

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Fairfield County

D. Garrison Hill, Circuit Court Judge

RECEIVED

MAR - 4 2013

S.C. Supreme Court

SHERMAN BOYD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213133

APPENDIX

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Appellate Defender

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT

2011-GS-20-0072, 0073

State of South Carolina,)
)
 Plaintiff,)
)
 v.) Transcript of Record
)
 Sherman Boyd,)
)
 Defendant.)
)
)
)
)
)
)

May 9, 2011
Winnsboro, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

Riley J. Maxwell, Esquire
Attorney for the State

William P. Frick, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M.
Circuit Court Reporter

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I N D E X

WITNESS/DESCRIPTION PAGE NO.

Plea

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 15

State v. Boyd 5/9/11

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1 MR. MAXWELL: Your Honor, may it please the Court?

2 THE COURT: Your Honor, this is Sherman Boyd. Mr. Boyd
3 has been indicted for distribution of cocaine base, 2011-GS-
4 20-072. He's also been indicted for distribution of
5 marijuana, 2011-GS-20-073. He's represented by Mr. Frick.
6 Mr. Boyd's record indicates this would be a third offense.
7 I have reduced the charge down to a second offense where the
8 minimum is five years. State is asking for a sentence in the
9 10 to 15 year range, Your Honor. This case is on the trial
10 list, first trial up Wednesday morning should the plea not
11 go through.

12 MR. FRICK: Your Honor, I think there's some confusion
13 with the paper work. It's -- the state is asking for what
14 they're asking for. It's not a recommendation. We're not
15 agreeing with that. Essentially, it's going to be a
16 straight up plea other than concurrent. There was some
17 legal discussion between Mr. Maxwell and I as to what the
18 difference between recommendation and not recommendation is,
19 but my understanding is this is a straight up plea.

20 THE COURT: All right. Distribution cocaine second.
21 Distribution of marijuana first, distribution of cocaine
22 second?

23 MR. MAXWELL: Yes, sir.

24 THE COURT: Am I reading this right?

25 MR. MAXWELL: Yes, sir.

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1 MR. FRICK: Yes, sir.

2 THE COURT: Now, Mr. Frick, have you explained to Mr.
3 Boyd the charges contained in the indictment --

4 MR. MAXWELL: Indictments.

5 THE COURT: -- the possible punishment and explained to
6 him his constitutional rights?

7 MR. FRICK: Judge, I have. Additionally, the solicitor
8 correctly stated and it is by my assessment a third offense
9 that they are allowing him to plead to a second offense. I
10 explained to him what he's facing on a third and on a
11 second, and he understood that were we to proceed to trial
12 the state would proceed on it as a third offense. He
13 understands all that.

14 THE COURT: Based on your investigation of the facts and
15 circumstances of these cases do you believe it likely the
16 state could convince a jury of his guilt on these charges
17 beyond a reasonable doubt?

18 MR. FRICK: Your Honor, obviously, my larger concern on
19 this one is distribution of cocaine base. I have reviewed
20 that case. I have reviewed the video. My assessment
21 initially of the video was that it is a very good video that
22 would likely result in a conviction. That was again
23 reviewed today by me and my client. We reviewed it. After
24 that he told me he wanted to see if we could pursue this
25 guilty plea, and that's why we're here. I also reviewed the

State v. Boyd 5/9/11

5

1 distribution of marijuana charge. The video is pretty good.
2 Not as good as the other. But, of course, it is a marijuana
3 charge, and I'm much more concerned about the crack charge.

4 THE COURT: All right. Thank you.

5 Mr. Boyd, how old are you, sir?

6 MR. BOYD: 38, sir. 38 years old.

7 THE COURT: Are you married?

8 MR. BOYD: Yes, sir.

9 THE COURT: What kind of work have you normally done?

10 MR. BOYD: I just graduate school for heat and air.

11 THE COURT: Have you ever been in criminal court before?

12 MR. BOYD: Yes, sir.

13 THE COURT: The last time has been approximately how
14 long ago?

15 MR. BOYD: Seven years ago.

16 THE COURT: How many?

17 MR. BOYD: Seven years ago, sir.

18 THE COURT: And what happened to you as a result of you
19 being in court seven years ago?

20 MR. BOYD: If I'm not mistaken, Your Honor, I came up in
21 front of you, and I wish not to be standing in this spot
22 right now. I think I came back on a PCR hearing. I think I
23 had a time reduction, because they didn't count my criminal
24 sentence, and I do appreciate you doing what you could for
25 me then. I ask for leniency now. Your Honor, this

1 situation --

2 MR. FRICK: He's asking the last time you were in court
3 what happened?

4 MR. BOYD: Seven years ago.

5 THE COURT: Mr. Boyd, have you ever been treated for the
6 abuse of alcohol, abuse of drugs or treated for any mental
7 illness?

8 MR. BOYD: No, sir.

9 THE COURT: In the past 24 hours have you taken any
10 medication, drugs or have you consumed any alcohol?

11 MR. BOYD: No, sir.

12 THE COURT: Are you aware today of any physical,
13 nervous, or emotional problem you might have that would
14 interfere with your ability to understand what's going on
15 here today?

16 MR. BOYD: No, sir. I'm a little nervous, but I do
17 understand.

18 THE COURT: Mr. Boyd, your attorney and the solicitor,
19 both, tell me they believe you wish to plead guilty to those
20 charges, one being distribution of marijuana, the other
21 being the distribution of cocaine, second offense. Is that
22 correct?

23 MR. BOYD: Yes, sir.

24 THE COURT: All right. The solicitor is going to give
25 me some facts about your cases. I ask you to please listen.

1 MR. MAXWELL: Your Honor, both these cases are two
 2 separate incidents involve controlled buys done by the
 3 Sheriff's Office Narcotics Unit. Confidential informants
 4 were equipped with audio and video, and the first buy took
 5 place on November 10, 2010. The informant went to a
 6 laundromat in the South Winnsboro area, made contact with
 7 Mr. Boyd and purchased \$10 worth of marijuana. On December
 8 10, 2010, again the informant went to the South Winnsboro
 9 area of Fairfield, I believe went to a house on Douglas
 10 Road, made contact with Mr. Boyd and purchased \$20 worth of
 11 crack cocaine. Again, that was captured on video. Mr. Boyd
 12 is identifiable on both videos. As Mr. Frick said, the
 13 second video is quite incriminating.

14 His prior record is a 1994, assault and battery
 15 conviction along with unlawful carrying of a pistol. 1997
 16 assault and battery. 1998, aggravated assault and battery
 17 with two counts of possession of crack cocaine, one count of
 18 distribution of marijuana. In 1998, his probation was
 19 revoked. In 2006, he received a seven year sentence on two
 20 counts of distribution of crack cocaine. He also spent some
 21 time in the federal prison system for felony possession of a
 22 firearm. That happened around 2005, 2006. I'm not sure
 23 when Mr. Boyd got out of prison either on the federal charge
 24 or the seven year state charge for the distribution. I
 25 don't think he's been out terribly long.

State v. Boyd 5/9/11

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1 In my discussion with the Sheriff's Office in this
2 case, the Narcotics Unit, they state Mr. Boyd is a
3 substantial problem here in Fairfield County, and they're
4 asking for a pretty harsh sentence.

5 THE COURT: Mr. Boyd, you heard the solicitor's
6 statement of the facts concerning the distribution of
7 marijuana and the distribution of cocaine second offense
8 charges. Do you agree with what he told me about those two
9 charges?

10 MR. BOYD: Yes, sir.

11 THE COURT: All right. Are you guilty of both of those
12 charges?

13 MR. BOYD: Yes, sir.

14 THE COURT: Has Mr. Frick explained to you your right to
15 have a trial by jury on both these charges?

16 MR. BOYD: Yes, sir.

17 THE COURT: Have you ever had a jury trial?

18 MR. BOYD: No, sir.

19 THE COURT: Bear with me just a moment. If you were to
20 have a jury trial, and while you stand there, even now,
21 you're entitled to have a jury trial. I believe -- did I
22 hear somebody say this trial was up for trial this week?

23 MR. MAXWELL: First case up.

24 THE COURT: But if you were to have a jury trial, the
25 Court, in this case, me, would instruct your jury that

1 you're presumed to be innocent and the burden would be upon
 2 the state to prove your guilt to that jury beyond a
 3 reasonable doubt. You'd have the right to cross-examine any
 4 witnesses that the state might call against you. You'd have
 5 the right to present your own witnesses to testify for you,
 6 and you could testify yourself or not, and if you decided
 7 not to testify the Court would instruct the jury that they
 8 could not hold that against you because you have a
 9 constitutional right not to testify. You'd have the right
 10 to challenge the state's right to use any evidence against
 11 you. If you'd made any incriminating statements you'd have
 12 the right to challenge that, also. You do understand you do
 13 have all of those rights, but by pleading guilty to these
 14 charges you are giving up all of those rights, as well as
 15 other rights as to these two charges. You understand that,
 16 you're giving up these rights on these charges?

17 MR. BOYD: Yes, sir.

18 THE COURT: Have you had enough time to discuss these
 19 matters with your attorney?

20 MR. BOYD: Yes, sir.

21 THE COURT: Are you satisfied with his services?

22 MR. BOYD: Yes, sir.

23 THE COURT: Has he answered all of your questions?

24 MR. BOYD: Yes, sir.

25 THE COURT: Mr. Boyd, has anyone threatened you or

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10

1 coerced you in any way to make you or cause you to plead
2 guilty to these two charges?

3 MR. BOYD: No, sir.

4 THE COURT: Has anyone promised you anything or held out
5 any hope or reward to get you to plead guilty to these two
6 charges?

7 MR. BOYD: No, sir.

8 THE COURT: Are you pleading guilty to these charges
9 freely and voluntarily?

10 MR. BOYD: Yes, sir.

11 THE COURT: Are you pleading guilty to these two charges
12 because you are guilty of both of these two charges?

13 MR. BOYD: Yes, sir.

14 THE COURT: All right. The Court finds there is a
15 substantial factual basis for both pleas and the decision to
16 enter these pleas has been entered freely and voluntarily
17 with the advice of an attorney with whom the defendant
18 states he's satisfied. The Court accepts the pleas.

19 MR. FRICK: Judge, I do these cases in my office, they
20 go down and apply to the Clerk of Court, and when they get
21 to me and make a determination of who is going to get what.
22 I chose Mr. Boyd's case because I was hoping I could help
23 him out. I was hoping I could get him more than what we're
24 talking about today, but this is what we can get, and, of
25 course, it is a reduction in charge, and we understand that,

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11

1 and we're grateful for the mercy that we've already been
2 given. This case is somewhat personally difficult for me,
3 and Mr. Boyd probably doesn't even know all this, but Mr.
4 Boyd and I share a common bond. He and I are both graduates
5 of Fairfield Central High School. He graduated before I
6 even got there, about a year or two ahead of me, but when I
7 got there his reputation was still there. He ran track. He
8 was probably one of the top 110 hurdlers in this state.
9 Probably, I think his record is still standing over at the
10 high school. His reputation was everywhere when I got
11 there, and it was a fantastic reputation. Excellent,
12 excellent young man who had a great future in front of him.
13 Many opportunities. I don't know where the wheels went off
14 the track. I don't know how he got in this situation, but
15 this is a man who understands, to some degree, that he has
16 run out of opportunities and running out of them still.
17 We're asking for whatever additional mercy you can show. He
18 had an opportunity to go to college on a scholarship. It
19 just didn't work out. It has not worked out for him. I
20 don't know how he got himself in this situation. We didn't
21 sit down and have that conversation. But, Judge, this is
22 the part of the job that's been on both sides of the aisle
23 that's frustrated me the most. We talk and talk about these
24 drug cases, we need to send a message, stop drugs, stop
25 drugs, and we end up with Mr. Boyd. He is the one that gets

1 punished. Now, he did wrong. He's not the big fish. He's
2 one of the guys out there, a piece man, so to speak, who's
3 selling a couple rocks every now and then, mainly to feed a
4 habit. And we've done nothing to deal with that. We've
5 done nothing to deal with those situations and we've done
6 nothing to get to the root of the problem. All we've done
7 is take these people who have already destroyed their lives
8 and destroy it even further by incarcerating them for a long
9 period of time with the most severe sentence that we have.

10 Mr. Boyd understands that whatever sentence that you
11 give him here today, he's going to have to do 85 percent of
12 it. When he gets out he's going to have to deal with
13 community supervision, which is two years of not probation,
14 not parole but something else, and if he messes that up he
15 can end up doing the other 15. We certainly understand that
16 he's going to have to go to the Department of Corrections.

17 I have read the law and read the law and tried to come
18 up with some kind of argument where I could ask you to
19 consider not even doing that, but I don't think the law
20 allows you to do it, and I don't think I can ask you for it.

21 Mr. Boyd may not deserve the mercy I'm asking for, but
22 I'm certainly asking you, as I sometimes do, unfortunately,
23 in Fairfield, have to ask on a personal note for my clients,
24 because I know them personally. Maybe not in Mr. Boyd's
25 situation but I have in other people I have represented.

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13

1 But I have know him for a long time. Even though we have
2 not know each other for that long a time. We just ask for
3 whatever mercy you can show.

4 Present in the courtroom is his fiance. I don't think
5 she wants to address the Court, but I do want to let you
6 know that he does have people out there for him.

7 And he started a little bit ago, and I cut him off, I
8 think Mr. Boyd wanted to address you.

9 THE COURT: Certainly. Be glad to hear from you, Mr.
10 Boyd.

11 MR. BOYD: Thank you, Your Honor. Your Honor, when the
12 informant asked me for drugs, I told them I didn't have any
13 drugs. Before that day I didn't sell any in over two and a-
14 half years. I didn't do it before then. But for 30 days,
15 first of all, they asked me where I get it from, and I
16 didn't want to do it. Your Honor, I call myself doing it
17 for a friend. I didn't profit not one dime from it. \$20.
18 \$20 and not any profit in it. I have problems in my life,
19 but I haven't done it since then. I have no reason to do it
20 again. On November 10th they came and asked me and I told
21 them I didn't have any. 30 days on December 10th they came
22 back and asked me, Your Honor, and asked me to go get it.
23 \$20 was the biggest mistake of my life. I ask you to be
24 lenient with me, Your Honor.

25 THE COURT: Tell me something, Mr. Boyd, how long --

1 when did you get out of the Department of Corrections?

2 MR. BOYD: I got out the Department of Corrections on
3 April 1, 2008.

4 THE COURT: What have you been doing for that --

5 MR. BOYD: I went back to school. I was working
6 construction. I went to Palmetto Training to do just --
7 just received my heating and air license. As far as
8 December 10th, my life been upside down. And doing odd jobs
9 and --

10 THE COURT: Did you serve any time on this warrant that
11 resulted in you being arrested?

12 MR. BOYD: No, sir.

13 THE COURT: Before you bonded out, I mean?

14 MR. BOYD: Three days. Three days, sir. My sister and
15 her family helped get me out.

16 THE COURT: Mr. Boyd, on the charge of distribution of
17 marijuana, I sentence you to the Department of Corrections
18 for a period of five years, will be concurrent sentence with
19 the other sentence. On that one, though, I can't help it,
20 Mr. Boyd, I sentence you to 12 years concurrent. Credit for
21 time served. I will recommend the addiction treatment unit.
22 Good luck to you.

23 MR. MAXWELL: Your Honor, that's all we have for today.

24 (This proceeding was concluded.)

25

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C-E-R-T-I-F-I-C-A-T-E

1
 2 I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT
 3 REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
 4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
 5 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PLEA
 6 IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR
 7 FAIRFIELD COUNTY, SOUTH CAROLINA, ON THE 9TH OF MAY, 2011.

8 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
 9 NOR INTEREST IN ANY PARTY HERETO.

10
 11
 12
 13 

Hilda M. Jordan, CVR-M

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 16 April 10, 2012

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FORM 5

STATE OF SOUTH CAROLINA)

County of Fairfield)

IN THE COURT OF COMMON PLEAS

2017 FEB -2 A 11:48

Sherman BOYD

Full name and prison number (if any) of Applicant
252465,

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 S.C. Dept. of Corrections (SCDC)
Kirkland Corr. Inst., 4344 Broad River Rd, Columbia, SC 292
2. Name and location of Court which imposed sentence Court of
General Sessions, County of Fairfield - 6th Jud.
3. Name(s) of co-defendant(s) (if any)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-20-72 - Dist. Cocaine Base
 - (b) 2011-GS-20-73. Dist. Marijuana

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 9, 2011 - 12 yrs, Dist. Cocaine Base

(b) May 9, 2011 - 5 yrs, Dist. Marijuana

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Affirmative

(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 Ayes@ to (7), list:

(a) the name of each Court to which you appealed: N/A

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed: N/A

i. _____

ii. _____

iii. _____

(c) the date of each such result: N/A

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such

results: Not Applicable / (N/A)

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) Counsel stated Pleas Not Appealable

(b) _____

(c) _____

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

- (a) Ineffective Assistance of Counsel -
- (b) Conflict of Interest - see "Attachments
- (c) Plea Not Knowing And Volun due to Conflict

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

- (a) See Attached Sheets (with
- (b) Case Citations and Rules of
- (c) Professional Conduct in Support.

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

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

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application: N/A

(a) the specific nature thereof: N/A

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

iv.

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

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

(c) the disposition thereof: *N/A*

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

(d) the date of each such disposition: *N/A*

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

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

- 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? *N/A*

- _____
- _____

15. If you answered "yes" to (14) identify: *N/A*

(a) which grounds have been presented: *N/A*

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

(b) the proceedings in which each ground was raised: *N/A*

- 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: N/A

(a) _____

(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? No.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

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

i. Mr. Frick, please see South Carolina BAR # 69739, Fairfield County

ii. _____

iii. _____

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

i. Plea

ii. Sentencing

iii. _____

- 19. State clearly the relief you seek in filing this application:
Evidentiary Hearing; For PCR Counsel to
Amend this Prose Application; Grant PCR,
Reverse and/or Remand Case to Reconsider Lesser
- 20. Are you now under sentence from any other court that you have not challenged? Sentence.
No.

Revised 3/2003

STATE OF SOUTH CAROLINA)
 County of Fairfield)

VERIFICATION

I, Sherman Boyd, SCDC # 252465, 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.

[Signature]

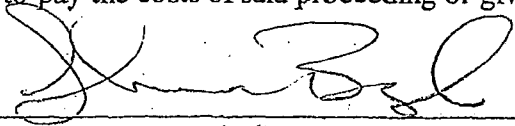
SWORN to and subscribed before me this 31st
 day of January, 2012

[Signature] (L.S.)
 Notary Public My Commission Expires
 October 8, 2014
 My Commission Expires: _____

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

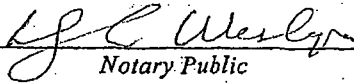
I, Sherman Boyd, #252465, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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



Applicant

SWORN or affirmed to and subscribed before me this
31st day of January, 2012.



Notary Public

My Commission Expires
October 8, 2014

My Commission Expires: _____

APPLICANT SHERMAN BOYD,

MEMORANDUM OF LAWS

10.(a) APPLICANT WAS DENIED THE RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE 6th AND 14th AMEND. OF THE US CONSTITUTION AND BY ART. I, §§ 3 AND 14 OF THE S.C. CONST., etc.

SUPPORTING FACTS: COUNSEL PERFORMANCE IN HIS ASSISTANCE WAS UNREASONABLE AND PREJUDICIAL ACCORDINGLY TO THE SETFORTH PRONGS OF THE CITED CASE AS: STRICKLAND V. WASHINGTON, 466 U.S. 688 (1984), CITED AS 104 S.Ct. 2052;

CASE COUNSEL ACTS AN OMISSIONS INCLUDES BUT NOT LIMITED TO THE FOLLOWINGS:

COURT LACKED JURISDICTION TO ACCEPT GUILTY PLEA, *APPLICANT REQUESTED FOR VENUE IN ANOTHER COUNTY, etc.

THE APPLICANT RESPECTFULLY CONTENDS THAT NOT ONLY WAS COUNSEL "INEFFECTIVE" IN HIS REPRESENTATION, HOWEVER THAT A GRAVE MISCARRIAGE OF JUSTICE HAS OCCURRED THAT IS BEYOND MERE HARMLESS ERROR AS IT IS "CLEAR" COUNSEL WAS IN VIOLATION OF THE SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT, RULE 407 AND RULE 1.12 et. seq.;

IN THE INDICTMENT NO. 2005-GS-20-420, PWID CRACK, APPLICANT BOYD'S COUNSEL IN THE INSTANT CASE WAS HIS FORMER SOLICITOR, (MR. FRICK) WHO THEN HAD VOWED TO GET HIM THE MAXIMUM SENTENCE EVEN WHILE A FIRST OFFENDER WHEN UNDER SC LAWS THE CRIME CARRIED A SENTENCE OF 0 TO 15 YEARS (NON-VIOLENT), IN INDICTMENT NO. 2011-GS-20-72 AND 73, AGAIN REITERATES COUNSEL OF RECORD BEING THE FORMER SOLICITOR IN THE AFFOREMENTIONED 2005-GS-20-420, AS IS COUNSEL FOR CURRENT CASE MATTERS CONVICTIONS, THIS VERY SAME SOLICITOR REPEATEDLY THREATENED APPLICANT TO SEE THAT HE SERVE A LENGTHY SENTENCE AND ADAMANTLY CONTENDED THAT SINCE HE KNEW AND ASSUMED APPLICANT WAS GUILTY, WHILE STRESSING EMPHASIS ON HOW HE FELT THE SAME WAY ABOUT APPLICANT AS HE DID WHILE A FORMER SOLICITOR/PROSECUTOR IN APPLICANT'S CASE HE INFORMED ME THAT INVESTIGATING THE CASE TO SEEK "EXCULPATORY EVIDENCE", ON MY BEHALF WAS OUT OF THE QUESTION AND THAT AS A FORMER SOLICITOR HE HAD SPOKEN WITH HIS FORMER COLLEGES IN THE SOLICITOR'S OFFICE IN THE INSTANT CASE AND HAVE AGREED (CONSPIRED) WITH THEM THAT A TRIAL WAS OUT OF THE QUESTION AND BY HIS ACTIONS AND IN-ACTIONS THAT EVERYTHING WOULD BE POSSIBLE DONE BY HIM TO ENSURE I GET A CONVICTION; FROM THE ONSTART OF COUNSEL REPRESENTATION A SERIOUS (CONFLICT OF INTEREST) EXISTED, SPECIFICALLY AND ESPECIALLY WHEN COUNSEL BEGAN TO EXPRESS AND OR REITERATE HIS VIEWS BASED ON HIS PREVIOUS VIEWS OF APPLICANT AS A DRUG DEALER, SEE THE LEGAL AUTHORITIES OF: CUYLER V. SULLIVAN, 446 U.S. 335, 100 S.Ct. 1708 (1980); MANNHALT V. REED, 847 F.2d. 576, 580 (9th Cir. 1988); U.S. V. TATUM, 943 F.2d. 370 (4th Cir. 1991); WHEAT V. UNITED STATES, 486 U.S. 153, 108 S.Ct. 1692 (1988), SIMPLY STATING COUNSEL KNEW

HE REPRESENTED A CONFLICT OF INTEREST AND HE ALSO KNEW THAT THIS SAME CONFLICT OF INTEREST ADVERSELY EFFECTED HIS REPRESENTATION THAT OF WHICH PREJUDICE APPLICANT, IN SHORT AND BY MEANS; THE COURT MUST REVIEW HOW COUNSEL ACTIVELY REPRESENTED THE CONFLICT OF INTEREST, AND THAT AND ACTUAL CONFLICT OF INTEREST ADVERSELY AFFECTED THE ATTORNEY'S PERFORMANCE, HERE IN APPLICANT'S CASE COUNSEL ACTIONS AND DISPOSITION WAS THE SAME AND THROUGH OUT HIS REPRESENTATION HE FUNCTIONED MORE AND MORE LIKE THE PROSECUTOR AS OPPOSED TO APPLICANT'S ATTORNEY, COUNSEL REPEATEDLY IGNORED APPLICANT'S REQUEST TO SUPPRESS EVIDENCE AND INVESTIGATE APPLICANT'S CASE SEEKING FACTS, WHEN COUNSEL KNEW OR SHOULD HAVE KNOWN A MOTION TO SUPPRESS AND FOR ADDITIONAL DISCOVERY WAS NEEDED OR ANY SUFFICIENT OR GENUINE DISCOVERY MATERIALS OTHER THAN PROVIDING APPLICANT WITH A COPY OF ARREST WARRANTS AND AFFIDAVITS WHICH THE HONORABLE COURT KNOWS IS NOT SUFFICIENT DISCOVERY MATERIALS UNDER THE BRADY, SUPRA. OR RULE 5, AND 6, SCRCRIM.P., ON APPLICANT'S VERY FIRST DRUG OFFENSE HIS ATTORNEY MR. FRICK, FORMER SOLICITOR, DID RECOMMENDED A HARSH SENTENCE WHICH THE APPLICANT IS REITERATING TO SIMPLY DEMONSTRATE THE CULPABLE MENTALITY OR MIND STATES OF HIS COUNSEL AT THAT PARTICULAR TIME AND CURRENT TIME, WHICH WENT FOR THE MOST PART UNCHANGED WITH REGARDS TO APPLICANT AND HIS CASE MATTER PRESENTED TO THE COURT BY THE FORMER SOLICITOR, THE COUNSEL HAD NOT CHANGED HIS MIND SET AND WAS THE SAME PERSON APPLICANT MET WHEN A SOLUTION, WHICH DEMONSTRATED TO APPLICANT AS SHOULD TO THE HONORABLE COURT THAT COUNSEL COULD NOT BE FAIR AND IMPARTIAL IN HIS REPRESENTATION GIVEN TO APPLICANT AS IN APPLICANT'S BEST INTEREST, AS IF APPLICANT WAS NOT IN HIS RIGHT MIND FRAME MENTALLY, THAT CURRENT SOLICITOR MR. MAXWELL AND APPLICANT'S ATTORNEY MR. FRICK CONSPIRED WITH ONE ANOTHER WITH MY COUNSEL LEADING TO SEE TO IT THAT APPLICANT HAD RECEIVED A LENGTHY SENTENCE;

PLACING APPLICANT IN THE CATCH 22 PHASES, COUNSEL WAS NOT PREPARED FOR TRIAL AND AGAIN COUNSEL NEVER INTENDED TO PREPARE FOR A DEFENSE FOR APPLICANT'S TRIAL AS APPLICANT MADE IT OBVIOUSLY CLEAR AND KNOWN THAT HE DEMANDED TO EXERCISE HIS RIGHTS TO A TRIAL TO BE EXONERATED OF ALL CHARGES HE WASN'T GUILTY OF, APPLICANT EXPLICITLY RESERVE THE RIGHT TO FILE AN (AMENDED) APPLICATION FOR PCR OR HAVE COUNSEL TO AMEND PURSUANT TO RULE 71.1, SCRPC. TO MAKE MANIFESTED A QUESTION OF LAW TO BE EXAMINED AS TO HAVE THE PCR COURT TO GIVE A FINDING OF FACTS SPECIFICALLY TO EACH SPECIFICALLY ISSUE AND TO GIVE A SPECIFICALLY RULING OF LAWS TO THEM SPECIFICALLY PER SE SC PRC § 17-27-80.

AS IS, IT IS THE APPLICANT'S PRIMARY ASCERTAINING TO THE RECORDS THAT HE ASSERTS THE CONFLICT OF INTEREST AND INEFFECTIVE ASSISTANCE OF COUNSEL IN APPLICANT'S CONCURRENT CONVICTIONS HE MAKES COLLATERAL ATTACKS TO ACCORDINGLY TO LAWS OF THE U.S CONSTITUTION AND THE SC CONSTITUTION. IT IS TO ALSO DEMONSTRATE THAT THE COURT LACKED SUBJECT MATTER JURISDICTION TO ACCEPT SUCH OF A PLEA WHEN THE COURT KNEW OR SHOULD HAVE KNOWN A CONFLICT OF INTEREST EXISTED.

LEGAL ANALYSIS AS PREVIEWED

[RULE 1.12, SCRPC], THE MANDATES APPLICABLE THAT WERE NOT FOLLOWED BY APPLICANT'S COUNSEL, SUPPORTS APPLICANT'S ALLEGATIONS OF CONFLICT OF INTEREST ALSO WHEREAS, IT IS CLEARLY ESTABLISHED THAT A LAWYER SHALL NOT REPRESENT ANYONE IN CONNECTION WITH A MATTER IN WHICH HE OR SHE PARTICIPATED PERSONALLY AND SUBSTANTIALLY AS A JUDGE OR OTHER ADJUDICATIVE OFFICE OR LAW CLERK, TO SUCH PERSON OR AS AN ARBITRATOR MEDIATOR, FORMER JUDGE OR OTHER 3rd PARTY NEUTRAL (SOLICITOR, etc.) UNLESS ALL PARTIES TO THE PROCEEDING OR REPRESENTATION GIVES INFORMED CONSENT, CONFIRMED IN WRITING WHICH DEFINATELY DID NOT EXISTS IN APPLICANT S. BOYD'S CASE, SEE AUTHORITY AT ZUCH V. ALABAMA, 588 F.2d. 436 (5th Cir. 1979).

LIKE FORMER JUDGES, LAWYERS WHO HAVE SERVED AS ARBITRATORS, MEDIATORS OR OTHER THIRD PARTY NEUTRALS MAY ASK TO REPRESENT A CLIENT IN A MATTER IN WHICH THE LAWYER FORMALLY PARTICIPATED PERSONALLY AND SUBSTANTIALLY, YET THE RULE FORBIDS SUCH REPRESENTATION UNLESS [ALL PARTIES TO THE PROCEEDINGS GIVE THEIR INFORMED CONSENT WHICH MUST BE CONFIRMED NOT TO BE OF WORD OF MOUTH, HOWEVER, IN WRITING SEE RULE 2.4, etc., ALSO SEE: MILKENS vs. TAYLOR, 535 U.S. 162-APPLICANT HAS A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, QUOTED: STRICKLAND V. WASHINGTON, 466 U.S. 668, IT IS WELL AND ESTABLISHED CLEARLY THAT AMONG OTHER THINGS THAT THE 6th AMEND. OF US CONST. GUARANTEES A DEFENDANT HIS RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL AND THAT SUCH FUNDAMENTAL RIGHTS ATTACHED UPON INITIATION OF THE ADVERSIAL JUDICIAL PROCEEDINGS AT "ALL CRITICAL STAGES OF A CRIMINAL TRIAL, TO ESTABLISH A VIOLATION OF THE 6th AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE DUE TO A CONFLICT OF INTEREST, A DEFENDANT MUST SHOW THAT COUNSEL'S REPRESENTATION EFFECTED COUNSEL PERFORMANCE AS THE APPLICANT HAS IN FACT CLEARLY SHOWN THROUGH THE COURT'S OWN RECORDS, SEE CASE AUTHORITY OF CITE: THOMAS V. STATE, 551 SE2d 254 (2001); STAGGS V. STATE, 643 S.E.2d. 690,692 (2007)

(HE APPLICANT IS VERY MUCH AWARE THAT IN THIS ACTION FOR WHICH HE IS SEEKING RELIEF THAT HE BEARS THE BURDENS OF ESTABLISHING THE PROOF SHOWING THAT HE IS ENTITLED TO RELIEF AS SOUGHT, PER SE TO RULE 71.1(e), SCRCP., WHICH APPLICANT HAS DONE, JAMES V. STATE, 659 SE 2d 148 (2008), THE APPLICANT LEGAL CONTENTION GOES BEYOND THE RIGHTS OF PROFESSIONAL CONDUCT, SINCE A DEFENDANT NEED NOT ESTABLISH OR RATHER DEMONSTRATE PREJUDICE IF THERE IS AN ACTUAL CONFLICT OF INTEREST, SEE GREGORY V. STATE, 612 SE2d 450(). IN THE EVENT THAT THE OFFICE OF THE ATTORNEY GENERAL OR "RESPONDENT" RAISES THE ARGUMENT THAT THE RULES OF PROFESSIONAL CONDUCT HAS NO BEARINGS ON THE CONSTITUTIONALITY OF A CRIMINAL CONVICTION, THE APPLICANT WISHES TO MANIFEST THAT HIS USAGE OF THE MENTIONED RULES GOES BEYOND THE MERE RAISING OF AN ARGUMENT OF A CONFLICT OF INTEREST, WHERE AN ATTORNEY MERELY FAILS TO OR DOES NOT ADVISE A DEFENDANT OF THE POTENTIAL CONFLICT OF INTEREST WHICH IS DEFINITELY "NOT" APPLICANT'S ARGUMENT NOR IS APPLICANT RELYING EXCLUSIVELY ON THE RULES OF PROFESSIONAL CONDUCT. AS

APPLICANT PRESENT HIS CHIEF CONTENTIONS, HOWEVER, ITS USAGES IS TO ONLY POINT OUT THE DICTATION OF SAID RULES BEING APPLICABLE TO HIS ISSUES RAISED. TO THE EXTENT THAT A VIOLATION OF SAID RULES, SPECIFIED HEREIN DOES IN FACT EXISTS AND THAT HIS FORMER SOLICITOR AND NOW ATTORNEY OF RECORD IN ALL FUNDAMENTALS FAIRNESS " CHARGED ONLY JOBS YET NOT HIS STRIPES, AND WHEREIN NO WRITTEN AGREEMENT/WAIVERS WAS MADE WITH HIS HAVING ANYTHING TO DO WITH THE APPOINTMENT OF COUNSEL AND THAT HAD NOT COUNSEL REMINDED HIM OF HIS SAME VIEW OF HIM (i.e. HIS GUILT AS A DRUG DEALER) COUNSEL LACKED OF PREPARING, DEFENSE OF DEFENSIVE STRATEGIES HAD COUNSEL NOT DEMONSTRATED SUCH TO APPLICANT, APPLICANT ARGUES THAT APPLICANT WOULD NOT HAVE HAD A PROBLEM WITH COUNSEL'S REPRESENTATION EVEN AFTER CHANGING OFFICE FROM SOLICITOR TO PUBLIC DEFENDER, etc.

APPLICANT FURTHER RELIES EXCLUSIVELY ON CASE ANALYSIS TO SUPPORT HIS ARGUMENTS HEREIN, THE STATE IN ALL FUNDAMENTAL FAIRNESS DENY COUNSEL VIOLATED RULES OF PROFESSIONAL CONDUCT, THIS IS CLEAR AS THE HONORABLE COURT WILL SEE OR ACKNOWLEDGE DURING THE MANDATORY EVIDENTIARY HEARING TO BE HELD APPLICANT REQUESTS, THE APPLICANT WISHES TO POINT OUT TO THE COURT RULE 1.11, [SPECIAL CONFLICT OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYERS] WHICH RESPECTIVELY STATES IN RELEVANT PARTS; EXCEPT AS PROVIDED BY LAW OR LAWS MAY OTHERWISE EXPRESSLY PERMIT A LAWYER WHO HAS FORMERLY SERVED AS A PUBLIC OFFICER OR EMPLOYER OF THE GOVERNMENT IS SUBJECTED TO RULE 1.9(c) AND (2) SHALL NOT OTHERWISE REPRESENT A CLIENT IN CONNECTION WITH A MATTER IN WHICH THE LAWYER PARTICIPATED PERSONALLY AND SUBSTANTIALLY, etc. WHICH REINFORCES OR REITERATES THE CONFLICT OR INTEREST EXHIBITED IN PREVIOUS RULES OF PROFESSIONAL CONDUCT STATED.

COURT LACKED JURISDICTION TO PRESIDE OVER CASE

TO ACCEPT PLEA WHEN IT WAS CLEARLY DEMONSTRATED THAT COUNSEL AND APPLICANT HAD HEATED ARGUMENTS OVER COUNSEL'S LACK OF INTEREST IN APPLICANT'S CASE MATTER, APPLICANT SHOWS THAT WITH THE COUNSEL LACK OF INTEREST IN HIS CASE THE COUNSEL FAILED TO FILE PRETRIAL MOTION TO HAVE THE JURISDICTIONAL ISSUES EVALUATED BY THE TRIAL COURT AS IT SHOULD HAVE PURSUANT TO THE GENTRY, supra, MANDATES AS APPLICABLE TO JURISDICTION ISSUES TO BE RAISED BEFORE THE COURT, AS IT IS SOUNDED AND EXPLICITLY STATED BY APPLICANT BOYD, IT IS INCUMBENT UPON THE ASSIGNED COUNSEL PRESENTING HIM TO RAISE ADDITIONAL GROUNDS TO THE COURT OVER THE MATTER, THE APPLICANT THUS RESERVE THE RIGHTS TO PRESENT CASE LAWS CITATIONS AND THE LIKES TO SUPPORT OR REINFORCEMENT OF ALL ARGUMENTS HEREIN OR HENCEFORTH SO STATED AND REQUEST COUNSEL OF RECORD TO FOLLOW THE PROCEDURE AND GUIDELINES TO PLACE HIS TELEPHONE NO.s ON APPLICANT'S SCDC PIN LIST AND TO SCHEDULE LEGAL VISITS WITH HIM TO DISCUSS FACTS IN REGARDS TO THE ISSUES HEREIN STATED, AND THAT THIS PCR IS RESPECTFULLY REPRESENTED AND PROPERLY PRESENTED TO THE COURT FOR THE DEEM RELIEF REQUESTED AND ENTITLED TO BY THE APPLICANT.

IT IS THEREFORE SUBMITTED ON THIS 9 DAY OF April 2012.

S/ *[Signature]*
Subscribed and sworn to before me this 9th day of April 2012
[Signature]
Notary Public for South Carolina

4. OF 4.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD)	
)	
)	2012-CP-20-0057
Sherman Boyd # 252465,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 2, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. The Applicant was indicted at the March 2011 term of the Fairfield County Grand Jury for distribution of crack cocaine (2011-GS-20-072) and distribution of marijuana (2011-GS-20-073). The Applicant was represented by William P. Frick, Esquire. On May 9, 2011, the Applicant pled guilty as indicted to distribution of marijuana and pled guilty to the lesser included offense of distribution of crack cocaine, second offense. He was sentenced by the Honorable Brooks P. Goldsmith to confinement for a period of twelve (12) years for distribution of crack cocaine, second offense, and five (5) years for distribution of marijuana, to run concurrent. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Fairfield County Clerk of Court regarding the subject conviction(s), a copy of the guilty plea transcript, and the Applicant's

records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials

II.

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

1. Ineffective Assistance of Counsel;
 - a. Counsel had a conflict of interest because he had formerly prosecuted the Applicant on charges in 2005.
2. Involuntary Guilty Plea; and
3. Lack of Subject Matter Jurisdiction.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Further, the Applicant alleges the existence of a conflict of interest. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR 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 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, 546 S.E.2d 417 (2001). A defendant alleging that his 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 v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. 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. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to an alleged conflict of interest. An Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his

case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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June 25, 2012

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD
2012-CP-20-00057

Sherman Boyd

vs.

State of South Carolina

Lancaster, South Carolina

July 30, 2012

Before the Honorable D. Garrison Hill

APPEARANCES

For the Petitioner: Nicole Singletary

For the State: Suzanne White

Reported by: Michael C. Watkins

Official Court Reporter

1	Sherman Boyd:	3
2	Mr. Frick:	23
3	Certificate:	40
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1 MS. WHITE: Your Honor, this is the case of Sherman
2 Boyd versus the State, it is case number 2012-CP-20-0057.
3 He is represented today by Ms. Nicole Singletary. Mr. Boyd
4 was indicted March of 2011 for distribution of crack third
5 offense, and distribution of marijuana, pled to the lesser
6 distribution crack second and as indicted on the
7 distribution of marijuana charges, got 12 years on the crack
8 charge and five years on the marijuana to run concurrent.
9 He has filed this application asserting ineffective
10 assistance of counsel, involuntary guilty plea and subject
11 matter jurisdiction.

12 MS. SINGLETARY: Thank you, Your Honor. If it pleases
13 the Court, at this time I would like to call Sherman Boyd to
14 the witness stand.

15 The witness, SHERMAN BOYD, was first duly sworn
16 and testified as follows, on:

17 DIRECT EXAMINATION

18 BY MS. SINGLETARY:

19 Q. Mr. Boyd, would you state your full name for the
20 record?

21 A. Sherman Durrell (phonetically) Boyd.

22 Q. Where are you currently housed at?

23 A. Kirkland Correctional Institution.

24 Q. What is the basis of you being housed at Kirkland
25 Correctional Institution?

1 A. It's an privileged yard, that's with a lot of violent
2 inmates at this time.

3 Q. Why are you incarcerated?

4 A. Due to the fact I was charged with distribution of
5 crack cocaine and also distribution of marijuana.

6 Q. And do you remember what date you were actually charged
7 with those offenses?

8 A. The marijuana charge was November 10th of 2010 and the
9 drug charge crack cocaine charge was December 10, 2010.

10 Q. And do you remember around and about what date you
11 actually disposed of these charges?

12 A. May 9, 2011.

13 Q. And how did you actually dispose of these charges?

14 A. Well, to one I made a guilty plea.

15 Q. And in your application for a post conviction relief
16 there are a number of grounds that you have actually filed,
17 one being ineffective assistance of counsel; is that
18 correct?

19 A. Yes, ma'am.

20 Q. At the time that you actually pled guilty who was your
21 attorney?

22 A. Mr. William Frick.

23 Q. And how long had you known Mr. Frick prior to him
24 representing you on this case?

25 A. How long did I know he was representing me on this

1 case?

2 Q. Did you have any prior dealings with Mr. Frick?

3 A. Yes, ma'am. Mr. Frick was my prior solicitor on my
4 previous charge, he prosecuted me on the drug charge.

5 Q. And would that be drug charges from 2005?

6 A. Yes, ma'am.

7 Q. That Mr. Frick actually prosecuted you?

8 A. Yes, ma'am.

9 Q. And on your charges that stem from 2010 he actually
10 represented you?

11 A. Yes, ma'am.

12 Q. Just to give the Court some background from the actual
13 prosecution of your case by Mr. Frick back in 2005, how
14 would you characterize that relationship, if any?

15 A. It was real rocky. He was really pushing for a more,
16 how would I say it, harsher sentence than I felt that the
17 charge actually carried. Like he recommended ten years in
18 the department of corrections, when it was all said and done
19 the judge gave me seven years so I kind of felt then that he
20 was expecting me to do a lengthy sentence.

21 Q. And when you found out he actually represented you on
22 the charges that we are here for today, did you recognize
23 him as being your former prosecutor?

24 A. Yes, ma'am. We discussed that prior to me going up.

25 Q. And you said you discussed that. Explain to the

1 Court -- we weren't there, explain to the Court what the
2 discussions consisted of.

3 A. I was actually -- it wasn't in a conflict of interest
4 for him to actually represent me and he said he has my best
5 interest at heart, he wouldn't do me no wrong. And I was
6 still trying to tell him even though you say you won't do no
7 wrong it's still too soon. It was like I don't have a say
8 in the matter, going to trial or pleading guilty, that's all
9 he wanted was a guilty plea.

10 Q. Okay. And at that time did Mr. Frick actually move to
11 be released on the case?

12 A. No, ma'am.

13 Q. Did you ask Mr. Frick to be released on the case?

14 A. Yes, ma'am, I asked for another attorney.

15 Q. And when did you actually ask for another attorney?

16 A. April 4th.

17 Q. And what actually occurred on April 4th?

18 A. On April 4th --

19 Q. And let me stop you. That's April 4th of 2011?

20 A. Yes, ma'am.

21 Q. Go ahead.

22 A. On April 4th of 2011, which was 90 days after my
23 arrest, Mr. Frick came to the courtroom and asked me would I
24 walk in the back to have a conversation with him. And when
25 I get there he said, "Mr. Boyd, we need you to plead today."

1 And I said, "Plead today? It has only been 90 days." He
2 said, "I know that, the solicitor is wanting to go ahead and
3 get you on through." And I said, "You haven't made no plea
4 suggestions to me." And he said, "Well, I meant to tell you
5 that I've been told by Mr. Fitzsimons that they offered you
6 a plea." And I said -- and it was like seven years at
7 85 percent -- and I said, "I can't plead to seven years at
8 85 without seeing any evidence or if there is any evidence."
9 And he said, "Well, Mr. Boyd, they're saying they have a
10 tape." And I told him I would have to see the tape if you
11 have one. And he said, "Well, hold on, let me check." And
12 he went out to talk to the solicitor, Mr. Maxwell and
13 Mr. Maxwell came in and he said, "Mr. Boyd, if you want to
14 see the tape we'll offer you eight years, 85, if you're
15 going to see me, eight years, 85," I don't have a choice.
16 And at that time he said, "We do not have a tape this week,
17 we cannot get it but if you wait until the next term of
18 court to see the tape we are going to offer you no less than
19 ten years."

20 Q. And let me clarify what you just said. Now, when you
21 actually met Mr. Frick on April 4th, was that your first
22 meeting with him?

23 A. Yes, ma'am.

24 Q. And on April 4th did you and Mr. Frick review the
25 discovery in the case?

1 A. No, ma'am.

2 Q. But on April 4th you were given a plea offer?

3 A. Yes, ma'am. He told me I would have -- they gave me 30
4 minutes to plea or go to trial.

5 Q. Okay. And you stated that the initial plea offer was
6 seven years.

7 A. Yes, ma'am.

8 Q. And at that point you stated that you wanted to see the
9 discovery in your case?

10 A. Yes, ma'am.

11 Q. You wanted to see the tape that they allegedly had?

12 A. Yes, ma'am.

13 Q. And as a result of that the solicitor joins the
14 conversation between -- Mr. Maxwell, the solicitor, joins
15 the conversations between you and your attorney, Mr. Frick?

16 A. Yes, ma'am.

17 Q. And at that point it was your testimony that the
18 solicitor stated if you wanted to see the tape then they
19 would increase the plea offer that they were offering you?

20 A. Yes, ma'am.

21 Q. And it's also your testimony that when they told you
22 that they did not have the tape available on that day that
23 if you waited until the next term of court that the plea
24 offer would actually increase more years?

25 A. Yes, ma'am.

1 Q. And even after hearing all of that you wanted to still
2 see the discovery in your case?

3 A. Yes, ma'am. I asked the judge for a continuance so
4 I -- they could have time to let me see the evidence in my
5 case.

6 Q. And I'm about to get to that. All of the conversations
7 that we've talked about thus far on April 4, 2011, were
8 behind closed doors?

9 A. Yes, ma'am.

10 Q. They were not on the record?

11 A. No, ma'am.

12 Q. But at some point there is a hearing that is held on
13 that same date, correct?

14 A. Yes, ma'am.

15 Q. And what was the basis of that hearing?

16 A. The hearing was to ask for a continuance in order for
17 me and my attorney to have time to at least go over the
18 evidence.

19 Q. And as a result of that hearing what actually happened?

20 A. The judge granted me a 30 day continuance, told me in
21 30 days be prepared to either plead guilty or go to trial.

22 Q. Now, in between April 4th and the 30 days, how many
23 times did you actually meet with Mr. Frick?

24 A. None.

25 Q. How many times did you talk to him on the telephone?

1 A. None. I made two calls to the clerk of court asking
2 when were we going -- well, I was preferring to speak with
3 Mr. Frick but he wasn't in at the time, I was calling to
4 reference when were we going to be able to see the tape
5 before we went to trial.

6 Q. Now, when were you actually able to see the videotape?

7 A. That morning before sentencing.

8 Q. So you did not see the videotape, which is the evidence
9 that the State had against you, until right before your
10 plea?

11 A. Yes, ma'am.

12 Q. And it's your testimony that you did not meet with
13 Mr. Frick any time prior to your plea day?

14 A. That's correct.

15 Q. Other than the April 4th meeting?

16 A. Yes, ma'am.

17 Q. About how long would you say that April 4th meeting
18 occurred?

19 A. 30 or 40 minutes max.

20 Q. Okay. Now, at any point during -- in your opinion, how
21 long would you say from the time that you found out
22 Mr. Frick was your attorney until your plea date, how much
23 time lapsed?

24 A. Thirty days.

25 Q. Thirty days. And did you have another attorney in the

1 office prior to that?

2 A. Yes, ma'am. Mr. Fitzsimons was my attorney, he was the
3 one that took me to my preliminary hearing so I was calling
4 to the court to talk to Mr. Fitzsimons at the time. I did
5 not have any knowledge that Mr. Frick was given my case.

6 Q. And your preliminary hearing was held some time in
7 March of that year, correct?

8 A. Yes, sir.

9 Q. And so from March until April 4th you got no
10 communication from anybody in the public defender's office.

11 A. No, ma'am.

12 Q. Now, did you ever receive a copy of your discovery from
13 Mr. Frick?

14 A. No, ma'am. I wrote the clerk of court twice and he was
15 saying there's no copy of my discovery or transcript in my
16 files.

17 Q. But did you ask Mr. Frick for your discovery?

18 A. Yes, ma'am, I did.

19 Q. And at what point did you ask him for your discovery?

20 A. I asked it on April 4th and I also asked for one on
21 May 9th before when they reviewed the tape.

22 Q. Now, one of the allegations that you've made as it
23 relates to the ineffective assistance of counsel is that you
24 feel that Mr. Frick did not negotiate on your behalf. Could
25 you explain to the Court what you are referring to as it

1 relates to that?

2 A. I mean, it was just more of him just coming to me
3 saying exactly what Mr. Maxwell said. There is no -- at
4 first it was distribution third offense, I was asking him if
5 I've never been convicted of a distribution so how can you
6 charge me with distribution third offense? And he was
7 saying, "Well, that's just Mr. Maxwell, he have no decision
8 over that." And I was like there is no way I can be
9 convicted -- plead to a third and I never had a first. I
10 had a possession in 1995 and a possession in 2005 and this
11 was out of the question given -- but distribution third
12 offense, I guess, no less than ten years. So I was trying
13 to -- he didn't tell me about enhancement statutes or
14 nothing at that time, if he would have said the enhancement
15 statute I would have said he prosecuted on the charge that
16 enhanced this sentence.

17 Q. And I was about to ask you about that. Did Mr. Frick
18 explain to you that drug charges are charges that are
19 subject to the enhancement statute?

20 A. No, ma'am.

21 Q. So Mr. Frick didn't tell you that if you have a prior
22 drug conviction regardless to what the drug is that a second
23 or a third drug conviction could be enhanced?

24 A. No, ma'am, he didn't.

25 Q. Now, one of the other things that you actually allege

1 as it relates to ineffective assistance of counsel is that
2 Mr. Frick failed to investigate your case.

3 A. Yes, ma'am.

4 Q. And that he failed to hire experts in your case could
5 you explain that to the Court?

6 A. At the time it was like a marijuana charge. I asked
7 him to explore all of the evidence to see if we can get
8 expunged or see what was actually there to find me guilty or
9 not guilty. And when we get ready to go to this plea
10 agreement he said on the transcript without a doubt more
11 than likely we could have beat the marijuana charge but he's
12 not quite sure about the distribution because that tape is
13 clear. If that's the case we should have at least gotten
14 the marijuana charge expunged and it wouldn't have enhanced
15 my sentence in front of the judge that day, he said himself
16 more than likely we could have beat that charge. So if he
17 would have seek to have gotten it expunged from the start we
18 wouldn't have gone from that part.

19 Q. Let's clarify. When you said expunged, do you mean
20 dismissed?

21 A. Dismissed, yes, ma'am.

22 Q. It's your opinion that due to the fact that Mr. Frick
23 actually said that he felt that you all had a good chance in
24 actually getting that charge dismissed and you being found
25 not guilty of those charges but him allowing you to plead to

1 that charge, that was a conflict of interest.

2 A. Yes, ma'am.

3 Q. That he wasn't adequately representing you.

4 A. Yes, ma'am.

5 Q. Now, there was some other things that actually occurred
6 in the brief amount of time that Attorney Frick actually
7 represented you. At one point you actually met with some
8 narcotics agents, didn't you?

9 A. Yes, ma'am.

10 Q. And there was an agreement between you and those
11 narcotics agents, correct?

12 A. Yes, ma'am.

13 Q. As well as the solicitor?

14 A. Yes, ma'am.

15 Q. And was Mr. Frick aware of this agreement?

16 A. Yes, ma'am.

17 Q. Could you tell the Court the substance of this
18 agreement?

19 A. That if I cooperate with the State I would receive a
20 lesser sentence and not be sentenced to a harsher sentence.

21 Q. And let's clean it up a little bit. At the time that
22 you met with the narcotics agents what was the plea deal
23 that was on the table?

24 A. The officer said if I cooperated then I would receive
25 my original sentence which was seven years.

1 Q. You would receive your original plea which was seven
2 years?

3 A. Yes, ma'am.

4 Q. And Mr. Frick was made aware of that?

5 A. Yes, ma'am.

6 Q. And you have some concerns about the fact that
7 Mr. Frick did not make the Court aware of that?

8 A. Yes, ma'am.

9 Q. Could you explain that to the Court?

10 A. I know he had prior knowledge of everything that
11 happened and I feel that he should have at least told the
12 Court how I did my best to cooperate with the State in the
13 investigation but that was never brought up, it was never
14 mentioned.

15 Q. Now, did you cooperate with the narcotics agents?

16 A. Yes, ma'am.

17 Q. What was the substance of your cooperation?

18 A. They were telling me they had knowledge of where the
19 drugs was coming from, they wanted me to make a controlled
20 buy from the people that the drugs was coming from.

21 Q. And did you do that?

22 A. Yes, ma'am.

23 Q. And Mr. Frick was made aware of that?

24 A. Yes, ma'am.

25 Q. Now, there is some other issue brought up as a result

1 to ineffective assistance of counsel. You felt that the
2 appropriate measure was for Mr. Frick to actually try to
3 transfer venue and jurisdiction of your case.

4 A. Yes, ma'am.

5 Q. He did not make that motion?

6 A. No, ma'am.

7 Q. Why did you feel there were jurisdictional issues in
8 this case?

9 A. Because he -- I wind up being prosecuted and
10 represented in front of the same Judge, which was Judge
11 Goldsmith, and I was actually going up in front of Judge
12 Goldsmith, how could you prosecute me in front of him? So I
13 was actually asking for a change of venue at the time and
14 the motion wasn't even heard.

15 Q. Now, at any point did you ask Attorney Frick to do a
16 motion to suppress the drugs?

17 A. Yes, ma'am.

18 Q. Did that happen?

19 A. No, ma'am.

20 Q. And did you discuss any possible strategies or defenses
21 as it relates to your case in going to trial?

22 A. No, ma'am. He said he would get back with me after he
23 viewed the tape, which he never did until May 9th.

24 Q. So it is your opinion that you and Mr. Frick actually
25 viewed the tape together for the first time on May 9th?

1 A. Yes, ma'am.

2 Q. Which was the day of your plea?

3 A. Yes, ma'am.

4 Q. Now, you also made allegations that your plea was not
5 knowingly and voluntarily made. Explain to the Court why
6 you're saying that your plea was not knowingly and
7 voluntarily made.

8 A. It wasn't knowingly and voluntarily made because all
9 they said was, "Well, Mr. Boyd, we'll just give you an open
10 plea this morning." And I was like, "That's the best I can
11 receive?" And they said, "That is the best we can offer you
12 this morning. We're not going to charge you with
13 distribution third," we're just going to give you an open
14 plea, and that's --

15 Q. And if Mr. Frick would have done the motions to
16 suppress the drugs, would you have instead went to trial
17 instead of a plea?

18 A. Yes, ma'am.

19 Q. If Mr. Frick would have viewed the video surveillance
20 with you prior to the date of the plea, would you have been
21 able to make a more informed decision as to whether go to
22 trial or go to plead?

23 A. Yes, ma'am.

24 Q. And are you aware of the fact that the two warrants
25 that -- and the two charges that you're here for today, one

1 occurring on November 10, 2010, which is the possession of
2 marijuana, and then the other one actually occurring in the
3 marijuana is in June 2010 and the crack --

4 A. In 2010, at first the marijuana that was in possession,
5 I have never been caught with it, we wound up changing every
6 one later to a distribution.

7 Q. Okay. And so do you know whether or not it was the
8 State's intention to try to try you on both of these
9 offenses on the same date of your trial or whether to try
10 you in one trial for the PWID marijuana and then have
11 another trial on the PWID crack?

12 A. I was thinking they were wanting to try me the same day
13 for both charges.

14 Q. Did anyone tell you whether or not that was the case?

15 A. No, ma'am.

16 Q. So when the judge told you on April 4th to come back in
17 30 days and be ready for trial, what case did you think you
18 were going to trial on?

19 A. I actually thought that the drug charge was going to
20 come up first, that's the tape he showed me, he never showed
21 me a tape of marijuana.

22 Q. So it's your opinion that a PWID crack charge was going
23 to come up first?

24 A. Yes, ma'am.

25 Q. And the State is going to charge you on that case in a

1 trial?

2 A. Yes, ma'am.

3 Q. And then depending on the outcome of that case that the
4 State would charge you on the PWID marijuana?

5 A. Yes, ma'am.

6 Q. Now, as it relates to your petition for the post
7 conviction relief, Mr. Boyd, is there anything else that you
8 would like for this Court to know?

9 A. I feel that Mr. Frick was at least biased towards me
10 after knowingly trying me on the marijuana charge after the
11 next one. I feel there's no way he could be impartial to me
12 knowing that he convicted me of a charge and turned around
13 representing me on the same case now.

14 Q. And so is that your assessment that he prejudiced you
15 in this matter?

16 A. Yes, ma'am, I really do.

17 Q. And as a result of that prejudice you got convicted of
18 this offense?

19 A. Yes, ma'am. I feel that he did not do as much as he
20 possibly could to exonerate me from these charges.

21 Q. Did he do an investigation?

22 A. No, ma'am, not to my knowledge.

23 Q. And after you were sentenced did you ask Mr. Frick to
24 actually appeal the guilty plea?

25 A. Yes, ma'am. I made a request for him to come to the

1 jailhouse to see me and he said he wasn't going to be able
2 to come.

3 Q. So was there an appeal actually filed in your case?

4 A. No, ma'am.

5 Q. But it is your statement that you asked Mr. Frick to --

6 A. Yes, ma'am. He told me I could not appeal a guilty
7 plea.

8 MS. SINGLETARY: Your Honor, I have no further
9 questions for this witness.

10 THE COURT: Cross examination.

11 MS. WHITE: Just briefly, Your Honor.

12 CROSS EXAMINATION

13 BY MS. WHITE:

14 Q. Mr. Boyd, you went before the Court and they went over
15 with you several things. In fact, they went over the facts
16 of the case, isn't that right, where they talked about the
17 actual videos and the buys of marijuana and crack and you
18 agreed with the facts.

19 A. But they didn't. I don't remember them going over the
20 facts of this in general sessions. No.

21 Q. Okay. So if the transcript reflects on your plea the
22 prosecutor talked about the fact that November 10, 2010,
23 informant went to a laundry mat, made contact with you,
24 purchased \$10 of marijuana. Again, December 10th, went to
25 an area, a house on Douglas Road, and purchased \$20 of crack

1 cocaine, both on video. Do you recall them telling the
2 Court that?

3 A. Yes, ma'am.

4 Q. Okay. Do you recall the Judge asking if you agreed
5 with the facts and you said, yes, sir, that was what had
6 happened, that you were guilty of both charges?

7 A. Well, it -- yes, ma'am. It varied, yes, ma'am.

8 Q. The Judge also asked you if you had plenty of time to
9 meet with your attorney, if you were satisfied with his
10 services and if he had answered all of your questions and
11 you told the Court that you were and that everything was
12 fine with them; is that correct?

13 A. Yes. That was before we gave our closing statements
14 and I was -- really think that Mr. Frick was at least going
15 to tell the Judge about how I tried to cooperate with the
16 State, and --

17 Q. But at the time you were aware that he had previously
18 prosecuted your charges.

19 A. Yes, ma'am. Once I was appointed a public defender I
20 had no knowledge of how to go around asking for another
21 attorney. I asked him for another attorney and he was like,
22 well, he had been appointed to me and he was like I may get
23 appointed another attorney and I may not and may have to
24 represent myself, and I was in no position to represent
25 myself.

1 Q. So you didn't feel like it was the time to tell the
2 Judge it was a conflict between you and Mr. Frick?

3 A. It was going on so fast, this charge was only four
4 months old, I didn't have time to point my feet in the right
5 direction and trying to remember everything to say to the
6 Judge.

7 Q. And Mr. Frick spoke on your behalf at the plea, right?

8 A. Mr. Frick?

9 Q. You said he didn't describe the help you had tried to
10 give but he did speak on your behalf, didn't he?

11 A. He spoke that he remembered me from high school and he
12 didn't say nothing about he feel that I have a drug problem
13 and how drugs have ruined my life, he didn't say nothing
14 about that. All he said is he just remembered me from high
15 school.

16 Q. And he did tell the Court that you were doing this
17 mainly to feed your own habit, that you weren't the big fish
18 though, didn't he?

19 A. I don't think so, no, ma'am.

20 Q. If the transcript reflects that he said -- he talked
21 about the high school and how you ran track and how the
22 potential for scholarships, that he talked about drug cases
23 and he said, "He's the one that ends up getting punished, he
24 did wrong, he's not the big fish, he's one of the guys out
25 there selling a couple of rocks out there mainly to feed the

1 habit."

2 A. No, ma'am, I don't.

3 Q. Would you agree if the transcript reflects that that he
4 probably did say that?

5 A. If the transcript said it I will agree.

6 Q. Okay. And he also talked with the Judge about the fact
7 that he understood that you could have something hanging
8 over your head if you got probation and he actually asked
9 you -- asked the Court for mercy and had you speak to the
10 Court; isn't that right?

11 A. I mean, you said two different things. You said --

12 Q. He asked the Court at one point to give you mercy in
13 sentencing.

14 A. I don't think so.

15 Q. Okay. And the transcript reflects he said, "Mr. Boyd
16 may not deserve the mercy I'm asking for but I'm certainly
17 asking you because I know him personally."

18 A. See, that's one more thing he said, "I don't think he
19 deserves mercy," and he's the prosecutor and -- that's my
20 attorney, I don't think he should have said that, whether I
21 deserve mercy or not. I feel it's his job to at least
22 persuade the Judge for mercy.

23 Q. And then he did have you speak to the Court and you
24 actually explained to the Court that you hadn't sold drugs
25 in two and a half years but you got those two times because

1 somebody called you; is that right?

2 A. Ma'am?

3 Q. That you had not sold drugs for over two and a half
4 years but those two instances someone had called you.

5 A. Also states on the record where the guy walked with me
6 and asked him -- I told him I didn't have any drugs and he
7 said, "Well, do you know anybody I can get it from?" And
8 that he came to me three or four times that month without me
9 even selling him no drugs and I told him no two or three
10 times, and he just --

11 Q. I'm sorry?

12 A. And at this one time I was just somebody that sold
13 drugs and at that time I did get it from them.

14 Q. Your attorney did note for the Court he had seen the
15 videos and it was pretty clear in particular about the
16 crack; is that correct?

17 A. You say pretty clear about the fact, yes, but the
18 marijuana -- what he said about the marijuana?

19 Q. And the distribution of crack was your third offense
20 where you were facing a pretty substantial amount of time;
21 is that right?

22 A. Yes, ma'am. He never told me it was enhanced that
23 third offense because of my prior possession. I never had a
24 distribution before, I had a possession, and he did give --
25 with the marijuana, he said we could beat that charge.

1 Q. All right. And you didn't raise to the Court anything,
2 you didn't mention anything about the fact that you thought
3 you had cooperated and there should have been another plea
4 offer.

5 A. I was thinking that was part of my attorney to bring to
6 the Court.

7 MS. WHITE: All right. That's all I have at this time,
8 Your Honor.

9 THE COURT: Redirect?

10 MS. SINGLETARY: No further questions, Your Honor.

11 THE COURT: All right. Thank you, Mr. Boyd. All
12 right, you may call your next witness, Ms. Singletary.

13 MS. SINGLETARY: We have no further witnesses at this
14 time, Your Honor.

15 THE COURT: Okay. Ms. White?

16 MS. WHITE: Thank you, Your Honor. We would call
17 William Frick to the stand.

18 The witness, WILLIAM FRICK, was first duly
19 sworn and testified as follows, on:

20 DIRECT EXAMINATION

21 BY MS. WHITE:

22 Q. State your name for the record.

23 A. William Frick, F-r-i-c-k.

24 Q. And Mr. Frick, obviously we've heard that you
25 represented Mr. Boyd. Did you have any discussions with him

1 about this prior relationship?

2 A. I did. Just so we're clear, I was the prosecutor in
3 Fairfield County from 2005 to 2006, I spent a year there.
4 It is not uncommon for me now to see folks in general
5 sessions court that are represented by our office that I
6 prosecuted, generally I ask them do they have any issue with
7 that. I recall seeing Mr. Boyd at roll call and asking him
8 that, I received no indication that he had any issue with me
9 representing him.

10 Q. And if you had had an indication from him or if he had
11 said he really didn't feel comfortable with you representing
12 him would you have?

13 A. We would have dealt with that. There's another
14 attorney who works with me in Fairfield and we have other
15 attorneys in our circuit office that handle conflict cases
16 such as that. Generally if any issue comes up at any point
17 we can deal with that.

18 Q. And in regards to the timing in this one, he was
19 arrested following November and December 2010 charges and
20 pled guilty in May of 2011, mentioned a first meeting in
21 April. Do you recall meeting with him and talking with him
22 about an initial plea offer?

23 A. Like I said, I recall seeing him at a roll call. Of
24 course, these are -- we're a little informal in Fairfield,
25 when you come to your first roll call we don't have a lot of

1 information in this case, the solicitor likely has some type
2 of plea offer but we don't know a heck of a lot about it.
3 Sometimes we look at a case, we know enough about it, we
4 talk about whether you should do that at first appearance or
5 second appearance, I believe Mr. Boyd's was one of those
6 like every CI buy was, difficult for me to give you an
7 educated analysis of your case until I know what the video
8 shows. We are one of those jurisdictions in Fairfield that
9 the jury has got to see a hand to hand transaction or you're
10 probably not going to get convicted, and if you're not going
11 to get convicted I'm certainly not going to ask you to plead
12 to something that carries as much time that Mr. Boyd is
13 looking at. So I know when we had that first conversation
14 at roll call I didn't have that information. His case
15 clearly was moving quickly, quicker than I would have liked
16 it quite frankly, but it is a CI buy, it wasn't terribly
17 complicated. This is one that I knew that narcotics
18 officers were interested in pursuing, the solicitor had
19 related to me they were interested in pursuing when he came
20 to court in April. I can't say that I had seen the video
21 that day when we had that roll call but I did convey to him
22 that the solicitor had put it on the trial list. I think it
23 was a second appearance, I think they were ready to try him
24 right after the second appearance which is very fast but
25 within the scheduling order they're allowed to do that. I

1 conveyed to him what I knew the offer to be, the knowledge I
2 had about the case and likely told him that I hadn't seen
3 the video yet, I know that I saw it after that roll call.
4 Went over to the narcotics office, viewed that video, the
5 marijuana videos and probably some other ones that I had on
6 the trial list for that day.

7 Q. And in reviewing that -- and you talked about it on the
8 record -- after reviewing that did you feel like perhaps a
9 plea was in Mr. Boyd's best interest?

10 A. I will tell you on the marijuana I can't -- I'm not
11 going to argue, maybe I did tell him we could beat those, I
12 doubt that's exactly what we said, I said "Perhaps you can
13 beat those." I generally try to not corner myself like that
14 but I'm not going to dispute it, our problem was the
15 distribution of crack case. It was quite clear this was one
16 of those cases where they had these handy dandy new cameras
17 that's got the video from two points of view, they actually
18 wire the CI with two cameras, it was quite clear that
19 Mr. Boyd was distributing crack cocaine in that video. So
20 yes, I thought it was clearly in his best interest to plead
21 particularly since the solicitor was going to try him and he
22 would be sentenced as a third offense.

23 Q. That was my question. In regard to a third offense
24 Mr. Boyd has testified that he had no idea that he could be
25 sentenced for a third offense on this that you didn't

1 explain anything about the enhancement statute.

2 A. I'm certain we had that conversation because it's
3 something that quite commonly comes up. Someone looks at a
4 warrant or indictment and they charged me with distribution
5 third, I've never had a prior distribution to which I have
6 already explained and I think at the time of this occurrence
7 it's still under the old statute where the possession did
8 count. Unfortunately I think if Mr. Boyd were prosecuted
9 today the result could be different, at the time the law did
10 apply and the possession did count. So I explained to him
11 all drug offenses prior to that offense count and that's why
12 we were talking about going to trial on a third offense.

13 Q. And to your understanding were they going to prosecute
14 the charges separately or in a joint trial or did you really
15 know at that time?

16 A. We didn't really have any specific conversation. Like
17 I said, my biggest concern -- and I think Mr. Boyd's
18 rightfully biggest concern was the distribution of crack
19 third offense. Whether the solicitor would have prosecuted
20 the marijuana case afterwards I don't know. Could he?
21 Certainly. And I certainly would have expected it would
22 have been the crack trial and then the marijuana, I don't
23 think they could have tried them together, and if they had
24 we certainly would have moved for it to be severed because
25 they were separate events.

1 Q. In regards to his cooperation with narcotics or the
2 State, he has testified that he did cooperate with them and
3 was supposed to receive a lesser plea. Do you recall any
4 conversations or any discussions about that?

5 A. I do but it didn't come from Mr. Boyd. I was told by
6 the solicitor that Mr. Boyd showed up at the narcotics
7 office in Fairfield County to talk to the narcotics officer,
8 Jeremy Ashford. I then talked to Investigator Ashford
9 myself and he said that Mr. Boyd had gone out there to ask
10 him could he help. I was never told that he cooperated. In
11 fact, I believe I was told he was supposed to show up on a
12 certain day and he didn't, that was the information that was
13 related to me. Mr. Boyd did not communicate to me that he'd
14 attempted or had actually cooperated and I saw no indication
15 that he had.

16 Q. And generally in your practice have you had that
17 situation come up before where someone has assisted
18 narcotics in cooperation for a better plea?

19 A. Absolutely, happens all of the time.

20 Q. Is that something that you generally discuss with both
21 the clients sometimes and the agents for the State?

22 A. I much prefer they tell me they're going to go do that
23 before they go show up at the narcotics office, yes.

24 Q. And was there any discussion, did he ever ask you to
25 try to move venue jurisdiction so he didn't have to plead in

1 front of Judge Goldsmith again?

2 A. I don't remember that specifically but I don't doubt
3 that, that's not an unusual situation. And I think I do
4 recall he had some issue with perhaps Judge Goldsmith being
5 the judge in this case. I told him there was really no
6 motion we could make in that, a change in venue motion,
7 that's not what he was searching for. He wanted the judge
8 to recuse himself, we did not feel -- there were no grounds
9 to be necessary -- if Judge Goldsmith recused himself then I
10 don't know who would hear cases in the Sixth Circuit.

11 Q. And in regards to a motion to suppress the evidence, he
12 stated that he asked you to do that. Is that something you
13 generally do prior to trials or guilty pleas, or how does
14 that work?

15 A. We don't really have a motion docket so you have
16 suppression motions when the trial is actually called.
17 Would that we did have a motions docket, we just don't.
18 This was a CI buy. I saw the chain of custody, I did not
19 see where anything could have been suppressed, so no, I did
20 not file a motion.

21 Q. In regards to the request to appeal, do you recall
22 speaking with him about how to appeal a guilty plea or
23 whether or not he had anything to appeal?

24 A. I believe it's in the plea colloquy, I think Judge
25 Goldsmith tells him he has got ten days to appeal. My

1 general practice on that -- because the rule on guilty plea
2 appeals has been so viscerated it's useless. If someone
3 asks me should they appeal I generally tell them it's not
4 worth their time, it simply delays their PCR if that's what
5 they're interested in. If they ask me to I will do it. We
6 did not have any conversation after the plea, he did not
7 tell me, "Mr. Frick, I want you to appeal this," and I
8 received no letter from him.

9 Q. If he had asked you to file it would you have filed a
10 notice to appeal?

11 A. I would have filed a notice to appeal, yes, ma'am.

12 MS. WHITE: Nothing further.

13 THE COURT: Cross examination.

14 MS. SINGLETARY: Thank you, Your Honor. If it pleases
15 the Court?

16 CROSS EXAMINATION

17 Q. Attorney Frick, at any point did you ever speak to any
18 of Mr. Boyd's family members?

19 A. Yes. I remember one day -- I can't remember whether it
20 was the April day or whether it was the May day -- I recall
21 Mr. Boyd wanted to speak to me. What we generally do is we
22 go back and go to the jury room off of the courtroom, that's
23 about as private a conversation as you can get up to the
24 courthouse. We were back in that room, and I can't remember
25 if he had his cellphone or he used mine, I honestly can't,

1 but there was a cellphone call that Mr. Boyd made and he
2 then handed me the cellphone and said there was somebody I
3 needed to talk to, didn't have a clue who it was. The
4 person indicated to me that they were his sister and we had
5 a conversation.

6 Q. Now, do you remember the extent of that conversation?
7 I know it was some time ago.

8 A. I recall pretty well what the conversation was about.
9 I was not very friendly in that conversation, I will be
10 quite honest with you. His sister -- and I apologize, I
11 don't recall her name -- indicated to me she was a
12 Greenville police officer or some law enforcement person in
13 Greenville County. She told me without any information that
14 I had that she had any information of the case, that there
15 was no way that they could convict Mr. Boyd of this offense.
16 And she indicated exactly what Mr. Boyd is indicating here
17 today, I should recuse myself because I had prosecuting him
18 previously and I wasn't doing a good job. She also
19 indicated that the video was not sufficient to convict him
20 at which case I did inquire as to how many trials she had
21 had in Fairfield County, which is probably a little rude.
22 But she had not to my knowledge seen the video and I did not
23 really appreciate the ambush that I was getting on this.
24 Q. And at that point that you spoke to Mr. Boyd's sister,
25 had you seen the video yet?

1 A. Yes, ma'am.

2 Q. And at that point had Mr. Boyd seen the video yet?

3 A. I don't know, honestly I don't know. I do know at some
4 point we did view the video together. Because the day of
5 the plea when I walked into that courthouse I was fully
6 expecting to pick a jury on this case, when we viewed the
7 video Mr. Boyd then told me he wanted to plead guilty. So
8 he certainly saw enough on the video to indicate to me he
9 wanted to plead guilty which is what I had told him was my
10 advice. But as of walking in the courthouse that day I was
11 fully prepared to pick 12.

12 Q. So it's your testimony that throughout the weekend you
13 were intending on going to trial, you were prepping on going
14 to trial on Mr. Boyd's case?

15 A. Yes.

16 Q. And let me ask you this: How many times did you meet
17 with Mr. Boyd to review his case or go over the discovery?

18 A. Two times at the courthouse if I recall correctly. We
19 spoke about him meeting with me, he did not appear in my
20 office, he did not make any phone calls to my office. I
21 will tell you that I work part-time in Winnsboro and
22 part-time in Lancaster so I am back and forth a pretty good
23 bit. We have an answering machine, Mr. Boyd never left a
24 message on the public defender's office answering machine, I
25 was never conveyed a message by any coworker. We don't have

1 a support staff so it's just the two of us and the answering
2 machine. But I do have a message pad that folks are aware
3 of and they write their name and number, Mr. Boyd left no
4 message on our pad.

5 Q. Let me ask you this: Say for instance if Mr. Boyd was
6 to call the clerk of court looking for you, Mr. Frick, would
7 that message get to you from the clerk of court?

8 A. Generally it does or they will give that person the
9 public defender's phone number. I even have folks who call
10 the Fairfield County government direct line, there is one of
11 those information lines, goes to a switch board and they
12 transfer the calls to our office. So yes, if you call the
13 clerk of court or Fairfield County government they generally
14 get it to my office.

15 Q. And let me ask you this: How long prior to the plea
16 did you have to meet with Mr. Boyd to discuss the likelihood
17 of evidence being suppressed in this case?

18 A. I didn't see where any evidence was going to be
19 suppressed. It was a CI buy, they've got the CI wired up,
20 they go to the buy location where this was making the
21 transaction, go back to the meet location, then the evidence
22 is submitted to SLED. I saw the chain of custody, I did not
23 see where there were any issues with the chain. I did not
24 see where anything was going to get suppressed.

25 Q. And did you not think that it was a conflict of

1 interest for you to be representing Mr. Boyd once given the
2 fact that you prosecuted him back in 2005?

3 A. No.

4 Q. And as it relates to Mr. Boyd actually meeting with
5 narcotics, it was your testimony that you never received
6 information from Mr. Boyd or any of the agents informing you
7 of Mr. Boyd's actions?

8 A. Not from Mr. Boyd. I had a conversation with the chief
9 investigator and he told me Mr. Boyd had come to his office
10 and they had a conversation is what I was told.

11 Q. How did you actually explain to Mr. Boyd the
12 enhancement statute?

13 A. I don't recall specifically, but generally what is --
14 someone will come in -- quite commonly all of the time I get
15 someone that says, well, they're charging me with
16 distribution or PWID or whatever second or third offense and
17 I ain't had one of these before. And I have to explain it
18 doesn't matter if you had one of these, it's whether you had
19 a prior drug conviction. I was quite aware that Mr. Boyd
20 had had a second offense as has been pointed out, I was the
21 one who handled the prosecution of that case. There was an
22 underlying charge on that and I knew we were looking at a
23 third offense.

24 Q. Is it your opinion that it was a conflict for you to
25 actually represent Mr. Boyd in front of the same judge that

1 you prosecuted him in front of?

2 A. No.

3 Q. Considering the fact that you asked for the mercy
4 before the Court in Mr. Boyd's case, is it your opinion
5 that -- your personal opinion that the sentence that he got
6 was excessive considering the fact that on the record you
7 stated that Mr. Boyd really was supporting his habit instead
8 of being a big fish?

9 A. Yeah. I think that's what we do for Mr. Boyd and in a
10 lot of situations, unfortunately it's within the sentencing
11 guidelines we have, I don't personally agree with that but
12 it is the law. Yes. I think from what Mr. Boyd had gone
13 through, from what he has done he has got more time than he
14 probably deserves, but it is a legal sentence.

15 MS. SINGLETARY: Your Honor, I have no further
16 questions.

17 MS. WHITE: The State has nothing further, Your Honor.
18 And the State has no other witnesses, Your Honor.

19 THE COURT: Any arguments either side wishes to
20 present?

21 MS. SINGLETARY: Your Honor, we would just respectfully
22 ask that you consider granting Mr. Boyd's PCR based on the
23 fact of ineffective assistance of counsel. This is a case
24 in which the attorney has actually stated that the
25 prosecution fast-tracked this case, that he only had two

1 opportunities to actually meet with Mr. Boyd, and as a
2 result of those actions and inactions that Mr. Boyd was
3 actually prejudiced and in essence he received an excessive
4 sentence, Your Honor.

5 THE COURT: Thank you. Ms. White?

6 MS. WHITE: Thank you. Your Honor, the State would
7 argue that Mr. Boyd has not met his burden of proof in this
8 case and that there's no indication that he would have
9 proceeded to trial based on any allegations of deficiencies
10 of Mr. Frick. In fact, as Mr. Frick testified after seeing
11 the video Mr. Boyd himself requested to plead guilty. He
12 may not have received a sentence that he wanted, however I
13 think it's clear he pled freely and voluntarily based upon
14 his review of the information and review of the video and
15 advice of counsel, and I don't think there's any burden
16 that's been met, alleged conflict of interest or any
17 deficient representation that would have prejudiced
18 Mr. Boyd. We would ask that you deny the application.

19 THE COURT: Is there any authority on -- I recall
20 reading some time ago, is there any authority on a former
21 solicitor representing defendants and whether that does
22 become an issue?

23 MS. WHITE: Mr. Frick says that there is, Your Honor.
24 This is one of the first cases I have had so I don't have
25 one in my mind at this point. I definitely -- this is not

1 something that's very common but I will be happy to look it
2 up and see if we do have anything.

3 THE COURT: Yeah, if you could do that. And
4 Ms. Singletary, I will give you five days to respond to
5 whatever Ms. White sends in.

6 MS. SINGLETARY: Thank you, Your Honor.

7 THE COURT: Thank you very much for your presentation,
8 I will take it under advisement.

9 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in Court of Common Pleas for
7 Fairfield County, South Carolina, on the 30th day of July,
8 2012.

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

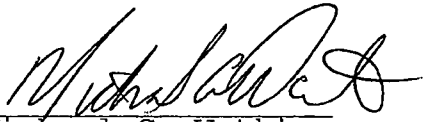
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January 2, 2012

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Michael C. Watkins
Court Reporter.

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STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Sherman Boyd # 252465,

Applicant,

v.

State of South Carolina,

Respondent.

2012 SEP 27 4:11:39
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2012-CP-20-0057

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 2, 2012. The Respondent made its Return on or about June 25, 2012. An evidentiary hearing into the matter was convened on July 30, 2012, at the Lancaster County Courthouse. The Applicant was present and represented by Nicole L. Singletary, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. William P. Frick, Esquire, was also present and testified. This Court also had before it a copy of the records of the Fairfield County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. The Applicant was indicted at the March 2011 term of the Fairfield County Grand Jury for distribution of crack cocaine (2011-GS-20-072) and distribution of marijuana (2011-GS-20-073). The Applicant was

represented by William P. Frick, Esquire. On May 9, 2011, the Applicant pled guilty as indicted to distribution of marijuana and pled guilty to the lesser included offense of distribution of crack cocaine, second offense. He was sentenced by the Honorable Brooks P. Goldsmith to confinement for a period of twelve (12) years for distribution of crack cocaine, second offense, and five (5) years for distribution of marijuana, to run concurrent. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

In the current application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

- 1. Ineffective Assistance of Counsel;
 - a. Counsel had a conflict of interest because he had formerly prosecuted the Applicant on charges in 2005.
- 2. Involuntary Guilty Plea; and
- 3. Lack of Subject Matter Jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of

the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625; *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

The Applicant alleged that Counsel was ineffective because Counsel had previously prosecuted the Applicant on drug charges in 2005 when Counsel was employed by the Sixth Circuit Solicitor's office. Applicant testified that he asked Counsel if there was a conflict of interest when Applicant realized who Counsel was. Applicant also testified that he requested another attorney on April 4, 2011, which was the first time Applicant met with Counsel. However, Applicant testified that Counsel came to him that day with a plea off of seven years even though Applicant had not reviewed the video tapes or any other discovery. Counsel

informed Applicant that the Solicitor's office would withdraw the offer of seven years if Applicant insisted on seeing the video tape evidence. Applicant did acknowledge that he saw the video tape prior to his plea. Applicant also alleged that he spoke with the Solicitor's office and a narcotics agent about cooperating with them to receive the original plea offer of seven years. However, Applicant testified that Counsel failed to inform the court of Applicant's cooperation and the controlled buy he assisted in. Applicant also testified that Counsel never explained to Applicant why he was being charged with a third offense, nor did Counsel explain the enhancement statute.

Counsel testified that when he met with the Applicant first at a roll call and discussed with Applicant the fact that Counsel had previously worked for the solicitor's office and prosecuted Applicant. Counsel testified that he did not believe that a conflict of interest existed. Counsel testified that it did not appear to be a problem and if it had, Counsel would have dealt with it by filing a motion. Counsel also testified that the case had been placed on the trial list, but neither Counsel nor Applicant had even seen the video tape discovery yet. However, Counsel testified that following the first roll call, he viewed the video. Counsel testified that the buy of the crack appeared to be clean, although he thought the marijuana case was weak. Finally, Counsel testified that he was only told of Applicant's attempt to cooperate after the fact and was informed by the police that Applicant actually did not cooperate. Counsel also testified that he was certain he had the conversation with Applicant about the enhancement because of the fact that Applicant was at risk of a substantial sentence because this would be his third offense.

Applicant testified that Counsel failed to investigate and failed to hire an expert in an effort to attack the charges. Applicant testified that had Counsel investigated, Applicant felt that the marijuana charge would have been dismissed. Applicant also testified that he asked Counsel

to make a motion to suppress the drugs, but it was never done. Applicant testified that he would have proceeded to trial on the day of his plea if Counsel had made a motion to suppress the drugs. Applicant also testified that he believed that Counsel should have made a motion for a change of venue or jurisdiction since Applicant had to plead before Judge Goldsmith and Goldsmith had previously sentenced Applicant on drug charges.

Counsel testified that he saw no reason to hire an expert for this case and reviewed the discovery in preparation for trial. Counsel testified that he saw no opportunity for a motion to suppress based on the video of the confidential information buy to be successful. In addition, there is no motions docket, and so any motion would have to have been made just prior to trial. Counsel also testified that he saw no grounds to ask for Judge Goldsmith to either recuse himself or to make a motion for change of venue.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

This Court finds that the Applicant has failed to establish that Counsel was ineffective

with investigating and preparing for this matter. Counsel noted that he reviewed the discovery materials with the Applicant, and discussed his options. The Applicant failed to demonstrate any additional evidence that could have been discovered had there been additional investigation. Additionally, this Court finds that the number of meetings held with the Applicant by Counsel did not prejudice the Applicant.

As to the Applicant's allegation that Counsel was ineffective for failing to hire an expert, this Court finds that the Applicant has failed to meet his burden of proof. Prejudice from counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The Applicant failed to offer any testimony or evidence as to what benefit an expert would have been in this matter.

This Court also finds that the Applicant has failed to meet his burden of proof in demonstrating that Counsel was ineffective for failing to make motions for a change of venue, to suppress the drugs, or for other counsel because of an alleged conflict of interest. First, this Court finds the allegation that Applicant requested to have alternate counsel appointed lacks merit based on testimony and review of the record. The Applicant failed to show that Counsel had any divided loyalties or an actual conflict of interest. State v. Childers, 373 S.C. 367, 645

S.E.2d 233 (2007). This Court finds that Counsel is an experienced attorney who was prepared for a trial had the Applicant chosen to proceed with a trial and would have made the appropriate motions at that time. This Court finds that the Applicant failed to meet his burden of proof that Counsel was ineffective for failing to make motions for new counsel, change of venue, or suppression of evidence. Therefore, these claims are denied and dismissed.

Involuntary Guilty Plea

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to

trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Applicant testified that a hearing was held, at which time Counsel requested and was granted a continuance, but the court informed Applicant and Counsel that Applicant needed to either be prepared for trial to proceed in thirty days or be ready to plead guilty. Applicant testified that he never met with Counsel during that thirty day period.

Counsel testified that he met with the Applicant twice at the courthouse, but the Applicant never left any messages for Counsel or attempted to make an appointment to see him before the plea. Counsel also testified that although he was prepared for trial, after showing the Applicant the video tape of the buys, the Applicant asked to plead guilty.

This Court finds that this allegation is conclusively refuted by the record. This Court further finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). This Court finds Counsel's testimony to be more credible than the Applicant's. This Court finds that the Applicant has failed to meet his burden of proof as to his claim of an involuntary guilty plea; therefore, this claim is denied and dismissed.

Lack of Subject Matter Jurisdiction

The Applicant also claimed in his application that the court lacked subject matter jurisdiction. However, the Applicant failed to offer any testimony or evidence in support of this claim. Therefore, this Court finds that the Applicant has failed to meet his burden of proof and the claim is denied and dismissed.

Summary

This Court finds counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

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

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 19th day of September, 2012.



D. Garrison Hill
Presiding Judge

WITNESSES

Cooper-FCSO

Sparks

ARREST WARRANT NUMBER/DOA

M400939 (DOA-01-13-11)

ACTION OF GRAND JURY

TRUE BILL

3/29/2011

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

MARCH TERM 2011

THE STATE

vs.

Sherman Boyd

Indictment for

Distribution of Marijuana

SC Code: § 44-53-370(a)(1), (b)(2)

CDR Code: 0186

Class: Felony, F

2011 MAR 29 P 12:34

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

STATE OF SOUTH CAROLINA)

INDICTMENT


COUNTY OF FAIRFIELD)

At a Court of General Sessions, convened on March 29, 2011, the Grand Jurors of Fairfield County present upon their oath:

DISTRIBUTION OF MARIJUANA

That Sherman Boyd did in Fairfield County on or about November 10, 2010, distribute, dispense, or deliver marijuana, a controlled substance in violation of § 44-53-370(a)(1), (b)(2), Code of Laws of South Carolina, (1976), as amended.

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



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Ashford-FCSO

Sparks

ARREST WARRANT NUMBER/DOA

M400913 (DOA-12-21-10)

ACTION OF GRAND JURY

TRUE BILL

3/29/2011

Diana Winkler

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-20-072

The State of South Carolina

County of Fairfield

2011 MAR 29 P 12:34

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

COURT OF GENERAL SESSIONS

MARCH TERM 2011

THE STATE

vs.

Sherman Boyd

Indictment for

Distribution of Cocaine Base

SC Code: § 44-53-375(B)

CDR Code: 3014

Class: Felony, D

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

INDICTMENT


85

At a Court of General Sessions, convened on March 29, 2011, the Grand Jurors of
Fairfield County present upon their oath:

DISTRIBUTION OF COCAINE BASE

That Sherman Boyd did in Fairfield County on or about December 10, 2010,
distribute, dispense, deliver, or purchase cocaine base, in violation of § 44-53-375(B),
Code of Laws of South Carolina, (1976), as amended.

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



Douglas A. Barfield, Jr., SOLICITOR