there were a
24 bunch of charges he had that had zero to fives to
25 them. So what I said to him is, You are not going

1 to go home. Our best shot is hoping that we can
2 shoot for a judge giving you five years, okay? He
3 had these drug charges. He had a record. He
4 wasn't going home.

5 Q Certainly.

6 A Okay? And he had a whole host of zero to five
7 charges, okay? You are going to do some time.
8 Let's see, hope and pray that we can get in here
9 and I'm going to play up the judge about your heart
10 condition, your medical challenges, and we have got
11 Judge Cothran, you know, he ain't like some other
12 judges I know, we had a good chance to get what we
13 are shooting for.

14 Q Okay. Mr. Brooks, you believe that you gave him
15 the impression that he would get zero to five
16 years?

17 A No. And let me say this, this ain't Marcus's first
18 time, now.

19 Q Okay.

20 A And --

21 Q Did you tell --

22 A Okay.

23 Q I'm sorry, Mr. Brooks.

24 A Okay. You want me to -- go ahead. I'm sorry, I
25 cut you off. Go ahead.

1 Q Did you tell Mr. Nelson prior to his doing the
2 plea -- and I am a Defense attorney as well, and I
3 will often tell my clients, Now, when you go up
4 before the judge, he is going to ask you if you are
5 pleading guilty because you are guilty, and your
6 answer, if it is, No, I am not guilty, the judge is
7 going to say, Well, I'm not going to accept your
8 plea. Did you discuss something like that with
9 him?

10 A Well, the plea colloquy, basically the recitation
11 of the questions that you know the judge is going
12 to ask they give a Defendant upon taking their
13 plea, absolutely. And, here again, Marcus already
14 knew, he had some prior experience because he had a
15 pretty extensive record, but I said, Now, look,
16 Judge Cothran is going to say, Are you pleading
17 guilty because you are guilty? Do you understand
18 you are giving up your right to a jury trial? Do
19 you wish to give up those rights? The same thing
20 we have heard over and over again. And he had
21 heard that before.

22 I said, You know, in order to take the plea,
23 you have got to take the package. Do you want to
24 take the package?

25 Q Did you discuss a recommendation with the

1 Solicitor, Assistant Solicitor, Ms. McElveen?

2 A I discussed a lot of things with Ms. McElveen.
3 And, yes, I said, Hey, why don't you agree to do
4 this?

5 And, of course, she was like, No, I ain't
6 going to do that. I'm willing to do this. I'm
7 willing to do concurrent.

8 Q On the record it says that she made a
9 recommendation?

10 A She might not have --

11 Q I'm sorry?

12 A She might not have sounded quite as crass as the
13 way I just sounded, but she made it clear that this
14 is what she was willing to give and this was it,
15 because, in her mind, as she often does, she has
16 formulated what she thinks a person's situation be
17 based on their record, the crimes they are charged,
18 and what she thinks is a suitable plea from her
19 side as a Prosecutor.

20 Q On the record it states that there was a
21 recommendation from the State. And when Judge
22 Cothran asked for that recommendation, she
23 stated -- in the transcript it says, Concurrent
24 sentences?

25 A That's correct.

1 Q So you had not discussed any time frame with her?

2 A Well, let me say this. I kind of asked her, trying
3 to be as zealous as I could for my client, as I
4 always do, I'm trying to get her to agree to
5 something that I would consider to be a steal for
6 my client, like, Hey, can you -- do you think you
7 could just do a cap of five, or something like
8 that? She wasn't going to do that. And she made
9 it abundantly clear that she wasn't going to do
10 that.

11 And I have had quite an experience with
12 Ms. McElveen. You know, dealing with a Prosecutor
13 and having practiced law and having had
14 relationships with people, you get a feel for what
15 you know you can get away with them and what you
16 know you can't get away with them on.

17 So basically -- and I told him that, It is
18 concurrent, but we are going to try to shoot for
19 the five. But, now, what I did tell him is, Hey,
20 you know, she wasn't going to stand up and say he
21 is the worst person in the world, which I have seen
22 her do on occasion to some Defendants where she
23 gets up and she is, you know, adamant and standing
24 on her soapbox about this person needs to go to
25 jail, and this, that, and the other. She didn't do

1 that in Marcus's case. I like to think it was
2 because of me that kind of, you know, kind of tamed
3 the tiger a little bit, but I knew I couldn't get
4 her to go and give me something like, you know,
5 some type of -- commit to some type of number. She
6 wasn't going to do that.

7 Q Now, but you mentioned just now in your evidence
8 that in speaking to Mr. Nelson that you said that
9 you were shooting for five, isn't that correct?

10 A That's correct.

11 Q Okay.

12 A That's right. That is probably where he got the
13 whole notion of five from.

14 Q Okay.

15 A And let me say this, and I will say this for him, I
16 thought Judge Cothran sentenced him a bit harshly
17 more than I thought that he should have gotten.

18 Now, of course, who am I? I'm just a criminal
19 Defense lawyer. But you kind of get a feel for,
20 you know, what your client is looking at. That's
21 why I told him, I said, You are not going to go
22 home, now, you are going to get some kind of time,
23 but I thought he was going to give him somewhere in
24 the nature -- somewhere in the range of about five
25 years. But I indicated earlier when I was

1 testifying that maybe Judge Cothran was probably
2 thinking, Hey, you know, non-violent offenses, SCDC
3 is kind of turning around these people quicker than
4 they normally do. Because I had a case somewhere
5 around where a gentleman had gotten four years, and
6 the plea was done maybe like this time last year,
7 and he got out of jail in early May. So that is
8 kind of what I think --

9 Q Now --

10 A In retrospect. I didn't know this at the time, but
11 in retrospect, I think that is what Judge Cothran
12 may have been thinking.

13 Q Now, I understand, and you are a Defense attorney,
14 when a person does a guilty plea, that if you are
15 going to appeal that, there has to be an
16 accompanying reason for the guilty plea and basis
17 for the plea or it is going to be denied by the
18 Court of Appeals, but if my client -- if a client
19 asks for an appeal, we often will file it whether
20 or not -- but do you recall being asked to file an
21 appeal for Mr. Nelson?

22 A Well, she -- his wife inquired about it. Now,
23 Marcus never, he never asked me. And it is not
24 like he called from the jail to say, Hey, man, I
25 want you to put in the plea. And that was

1 something that his wife may have said to me, but it
2 was never any follow-up. And, of course, you have
3 got ten days. There was never any follow-up, Hey,
4 Mr. Brooks, we really want you to put this plea in
5 or him calling -- not plea, appeal in -- or him
6 calling me from the jail, or anything like that.
7 So, you know, and there was really no basis for it,
8 so I didn't -- I didn't do any of that.

9 Q I understand. But his agent, his wife, a person
10 connected with him did ask you to file an appeal,
11 isn't that correct? Isn't that correct?

12 A And I don't even know if that -- if I can actually
13 say she asked for it. She may have said something
14 like, Hey, what about an appeal? And I may have
15 said all that.

16 Now, in the grand scheme of things, you know,
17 cut and dry, I did not send an appeal in. Didn't
18 think there was any basis. I didn't do that. Now,
19 if he really wants an appeal of his guilty plea,
20 give it to him.

21 Q I understand.

22 MR. GRIFFITH: I have no further questions.

23 MS. SCHILL: A few brief questions.

24 REDIRECT EXAMINATION

25

1 BY MS. SCHILL:

2 Q So even though the Applicant might not have
3 received a hard copy and might not have seen
4 certain things, did he seem to understand what the
5 State had against him?

6 A He understood my conversations with him, which were
7 basically, Hey, this discovery says you are charged
8 with X-Y-Z, and this is what the incident report or
9 the officer's version is, they are saying this. He
10 understood our conversations, which were
11 conversations talking about the discovery materials
12 that Ms. McElveen had given me.

13 Q Okay. Did he ever say to you, I'm not pleading
14 guilty until I see everything with my eyes, my own
15 eyes?

16 A No. No, he didn't say anything like that.

17 Q Okay. And so he still decided to ultimately plead
18 guilty, correct?

19 A That's correct.

20 Q Okay. And would you have proceeded -- I may have
21 asked you this already, but I just want to make
22 sure -- would you have proceeded to trial had he
23 said, I'm not pleading guilty until I see
24 everything?

25 A I would have. I wouldn't have liked it, but, you

1 know, Ms. McElveen, sometimes she can be a problem,
2 but, you know, I would have tried his case. But,
3 of course, you know, he wouldn't have gone to trial
4 on everything, obviously.

5 Q Okay.

6 A Because they were on different dates. She would
7 have picked out something, but I know Ms. McElveen,
8 now, she would have picked out something and it
9 would have been something he would have gone to
10 jail for 15 years for, and she would have tried him
11 on that, and that would not have been a good thing.
12 And I expressed that to him.

13 Q Okay. And, briefly, I just want to make it clear,
14 you did not guarantee that Applicant would only get
15 up to five years, correct?

16 A No, ma'am.

17 Q Okay. And did the judge give the Applicant an
18 illegal sentence, or was it legal?

19 A It is a legal sentence.

20 Q Okay. So it is a legal sentence. So although it
21 might have been an unfortunate one, it wasn't
22 statutorily inappropriate, or anything like that,
23 right?

24 A That's correct.

25 Q Okay. Those are all the questions I have.

1 THE COURT: All right. Thank you, Mr. Brooks.
2 You may step down.

3 THE WITNESS: Can I be excused, Judge?

4 MS. SCHILL: Yes, we ask that he be excused.

5 THE COURT: No objection?

6 MR. GRIFFITH: No objection, Your Honor.

7 THE COURT: Yes, sir, Mr. Brooks, you may be
8 excused.

9 (Witness steps down and is excused.)

10 THE COURT: Next witness. You may call your
11 next witness.

12 MS. SCHILL: The State would call Ms. Bronwyn
13 McElveen.

14 (Witness approaches.)

15 THE BAILIFF: Place your left hand on the
16 Bible, raise your right hand, and state your name.

17 THE WITNESS: Bronwyn McElveen.

18 THE BAILIFF: Do you solemnly swear and affirm
19 the testimony to this Court will be the whole
20 truth, and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE BAILIFF: Step around, please, ma'am.

23 THE WITNESS: Thank you, sir.

24 THE BAILIFF: State your full name, and spell
25 your last name for the record, please, ma'am.

1 THE WITNESS: Yes, ma'am, it is Bronwyn --
2 yes, sir, it is Bronwyn McElveen, M-C-E-L-V-E-E-N.

3 BRONWYN MCELVEEN,
4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SCHILL:

7 Q Thank you for being here. Just a few questions
8 first for the record. Where are you currently
9 employed?

10 A I'm employed at Sumter County Solicitor's Office.

11 Q Okay. And were you the Solicitor assigned to the
12 case of Marcus Nelson?

13 A Indeed, I was.

14 Q Did you receive any Brady and Rule 5 motions?

15 A I did. I believe we are here today on some drug
16 charges, but just for the sake of clarity and the
17 record, we had a possession of a stolen vehicle and
18 habitual traffic offender from July 29th of 2017.
19 We provided discovery to his Public Defender, Mr.
20 Jason Bridges, on December 1st of 2017. He also
21 had a possession of a Schedule 1 -- I'm sorry, a
22 controlled substance, an HT0, and a failure to stop
23 for a blue light from July 22nd of 2017. So he
24 actually bonded out and then was arrested three
25 days later on the first set I read. But we

1 provided discovery on that set of charges
2 December 5th of 2017. He also had a hit and run
3 with minor personal injury and another habitual
4 traffic offender violation from March 19th of 2018.

5 MR. GRIFFITH: Your Honor, I would object to
6 the list of charges that he has ever been charged
7 with going through as being prejudicial against him
8 and not bearing anything on the reason that we are
9 here for.

10 THE WITNESS: These are not the list of all
11 the charges he had ever been accused of, this is
12 what was pending --

13 THE COURT: Hold on just one minute,
14 Ms. McElveen. Let's do it this way. Why don't we
15 ask the witness a question and let the witness
16 answer the question?

17 THE WITNESS: Thank you. And we provided
18 discovery, Your Honor, on June 6th of 2018.

19 Then at that point, Mr. Nelson did get
20 arrested, looks like January 25th of 2018, which
21 are the charges at issue here. And at that point
22 he had Mr. Bridges on the other three sets of
23 charges. When he was arrested January 25th of
24 2018, he was charged with three counts of
25 distribution of cocaine base or crack cocaine and

1 possession of a pistol by a person with a crime of
2 violence charge.

3 He did not have a lawyer, but he was given a
4 bond, yet again a \$25,000 surety bond. So he
5 bonded out without getting a lawyer. He was then
6 arrested four days later on a habitual traffic
7 offender, and he bonded out again.

8 At that point, we made a motion to revoke his
9 bond, and his bond was successfully revoked on --
10 beg the Court's indulgence -- on May 16th of 2018.
11 He still had not retained a lawyer on the four new
12 sets of charges.

13 So I prepared -- the old charges for which we
14 had discovery, had sent to his Public Defender, I
15 prepared those cases for trial. Meanwhile, Mr.
16 Brooks gets hired for a motion to lift the bench
17 warrant. So I informed him that we do not plan on
18 consenting to the bench warrant being lifted
19 because, as you can see, he had a large number of
20 offenses and had been out for four days and got
21 arrested again, we would like to try his case and
22 we are going to object to the bench warrant
23 hearing.

24 At that point, discussions -- and I also let
25 Mr. Bridges, meanwhile, know that we had the

1 discovery ready for him when he was retained from
2 the jail, or when he was -- when the application
3 came in.

4 Mr. Brooks then presented himself as the
5 lawyer of -- the attorney of record. So we then
6 photocopied all of the contents of all four of the
7 new charges, which included still frames from the
8 videos from the confidential informant, along with
9 6-person photo line-ups and statements by the
10 confidential informant identifying Mr. Nelson as
11 the person who committed these distributions, and
12 we gave those to him that Monday, August 20th, when
13 he was there in person.

14 Q Okay. So by him, you mean Mr. Brooks?

15 A Sorry, Mr. Brooks in person. And Mr. Bridges had
16 the other set that would have been provided.

17 Q Yes. I just want to ask a little bit about that.
18 So Mr. Bridges did not represent Applicant in any
19 of the drug charges at issue in this PCR, correct?

20 A No, ma'am.

21 Q Okay.

22 A That is the confusion with the discovery. I just
23 wanted to clear that up.

24 Q Okay.

25 A Thank you.

1 Q So, in other words, Mr. Bridges' discovery file
2 wouldn't have included any of the drug information
3 that you had given to Mr. Brooks?

4 A No, ma'am.

5 Q Would that have affected his drug charges at all,
6 the fact that Mr. Bridges didn't have anything?

7 A No, ma'am.

8 Q Okay.

9 A I provided it to the attorney representing him in
10 that plea that day.

11 Q Yes, okay. So you physically -- did you physically
12 give Mr. Brooks the files pertaining to the drug
13 charges?

14 A I did. And the habitual traffic offender.

15 Q Okay.

16 A I had -- and also inside of those, while they did
17 not include the actual videos, we have a policy
18 unless -- that we at the time of trial don't like
19 to reveal the confidential informant until we try
20 the case, and so we provided still frames of the
21 purchases from the video to give to the Defense
22 attorney at the time so that he could show his
23 client still frames from the video.

24 Q Okay. So just so it is clear for the record, you
25 would have given him all appropriate -- him meaning

1 Mr. Brooks -- all the appropriate discovery that
2 you had?

3 A Certainly.

4 Q Okay. Did you ever offer a zero to five plea
5 offer?

6 A Absolutely not. In fact, I have -- I offered
7 Mr. Bridges May 29th, 2018, to dismiss two of the
8 five habitual traffic offenders and one of the
9 three drug distribution charges in exchange for his
10 plea. I said, I can recommend they run concurrent,
11 but no set time.

12 And then I forwarded that again July 12th of
13 2018 to remind Mr. Bridges of the offer, and then I
14 also sent that to Mr. Brooks, I forwarded the same
15 original e-mail to Mr. Brooks the Friday before the
16 plea when I knew that he was likely taking over as
17 counsel.

18 Q Okay.

19 A So that offer never changed.

20 Q Okay. Is it fair to say that the package -- or the
21 plea offer agreement was sort of a package deal?

22 A Definitely.

23 Q Okay. So, in other words, would you have allowed
24 the Applicant to pick and choose what he pled
25 guilty for and still receive benefits?

1 A We would probably not have given any plea offer if
2 he had chosen to pick which ones and leave other
3 ones outstanding. We probably would not have given
4 a plea offer in that situation. It would have been
5 at his own discretion and we would have then
6 proceeded to trial and ask that sentences be run
7 consecutively.

8 Q Okay.

9 A And he was looking at 81 years.

10 Q Okay.

11 MS. SCHILL: Beg the Court's indulgence, Your
12 Honor.

13 (Pause.)

14 MS. SCHILL: Those are all the questions I
15 have, Your Honor.

16 THE COURT: Mr. Griffith?

17 MR. GRIFFITH: Court's indulgence one moment,
18 Your Honor? I want to show her these.

19 May I approach, Your Honor?

20 THE COURT: You may, certainly.

21 CROSS-EXAMINATION

22 BY MR. GRIFFITH:

23 Q I just wanted you to look at these.

24 A Yes, sir.

25 Q Do you recognize those?

1 A Yes, sir. These are two still frames from the
2 confidential informant purchases involving the
3 purchase of crack cocaine from Mr. Marcus Nelson.

4 MR. GRIFFITH: I would like to enter these as
5 Exhibits Number 2 and 3.

6 THE COURT: Any objection?

7 MS. SCHILL: No, Your Honor.

8 (WHEREUPON, Applicant Exhibit Nos. 2 AND
9 3 were marked for identification and
10 received into evidence.)

11 BY MR. GRIFFITH:

12 Q Ms. McElveen, whose picture is that?

13 A I mean, I believe that is your client, but I'm not
14 the person who would be testifying to that, that
15 would have been the confidential informant.

16 Q Right. But, I mean, do you see a confidential
17 informant in there is what I'm asking?

18 A No.

19 Q Do you see anyone in there besides Mr. Nelson?

20 A No.

21 Q Okay. If I told you that this is all the discovery
22 that he received, that he ever got from his
23 attorney when he asked for the discovery in this
24 case, of course, you may or -- you wouldn't know
25 anything about that, but --

1 A Yes, sir, that would -- this would be a question
2 that I could only speculate, and I would not have
3 an answer for, so I don't think I'm the appropriate
4 person to answer said question.

5 Q But you would say that that is part of his
6 discovery, wouldn't you?

7 A That is part of the large packet of discovery that
8 was provided to Mr. Brooks that Mr. Brooks
9 testified that he reviewed with him down in the
10 holding cell on August 20th.

11 Q Now, you may have noticed that when Mr. Brooks was
12 talking disparagingly about you, I never agreed
13 with him one time.

14 A Thank you, Mr. Griffith. I do appreciate that.

15 Q That is just for own benefit later.

16 A I appreciate knowing that I do my job. Thank you.

17 Q Okay. No, she does her job. She does a great job,
18 actually.

19 Do you have any of that discovery with you
20 today?

21 A I do. The whole discovery for the drug
22 distribution?

23 Q For the drug distribution?

24 A I do.

25 Q Or trafficking -- or distribution? You do?

1 A Yes, sir.

2 Q Do you have like the 6-person line-up?

3 A I do.

4 Q Can I see that?

5 A Is it an exhibit that you want to make a copy of?

6 Q I just want to look at it.

7 A Well, there are multiple. Which -- I'll give you
8 one of them, sure. I'd be happy to.

9 Q Well, I mean, from this drug case.

10 A Well, there are multiple drug cases here.

11 Q Well, from any drug case.

12 A Okay. Here is one.

13 Q And that is from the drug case?

14 A Yes, sir. Again, that is part of the file that Mr.
15 Brooks went through with your client down in the
16 holding cell.

17 Q That was going to be my question. Did you give
18 that to Mr. Brooks?

19 A I certainly did.

20 Q Did you also give him any pictures of the -- an
21 actual sale taking place?

22 A No, sir, there are not -- there was not a camera
23 standing out there just taking pictures of the
24 sale. We had it audio and video recorded.

25 Q Well, I mean, did you give him a still shot of the

1 video of a sale taking place, in other words, to
2 show that you had evidence --

3 A No, we did not.

4 Q -- that he was selling the drugs?

5 A What we did was the pictures of his head in a car
6 hand-to-hand drug transaction. We identified him
7 through that picture, and that is so he would know
8 he was put in the car. And that was explained
9 through the incident and the investigative reports
10 that he went over with his lawyer in the holding
11 cell.

12 Q So the pictures of just him sitting in a car, that
13 is what you were going to use against him, is that
14 it?

15 A We would have had other -- we would have tried to
16 obtain the audio and video surveillance, clearly.
17 But at that point, to protect the confidential
18 informant, we don't hand out these videos. We let
19 the Defense review it at any time; whereas, we try
20 to protect the confidential informant and other
21 witnesses because of possible bodily injury or harm
22 that could come to them.

23 Q So then the only evidence you gave to Mr. Brooks
24 was a picture -- the pictures of him sitting in his
25 car and a 6-person line-up, is that correct?

1 A That is incorrect. We have investigative and
2 incident reports that clearly give an outline of
3 all the factors that all of the officers that were
4 present and that they were searched. The Sumter
5 County Drug Unit were members who watched this and
6 were part of the audio and video surveillance team.
7 We also have a confidential informant giving a
8 positive 6-person photo line-up and identifying
9 Mr. Marcus Nelson as the person who sold him or her
10 drugs on multiple occasions. So the video and
11 picture are absolutely not the only evidence that
12 we had identifying Mr. Nelson.

13 Q Well, I understand. I know you would have
14 evidence. What I'm asking is, was that evidence
15 provided to Mr. Brooks?

16 A All of the evidence, yes.

17 Q But, of course, you would have no idea whether he
18 shared that with Mr. Nelson or not?

19 A Well, he testified that he did, so I would have an
20 idea that, yes, he did.

21 Q But you didn't see him share that with Mr. Nelson,
22 did you?

23 A No.

24 Q So you have no --

25 A I am not the person who can answer that question.

1 You have already asked Mr. Brooks, and he answered
2 it multiple times.

3 Q Okay. I have no further questions for this
4 wonderful Solicitor, Assistant Solicitor, that does
5 a great job.

6 A Thank you, Mr. Griffith. I appreciate your kind
7 words.

8 MS. SCHILL: No further questions, Your Honor.

9 THE COURT: Thank you, Ms. McElveen. You may
10 step down.

11 THE WITNESS: Thank you, Your Honor.

12 (Witness steps down.)

13 MS. SCHILL: The State rests.

14 THE COURT: The State rests. Anything in
15 reply?

16 MR. GRIFFITH: Your Honor, we would ask that I
17 could give a closing statement.

18 THE COURT: Sure. But I didn't know if you
19 had any other witnesses you wanted to call in
20 response.

21 MR. GRIFFITH: No other witnesses, no rebuttal
22 witnesses.

23 THE COURT: I will be glad to hear from you.

24 MR. GRIFFITH: Your Honor, Mr. Nelson was in
25 the jail for quite some time. No discovery was

1 provided by the Solicitor's Office to Mr. Bridges,
2 his former attorney, on these charges as evidenced
3 by the letter from Jason Bridges. Ms. McElveen did
4 not give any evidence that she provided Mr. Bridges
5 with any of that information while Mr. Nelson was
6 at the jail where he could have sat and looked at
7 that evidence, gone through it page by page, gone
8 through it line by line.

9 Mr. Brooks testified that -- his testimony
10 wasn't clear to me that he had all of that
11 evidence, but even given that he may have had
12 statements, he was talking to Mr. Nelson here in
13 the courthouse through a little window that we have
14 down there with a hole in it that has got lines in
15 it and you can't talk through very well. My client
16 had a difficult time hearing me, and so that
17 evidence would have been given to him verbally
18 without him having an opportunity to look at the
19 evidence, to discuss the evidence. He spent two
20 hours with him, but he didn't have time to discuss
21 that evidence or see that evidence himself, he
22 didn't have time to hold it in his hand and think
23 about it. So he was denied the opportunity to view
24 the evidence that is against him, Your Honor. He
25 was denied his rights under Brady, under other

1 elements of the constitution to allow him to view
2 the evidence against him that he would have had,
3 had that information been brought to him in the
4 jail, where he could sit and page through to the --
5 have the opportunity to talk to family about it,
6 even think about it.

7 And, Your Honor, he had told his attorney that
8 he did not want to plead to the charges, the drug
9 charges. Mr. Brooks explained to him that, Hey,
10 this is a deal, but he did not wish to plead to
11 those charges, so it was an involuntary plea on
12 those charges, Your Honor.

13 And he was denied the right to review his
14 discovery.

15 Your Honor, as well, he asked for an appeal
16 through his agent, his wife asked for an appeal.
17 And just as Mr. Brooks and I were discussing, on a
18 guilty plea, when you send in an appeal, you do
19 have to have some kind of reasonable basis for that
20 appeal. However, if the client asked for an
21 appeal, it would behoove the attorney to go ahead
22 and file the appeal, whether there was a basis or
23 not, file a notice of appeal. But, Your Honor, he
24 was denied that right. And we would ask that a new
25 trial be granted to Mr. Nelson on those grounds.

1 THE COURT: Thank you, sir.

2 MS. SCHILL: Yes, Your Honor. The State, of
3 course, feels that none of the Applicant's
4 allegations are meritorious. First of all, his
5 failure to file an appeal allegation. It seems to
6 be unclear whether an appeal was actually
7 requested, first of all. And, second of all, there
8 was no -- Mr. Brooks testified that there was no
9 legal basis to file an appeal. It wasn't an
10 illegal sentence. It might have been, you know,
11 not what the Applicant had wanted, and he testified
12 that the sentence was really the only problem with
13 the plea.

14 And as far as the allegation regarding his
15 discovery, we heard testimony today that all
16 discovery was provided to Mr. Brooks. And although
17 he might have maybe not seen everything with his
18 own eyes, it was explained to him thoroughly. He
19 still ultimately chose to plead guilty. He never
20 said, I'm not going to plead guilty until I see
21 anything. Of course, the decision is ultimately
22 his.

23 And, of course, the letter from Mr. Bridges,
24 who was the Applicant's plea counsel, he didn't
25 represent, you know, Applicant on the drug charges.

1 So at the end of the day, Mr. Brooks had all the
2 information, gave the information to the Applicant,
3 and he chose to plead guilty.

4 And, of course, to the extent that he argued
5 he should have seen a video, of course, the
6 Solicitor's Office has a policy that has been
7 supported by case law, the case of Hyman v. State.
8 It has been abrogated on other grounds as far as,
9 you know, supporting policy is concerned. It has
10 been held that you can have such policy in order to
11 protect the identity of the confidential informant.
12 So, of course, he would have not received audio or
13 video, but he was provided still shots, among
14 many other things. So we absolutely feel that he
15 received all of his discovery. He seemed to
16 understand it, and he still chose to plead guilty.

17 As far as his involuntary guilty plea
18 allegation, you heard Mr. Brooks testify that he
19 did not threaten or coerce him, the Applicant, into
20 pleading guilty whatsoever. He received
21 many benefits from pleading guilty. He went
22 through the plea colloquy with the judge, the
23 standard, and answered appropriately. He
24 acknowledged that he was waiving his constitutional
25 rights, that he wasn't threatened, that he wasn't

1 under, you know, any medication, or anything like
2 that. So he went through the colloquy as per
3 usual, and still ultimately decided to plead
4 guilty. And, unfortunately, he might have not
5 received the sentence that he wanted, but that is a
6 risk of pleading guilty.

7 So, that is all, Your Honor.

8 THE COURT: Anything in response?

9 MR. GRIFFITH: Nothing in response, Your
10 Honor.

11 THE COURT: All right. The Court agrees with
12 the argument made by the Attorney General and the
13 position taken by the Attorney General as stated.

14 The Court finds that the Applicant has failed
15 to meet the Applicant's burden of proof.
16 Consequently, I am compelled to deny the
17 application for post-conviction relief.

18 Would the Attorney General please prepare an
19 order within 20 days consistent with the rules of
20 the Court?

21 MS. SCHILL: Yes, sir. Thank you, Your Honor.

22 MR. GRIFFITH: Thank you, Your Honor.

23 (WHEREUPON, the hearing was adjourned at
24 12:09 p.m.)

25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth 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 for Sumter County, South Carolina, on the 31st day of July, 2019.

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

December 19, 2019

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

Jason Bridges
Sumter County Public Defender
215 N. Harvin Street, Room 151
Sumter, SC 29150
(803)436-2424

July 23, 2019



Mr. Marcus Antonio Nelson
Palmer Pre-Release Center
2012 Pisgah Road

Florence, SC 29501

Re: State v. MARCUS ANTONIO NELSON

Warrant/Ticket No(s): 2017A4310200581, 5102P0648119, 2017A4320100524,
6102P0318326, 6102P0318327, 20182705005386,
2018A4320100242

Dear Mr. Nelson:

I am in receipt of your letter dated July 9. I cannot assist you with any specific procedure in your PCR case as you will have an assigned PCR counsel if your application is approved. From your letter it seems that you wanted more specific information about the last bond hearing that we had on Tuesday, August 7, 2018, during the morning session. It was at that bond hearing that Ms. McElveen mentioned putting you on the next trial list. You could ask your PCR counsel to get a transcript of that bond hearing, or your family could request a transcript. It was recorded by a court monitor, the contact information for the court monitoring service is:

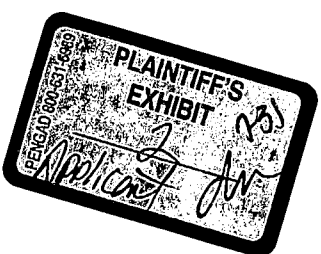
Desiree Alen, Program Manager
S.C. Court Administration
1220 Senate Street, Suite 200
Columbia, SC 29201

For the issue of discovery around the drug charge warrants (Warrants 2017A4310101192-95), I never represented you on these warrants. If I recall, On 8/17/2018 I asked you about sending in an application for those charges, and you completed an application and handed it to me. During the following week of 8/23, before that application could be processed and I was to bring it to Ms. McElveen to receive discovery, Mr. Brooks took over your representation. I think the solicitor gave me a brief overview of the discovery on the drug charges but I did not have the physical file before Mr. Brooks took over the case. During the week of the guilty plea, I was in the process of negotiating with Ms. McElveen about what specific charges you would and would not plead to as part of a plea deal. I did not finalize a deal with her because Mr. Brooks took over the case before we reached an agreement.

That is all of the information I can provide on the issues raised in your letters and I hope it can be of some use to you. I also hope your health continues to improve and that your family is doing well.

Very truly yours,

Jason Bridges





STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

Marcus Antonio Nelson, SCDC#262262,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2019-CP-43-00086

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

RECORDED
AUG 29 PM 3:53

This matter comes before the Court by way of Applicant's post-conviction relief (PCR) application filed January 22, 2019. Respondent made its return and motion for more definite statement on April 2, 2019. On July 29, 2019, Applicant filed an amended application for post-conviction relief. An evidentiary hearing on the matter was convened on July 31, 2019, at the Sumter County Courthouse before the undersigned. Timothy L. Griffith, Esquire, represented Applicant. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office represented Respondent.

At the hearing, Applicant testified on his own behalf. Charles T. Brooks, III, Esquire, Applicant's plea counsel (Counsel), and Assistant Solicitor Bronwyn McElveen of the Third Circuit Solicitor's Office also testified. At the conclusion of the hearing, this Court denied and dismissed Applicant's application and dismissed the application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections following his guilty plea in Sumter County. During its May 2018 term, the Sumter County Grand Jury indicted Applicant for two separate counts of distribution of crack cocaine (2018-GS-43-0512, -0514). Applicant was represented by Charles T.

Brooks, III, Esquire (Counsel). Assistant Solicitor Bronwyn K. McElveen (McElveen) of the Third Circuit Solicitor's Office prosecuted the case.

On August 21, 2018, Applicant appeared in the Sumter County Court of General Sessions before the Honorable R. Ferrell Cothran, Jr., where he pled guilty as indicted. Judge Cothran sentenced Applicant to ten years imprisonment for each count, with the sentences to be served concurrently. Applicant did not appeal his guilty pleas or sentences.¹

SUMMARY OF FACTS ADDUCED AT APPLICANT'S GUILTY PLEA HEARING

The facts giving rise to Applicant's drug charges were summarized at Applicant's guilty plea hearing as follows:

On May 8, 2017, a Sumter County confidential informant was supplied by Mr. Marcus Nelson an off-white rock-like substance, represented as crack cocaine, in exchange for a payment of \$80 in documented funds. The transaction occurred in the parking lot of the El Cheapo located on South Lafayette Drive. The drugs were entered into evidence and tested and determined to be .92 of a gram of crack cocaine or cocaine base. Mr. Nelson was identified by law enforcement and by the confidential informant and he was charged with distribution of crack cocaine, first offense.

On May 19, 2017, the Sumter County Sheriff's Office made a controlled purchase of a white rock-like substance represented as crack cocaine from Applicant, with a payment of \$100 in documented county funds. Once again, the transaction took place in the parking lot of the El Cheapo on South Lafayette Drive. The drugs were entered into evidence and were tested and were determined to be 1.48 grams of crack cocaine or cocaine base.

¹ At the same plea proceeding, Applicant also pled guilty to numerous other offenses (possession of a stolen pistol, possession of a stolen vehicle, and habitual traffic offender), but is not challenging any of those pleas or convictions in this application.



ALLEGATIONS RAISED

Applicant's original PCR application alleged the following claims:

1. "Whether counsel was ineffective for failing to render competent legal advice?"
2. "Whether counsel's performance was deemed reasonable?"
3. "Whether counsel was ineffective for the lack of communication about relevant law as required in the SCACR §401 1.4?"
4. "Whether counsel's performance was deemed a violation of the Petitioner's Sixth Amendment right to receive effective assistance?"
5. "Did counsel coerce the Petitioner into a plea involuntarily?"
6. "Whether counsel was ineffective for depriving the Petitioner of his Sixth and Fourteenth Amendment right to trial by jury when the Petitioner had insisted on going to trial?"
7. "Whether counsel was ineffective for failing to properly investigate or to present a defense?"
8. "Whether the actions of counsel was a violation of the Petitioner's Fourteenth Amendment Due Process Clause?"
9. "Whether counsel violated the rules of Professional Conduct and Responsibilities of Rule#407 1.1 Competence, 1.2 Representation between client and lawyer, 1.3 diligence, 1.4 Communication and 1.7 Conflict of interest?"
10. "Whether counsel's action prejudice the Petitioner?"
11. "Whether counsel rendered effective assistance when he deprived the Petitioner of his rights to appeal? See * Lozada V. Deeds, 498 U.S. 430, 112 L.Ed 2d. 956, 111 S.Ct. 860 (1991), and * Roe v. Flores-Ortega, 528 U.S. 470, 145 L.Ed. 2d. 985, 120 S.Ct. 1029 (2000)."
12. "Whether counsel was ineffective for failing to consult with the Petitioner about his options of going to trial?"
13. "Whether there was a conflict of interest between client and lawyer?"

On July 29, 2019, Applicant submitted to Respondent an amended application alleging the following claims:

1. "Failure to file an appeal."
2. "His right to see his discovery was denied. He never saw his Rule 5 and Brady on the drug charge."
3. "He told his attorney he did not want to plead to the drug charge but would to all the other charges. He was denied his right to trial."

At the outset of the hearing, PCR Counsel indicated Applicant was proceeding on the allegations contained in the amended PCR application. Accordingly, this Court finds all other

allegations raised in Applicant's original PCR application are waived and dismissed with prejudice.

TESTIMONY

Applicant's testimony

Applicant's Direct Examination

Applicant testified he agreed to plead guilty to some of his charges, but he did not want to plead guilty to the drug charges. Applicant testified he did not see any evidence relating to his drug charges. Applicant testified his first attorney, Jason Briggs, did not talk to him about his drug charges.

Applicant testified he was not aware of his drug charges at the outset, but he found out about his drug charges three months later. Applicant claims he found out about his drug charges when he was pulled over for a traffic violation.

Applicant testified he would like to go to trial on his drug charges because he did not want to plead guilty to a crime for which the State did not have sufficient evidence to convict him. Applicant testified he believes he is innocent. Applicant testified Counsel did not file an appeal on his behalf. Applicant testified his wife asked for an appeal.

Applicant later testified he was told there was video/audio relating to his drug charges, but that he did not see or hear either. Applicant testified he saw some evidence relating to his drug charges, to include copies of the currency.

Applicant's Cross-Examination

On cross-examination, Applicant testified he met with Counsel one time. Applicant stated he did not get discovery and he did not review discovery with his attorney. Applicant



claimed he received discovery after his guilty plea hearing. Applicant testified he took a class while in prison and learned how to obtain his discovery through that class.

Applicant testified Counsel did not discuss the advantages and disadvantages of going to trial. Applicant testified Counsel told him trial was "dangerous." Applicant testified Counsel did not explain the plea offer to him.

Applicant testified he believed the plea offer involved a zero-to-five open plea and that is all the information he was given regarding the guilty plea. Applicant testified he was being offered an open zero-to-five-year plea offer because he talked to Assistant Solicitor McElveen and McElveen said she would offer him zero-to-five years.

After receiving the guilty plea transcript, Applicant acknowledged the plea court told him he was facing up to fifteen years in prison for his drug charges. Applicant testified he recalled the plea court telling him at his guilty plea hearing that the plea court could impose consecutive sentences upon him. Applicant testified he recalled telling the plea court he did not have any questions for the court. Applicant testified he recalled giving up his constitutional rights at this guilty plea hearing. Applicant testified he recalled telling the plea court he was not threatened, coerced, or promised anything to plead guilty. Applicant recalled telling the plea court he was not suffering from any mental illnesses that would have prevented him from voluntarily pleading guilty. Applicant recalled telling the plea court he was not under the influence of any drugs or alcohol at the time of his guilty plea hearing. Applicant recalled telling the plea court he was satisfied with his representation from Counsel. Applicant recalled telling the plea court he did not need any more time to talk to Counsel.



Applicant testified he did not recall hearing facts summarized by Assistant Solicitor McElveen or recall agreeing with those facts. After being presented with the guilty plea transcript, Applicant testified he agreed with the facts.

Applicant recalled the plea court informing him of his right to appeal his guilty plea. Applicant testified his wife asked Counsel to file an appeal because she indicated to him that she was not happy with the sentence he received. Applicant testified Counsel said "his job was done," indicating that he would not file an appeal. Applicant testified he wants an appeal so the plea court could reconsider his sentence.

(Counsel's Testimony)

Counsel's Direct Examination

Counsel testified he has been practicing law since 1996 and a fair portion of his practice has been in criminal law. Counsel testified he has experience representing Applicant and is familiar with Applicant and his family.

Counsel testified he initially contacted McElveen to see if she would lift Applicant's bench warrant. Counsel testified McElveen said she would not lift Applicant's bench warrant because Applicant's case was listed on the trial list. Counsel testified Applicant had a number of charges. Counsel testified he visited with Applicant on a Monday and met with Applicant for approximately two hours to review discovery. Counsel testified Applicant admitted to some charges. Counsel testified he explained to Applicant what sentences he was facing. Counsel testified Applicant had a criminal record, and as such, he told Applicant the best thing to do was "shoot for" a five year sentence.

Counsel testified Applicant had a heart condition. Counsel testified Applicant said he did not commit the drug offenses. Counsel testified he believed Applicant could get five years because



Judge Cothran is traditionally lenient with respect to criminal sentences. Counsel testified Applicant had "so many charges" and also a criminal record. Counsel testified he told Applicant he could get five-years, but could also get ten-to-fifteen years. Counsel testified McElveen ultimately dismissed more charges than she initially indicated. Counsel testified Judge Cothran ultimately sentenced Applicant to ten years, which left Counsel and Applicant stunned. Counsel testified SCDC typically releases inmates early for good behavior. Counsel testified he thought that explained why Judge Cothran sentenced Applicant to ten years as opposed to five.

Counsel testified he could not recall any issue about an appeal. Counsel testified Applicant did not like the amount of prison time Judge Cothran gave him. Counsel testified he did not have a valid basis to file an appeal.

Counsel testified McElveen gave him one or two pounds worth of documents regarding Applicant's case. Counsel testified he reviewed the file with Applicant. Counsel testified that based on his experience, it does not benefit a defendant to plead guilty to some charges but not others when offered a package deal. Counsel testified if Applicant had plead guilty to all charges but the drug charges, he would have been worse off than he was by pleading guilty under the package deal that he was offered.

Counsel testified he did not promise Applicant anything. Counsel testified he told Applicant he was not going home and would have to face some jail time, and that their goal was to minimize his jail time the best they could. Counsel testified he believes it was in Applicant's best interest to plead guilty. Counsel testified it was ultimately Applicant's choice to plead guilty. Counsel testified that if Applicant wanted to go to trial, he would have taken Applicant's case to trial.



Counsel's Cross-Examination

Counsel testified Applicant's first defense attorney, Jason Bridges, did not receive discovery regarding Applicant's drug charges. Counsel testified that he received discovery regarding Applicant's drug charges. Counsel could not recall specifically what discovery he had received. Counsel testified he did not know what discovery Bridges received.

Counsel testified Applicant initially told him he did not want to plead guilty to drug charges. Counsel testified Applicant agreed to plead to all of the charges because it got him a package deal and because he otherwise faced a much longer sentence. Counsel testified he discussed with Applicant the additional issues his criminal record and medical challenges caused. Counsel testified he told Applicant the best outcome they could hope for was five years. Counsel testified he did not guarantee Applicant five years nor did he give Applicant an impression he would get five years.

Counsel testified he discussed the plea colloquy with Applicant. Counsel further testified Applicant was aware of the plea colloquy because this was not "his first rodeo" in terms of facing criminal charges. Counsel testified McElveen made clear what the plea offer was. Counsel testified McElveen recommended concurrent sentences and dropped several charges. Counsel testified McElveen told him she would not recommend a five year sentence. Counsel testified McElveen agreed to not speak negatively about Applicant at his plea hearing.

Counsel testified Applicant did not ask for an appeal. Counsel testified Applicant's wife might have asked for one, but he could not recall specifically. Counsel testified he did not have a valid basis to appeal Applicant's guilty plea hearing.

Counsel's Redirect Examination

Counsel testified Applicant understood the conversations he had with Applicant about Applicant's charges. Counsel testified he would have taken Applicant's case to trial if that is ultimately what Applicant wanted. Counsel reiterated he did not guarantee Applicant a five-year sentence. Counsel testified Applicant's sentence, although not ideal, was not an illegal sentence.

McElveen's TestimonyDirect Examination

McElveen testified she is currently employed at the Sumter County Solicitor's Office, and that she was the Assistant Solicitor assigned to Applicant's case. McElveen testified she received Brady / Rule 5 motions pertaining to Applicant's case and that she complied with those motions. McElveen testified Bridges represented Applicant on multiple charges before Applicant received the drug charges. McElveen testified her discovery file consisted of still shots from the confidential informant, pictures of the currency exchanged, photo-lineups, and other various documents. McElveen testified all of this discovery was given to Counsel. McElveen testified Bridges did not receive discovery related to Applicant's drug charges because Applicant had not been charged with the drug charges until after Counsel became his attorney.

McElveen testified she did not offer a zero-to-five year plea offer. McElveen testified on May 29, 2018, she sent Bridges a plea offer that would to dismiss two out of the five non-drug related charges and one of the three drug distribution charges, and also recommend a concurrent sentence. McElveen testified she also eventually sent the same offer to Counsel. McElveen testified this plea offer was a package deal and that she would have not made the same offer had Applicant opted to go to trial on certain charges. McElveen testified Applicant was facing a total of eighty-one years' imprisonment for all of his charges.

McElveen's Cross-Examination

On cross-examination, McElveen testified her file contained a photo-lineup relating to Applicant's drug charge, and this lineup was given to Counsel. McElveen testified Applicant was identified through video and audio recording of the drug transaction. Applicant testified pursuant to the Solicitor's Office policy, she would not have provided Applicant the video and audio footage in order to protect the identity of the confidential informant. McElveen testified Counsel would have had the opportunity to view any video and audio footage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the relevant portions of the record and has heard the testimony and arguments presented at the PCR hearing. This Court also had before it the records of the Sumter County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application, the State's Return, and the plea transcript. This Court has reviewed the plea court record and has heard the testimony of both Applicant, Counsel, and McElveen. This Court has therefore weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant 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." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. The courts presume that counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. A PCR applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985).

Allegation #1: Failure to File an Appeal

Applicant alleges counsel was deficient for failing to file an appeal. Pursuant to Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000), "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. Further, "a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court finds Counsel was not deficient for failing to file an appeal. In this case, Applicant's PCR arises out of a guilty plea. It is uncertain whether Applicant's wife even requested an appeal. As Counsel testified, Applicant did not request an appeal. Furthermore, Applicant indicated he only wanted to appeal his guilty plea because he was not happy with his sentence. As Counsel testified, the sentence Applicant received was not an illegal sentence. Counsel testified he did not have a basis for an appeal. This Court finds Counsel's testimony on this issue to be credible, while also finding Applicant's testimony is not credible. Accordingly, this Court finds Counsel had no legitimate basis for an appeal. Accordingly, this allegation is dismissed and denied with prejudice.

Allegation #2: Brady/ Rule 5 Violation

Applicant alleges a Brady/Rule 5 violation, stating that McElveen withheld material evidence. The Brady disclosure rule requires the prosecution to provide a defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676 (1985). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). This Court finds that Applicant did not demonstrate a Brady violation.

Applicant testified he did not see any discovery relating to his drug charges. To the contrary, McElveen provided all favorable evidence, including photo lineups, pictures of the currency exchanged in the drug transaction, and still shots from the drug transaction. McElveen

would not have provided audio or video footage to Applicant due to the Solicitor's Office policy that plea offers are retracted once audio or video footage is provided to a defendant. Such a policy has been upheld by the Supreme Court of South Carolina. Hyman v. State, 397 S.C. 35 (2012), abrogated on other grounds by Smalls v. State, 422 S.C. 174 (2018). As McElveen testified, Counsel was able to view the audio/video evidence. Counsel testified he received discovery from McElveen and reviewed the discovery with Applicant. This Court finds credible the testimony of Counsel and McElveen, while also finding Applicant's testimony not credible. Accordingly, this allegation is dismissed and denied with prejudice.

Allegation #3: Involuntary Guilty Plea

Applicant alleges his guilty plea was not freely and voluntarily made. An Applicant alleging the guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant and statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Edmonds v. Lewis, 546 F.2d 566, 568 (4th Cir. 1976) (citing Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975)).

In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Ai-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417 (2001).

Applicant asserts his guilty plea was not freely and voluntarily made. This Court disagrees.

McElveen testified she did not offer Applicant an open zero-to-five year sentence. Counsel also testified that he told Applicant the best they could hope for was five years. Counsel, however, did not promise Applicant he would receive five years or any sentence shorter than five years. Additionally, Applicant recalled telling the plea court he did not have any questions for the court. Applicant recalled telling the plea court he understood the drug charges carried a possible sentence of zero-to-fifteen years. Applicant also testified he recalled telling the plea court he understood the judge could choose to run his sentences consecutively. Applicant testified he recalled telling the plea court he was not threatened, coerced, or promised anything to plead guilty. Applicant recalled giving up his constitutional rights at his plea hearing. Applicant recalled telling the plea court he was not under the influence of any drugs or alcohol at his guilty plea hearing. Applicant recalled telling the plea court he was satisfied with his representation from Counsel. This Court finds credible the testimony of McElveen and Counsel, while also finding Applicant's testimony not credible. It is clear from the testimony and the record that Applicant's plea was freely and voluntarily made. Accordingly, this application is dismissed and denied with prejudice.



CONCLUSION

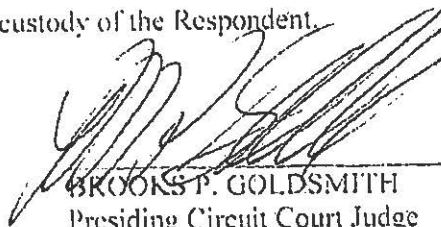
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


 BROOKS P. GOLDSMITH
 Presiding Circuit Court Judge
 Third Judicial Circuit

August 23, 2019.

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Sumter

VS.

Marcus Antonio Nelson

AKA:

Race: Black Sex: M Age: 36

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Apollo St.

City, State, Zip: Wedgefield, SC 29168

DL#: 090308839 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 / manufacture, distribution, etc. of cocaine base, 1st

in violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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:

Solicitor

SC Bar# 76589

Defendant

Attorney for Defendant

SC Bar# 11762

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 SCDOC.☐ 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 (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) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-43-0514

A/W#: 2017A4310101193

Date of Offense: 12/12/2017

S.C. Code § : 44-53-0375(B)(1)

CDR Code #: 3014

CERTIFIED TRUE COPY

OF ORIGINAL FILE

SENTENCE SHEET

☐ CONVICTED OF ☒ PLEADS

SOUTH CAROLINA

in violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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:

Solicitor

SC Bar# 76589

Defendant

Attorney for Defendant

SC Bar# 11762

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 SCDOC.☐ 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 (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) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-43-0514

A/W#: 2017A4310101193

Date of Offense: 12/12/2017

S.C. Code § : 44-53-0375(B)(1)

CDR Code #: 3014

CERTIFIED TRUE COPY

OF ORIGINAL FILE

SENTENCE SHEET

☐ CONVICTED OF ☒ PLEADS

SOUTH CAROLINA

in violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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:

Solicitor

SC Bar# 76589

Defendant

Attorney for Defendant

SC Bar# 11762

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 SCDOC.☐ 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 (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) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

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 requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

8-21-2018

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR

Drugs / manufacture, distribution, etc. of cocaine base

At a Court of General Sessions, convened on May 10, 2018 the Grand Jurors of
SUMTER County present upon their oath:

CERTIFIED TRUE COPY
OF ORIGINAL FILE
Barbara Harper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONE
DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)

That in Sumter County, South Carolina, on or about December 12, 2017, the Defendant, Marcus Antonio Nelson, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base (crack cocaine); in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

Solicitor

Ernest A. Finney III

WITNESSES

Jerome Williams, Jr. Sumter County Sheriff

G. Herod Sumter County Sheriff

ARREST WARRANT NUMBER

2017A4310101193

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

5/16/18

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-43-0514

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2018

THE STATE

vs.

MARCUS ANTONIO NELSON

Indictment for

Drugs / manufacture, distribution, etc. of cocaine base

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Sumter
 STATE VS.
Marcus Antonio Nelson

AKA:

Race: Black Sex: M Age: 36DOB: [REDACTED] SS#: [REDACTED]Address: Apollo St.City, State, Zip: Wedgefield, SC 29168DL#: 090308839 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 / manufacture, distribution, etc. of cocaine base, 1st

in violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:

[Signature]
 Solicitor

76589
 SC Bar#

[Signature]
 Defendant

[Signature]
 Attorney for Defendant

17762
 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 SCDoc.☐ 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 (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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-43-0512A/W#: 2017A4310101192Date of Offense: 5/8/2017S.C. Code § : 44-53-0375(B)(1) CERTIFIED TRUE COPYCDR Code #: 3014 OF ORIGINAL FILE

SENTENCE SHEET

SUMTER COUNTY

SOUTH CAROLINA

☐ CONVICTED OF or ☒ PLEADS

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 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge

Judge Code:

Sentence Date:

2144
8-21-18

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Drugs / manufacture, distribution, etc. of cocaine base

CERTIFIED TRUE COPY
OF ORIGINAL FILE*Barbara Harper*
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on May 10, 2018 the Grand Jurors of the
SUMTER County present upon their oath:

COUNT ONEDISTRIBUTION COCAINE BASE (CRACK COCAINE)

That in Sumter County, South Carolina, on or about May 8, 2017, the Defendant, Marcus Antonio Nelson, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base (crack cocaine); in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

Solicitor

Ernest A. Finney III

WITNESSES

Jerome Williams, Jr. Sumter County Sheriff

G. Herod Sumter County Sheriff

ARREST WARRANT NUMBER

2017A4310101192

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 5/10/18

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-43-0512

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2018

THE STATE

vs.

MARCUS ANTONIO NELSON

Indictment for

Drugs / manufacture, distribution, etc. of cocaine base

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR