

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Edgefield County

Edward W. Miller, Circuit Court Judge

---

RECEIVED

MAY 31 2012

S.C. Supreme Court

MICHAEL NORRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

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STATE OF SOUTH CAROLINA )

COUNTY OF EDGEFIELD )

COURT OF GENERAL SESSIONS  
09-CP-19-00236

THE STATE )

vs. )

MICHAEL NORRIS )

TRANSCRIPT OF RECORD

August 3, 2009  
Edgefield, South Carolina

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

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

ERVIN MAY, ASSISTANT SOLICITOR  
Attorney for the State

NORMAN STAPLES WOOD, ESQ.  
Attorney for the Defendant

PRISCILLA NAY  
Official Court Reporter

I N D E X   O F   W I T N E S S E S

NONE

E X H I B I T S

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

NONE

1 THE SOLICITOR: 2009-GS-19-236, State versus Michael  
2 Norris. He has indicated a willingness to enter a guilty  
3 plea. He has two convictions subjecting him to a third  
4 offense but pursuant to negotiations he is pleading guilty  
5 to possession of crack cocaine, second offense, to a  
6 ten-year sentence and I am dismissing all other charges he  
7 has pending, resolving everything he has pending in  
8 Edgefield County.

9 THE COURT: Mr. Norris, I placed you under oath a  
10 little while ago. You're still under oath. Do you  
11 understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I need you to come up closer to the  
14 microphone because that lady has to take down everything  
15 you say. Have you and Mr. Woods been able to resolve your  
16 differences?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: This indictment charges in Edgefield on  
19 or about July 7, 2008 you knowingly, intentionally  
20 distributed to a confidential informant working with the  
21 Edgefield County Sheriff's Department a quantity of crack  
22 cocaine in violation of the law. Upon your arraignment it  
23 appears you wish to plead guilty to distribution of crack  
24 cocaine as a second drug offense; is that right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you explained to your client the  
2 nature and elements of the offense, the possible  
3 punishment, and his constitutional rights including his  
4 right to a trial by jury.

5 MR. WOOD: Yes, Your Honor.

6 THE COURT: You agree there is a factual basis for  
7 his plea?

8 MR. WOOD: Yes.

9 THE COURT: You agree with his decision?

10 MR. WOOD: Yes.

11 THE COURT: You under the influence of any alcohol or  
12 drug or anything that affects your thinking?

13 THE DEFENDANT: No, sir.

14 THE COURT: You suffer from physical or mental  
15 condition that affects your thinking?

16 THE DEFENDANT: Physical condition.

17 THE COURT: It affects your thinking?

18 THE DEFENDANT: No, sir.

19 THE COURT: What you told me about earlier about your  
20 spine?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: But you think clearly?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So you feel like you're clear-headed  
25 today and know what you're doing?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: When you plead guilty you give up very  
3 important rights including your right to remain silent and  
4 your right to a jury trial; you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you wanted a jury trial you would be  
7 presumed innocent and the State has to prove you guilty  
8 beyond a reasonable doubt to convict you. You get to see,  
9 hear, and have your lawyer cross-examine all the witnesses  
10 against you; do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: By pleading guilty you give up all those  
13 rights and defenses and challenges to evidence and admit  
14 this charge is true; you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You want a jury trial?

17 THE DEFENDANT: No, sir.

18 THE COURT: Listen to the State.

19 THE SOLICITOR: May it please the Court. Your Honor,  
20 on the dates and times indicated in the indictment in this  
21 case, the defendant distributed a quantity of crack  
22 cocaine to a C.I. that was working under the control of  
23 the Edgefield County Sherrif's Office and it did occur  
24 here in Edgefield County, a twenty-dollar buy and he does  
25 have two previous convictions that would subject this to

1 actually being a third offense. But pursuant to plea  
2 agreement he is pleading to second offense to put us in  
3 the permissible sentencing range for our negotiations.  
4 The buy was videotaped. He has seen the -- the defense  
5 has been provided with a copy of the videotape. You can  
6 clearly see him on it. We printed stills of him and the  
7 defense has been provided with a copy of the videotape.  
8 Officers took possession of the substance they believed to  
9 be crack cocaine. It was tested by the South Carolina Law  
10 Enforcement Division and did test positive to be crack  
11 cocaine.

12 THE COURT: All right. Mr. Norris, you admit you're  
13 guilty of this charge?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You admit it is at least your second  
16 offense?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has anybody forced you, threatened you,  
19 coerced you in any way to get you to plead against your  
20 will?

21 THE DEFENDANT: No, sir.

22 THE COURT: Any plea bargains the State had made with  
23 you they've got to tell me about so if they promised you  
24 anything about dropping charges, reducing charges, or  
25 recommending sentences, anything like that, they would

1 have to tell me about it. That lady has to take it down  
2 and you lose what they don't say, you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. So is it a negotiated  
5 ten-year sentence on this charge or are y'all dropping  
6 those other charges?

7 THE SOLICITOR: I am nolle-prossing. It cleans the  
8 State for him in Edgefield. He has previously indicated  
9 he had complaints against me personally and the sheriff's  
10 office in this case involving our handling of this case.  
11 I would like for the court to specifically inquire if he  
12 is satisfied or has any complaints about the way his case  
13 has been handled either by me personally or the Edgefield  
14 County Sheriff's Office.

15 THE COURT: All right. I've got to cover that with  
16 everybody I think but I haven't gotten that far yet.  
17 Mr. Norris, other than -- Mr. Woods, is everything on the  
18 record represented in the negotiations?

19 MR. WOOD: Yes, Your Honor.

20 THE COURT: Other than what's on the record,  
21 Mr. Norris, has anybody promised you anything to get you  
22 to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you fully satisfied with your  
25 attorney now?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Is there anything else you want him to do  
3 on the case he hasn't done?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you have any complaints of any kind  
6 against anybody who dealt with your case?

7 THE DEFENDANT: No, sir.

8 THE COURT: So whatever you may have raised before,  
9 you're waiving that, giving it up?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Now, second offense is a felony  
12 that carries not less than five years nor more than 30  
13 years in prison and up to \$1,000; you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All drug offenses are graduated and if  
16 you violate again you face higher punishment; you know  
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I know you know this but you know this  
20 doesn't give you a clean slate back to a second offense.  
21 If you were to get caught with drugs again it would be  
22 your fourth offense or treat it as whatever level it  
23 actually is. You understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Norris made a free, knowing, and

1 voluntary decision to plead guilty and has done so upon  
2 the advice of counsel with whom he is satisfied. There is  
3 a factual basis for his plea. Mr. Norris, you made a  
4 free, voluntary decision to plead guilty and has done so  
5 upon the advice of counsel with whom he is satisfied and  
6 there is a factual basis for the plea. Mr. Wood.

7 MR. WOOD: Yes, Your Honor.

8 THE COURT: Go ahead. Want to tell me anything about  
9 your conference?

10 MR. WOOD: Mr. Norris has been very frustrated and he  
11 does have a debilitating disease and it is causing  
12 paralysis in his arms and leg. If you wouldn't mind  
13 showing the Court your arm.

14 THE DEFENDANT: It's been through my whole body to my  
15 spine.

16 MR. WOOD: I checked it out with the doctor, Your  
17 Honor, and apparently it may be getting worse so when he  
18 gets to prison he will need to see a specialist. Under  
19 the eighth amendment he is entitled to see a doctor and I  
20 think he may be going paralyzed and I didn't get the  
21 opportunity to discuss this condition with the specialist  
22 but a general doctor did tell me he may be going  
23 paralyzed. Michael has a girlfriend and two children.

24 THE COURT: All right. You know the day you went in  
25 jail, Mr. Norris? You know the date?

1 THE DEFENDANT: I came here to Edgefield County  
2 February 22.

3 THE COURT: What about in Augusta?

4 THE DEFENDANT: Started November 28.

5 THE COURT: They have explained to you, have they  
6 not, this sentence is a no-parole offense which means  
7 you've got to do at least 85 percent of it. Do you  
8 understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You're shaking your head yes.

11 (WHEREUPON THE DEFENDANT NODS HEAD.)

12 MR. WOOD: We talked about it, Your Honor.

13 THE COURT: You been to prison before?

14 THE DEFENDANT: Yes, sir, when I was seventeen.

15 THE COURT: So you know when you go through reception  
16 and evaluation you need to tell them about your physical  
17 condition.

18 (WHEREUPON THE DEFENDANTS NODS HEAD.)

19 MR. WOOD: I have provided him copies of his medical  
20 records.

21 THE COURT: Court says you be committed to the South  
22 Carolina Department of Corrections for ten years plus cost  
23 and assessment and give him credit for time served  
24 pursuant to 24-13-40, has to be calculated by the  
25 Department of Corrections. Did you tell me the date in

1 November?

2 THE DEFENDANT: November 8.

3 THE COURT: Twenty-eighth? I don't put that on there  
4 they probably won't give you credit. Credit time for  
5 November 28, 2008; is that right?

6 MR. WOOD: Yes, Your Honor.

7 THE COURT: Pay your court costs at the rate of \$50 a  
8 month beginning 180 days after you begin community  
9 supervision. Good luck to you, Mr. Norris.

10 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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FORM 5  
CLERK OF COURT  
SHARLENE NEWBY

STATE OF SOUTH CAROLINA

2009 NOV -4 AM 11:14 IN THE COURT OF COMMON PLEAS

County of Edgefield

Michael Norris 249235  
Full name and prison number (if any) of Applicant

v.

State of South Carolina

2009-CP-19-343

APPLICATION FOR  
POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Edge Field County Detention Center

---

2. Name and location of Court which imposed sentence Edgefield County Court House P.O. Box 34 Edgefield S.C. 29824

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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) 2009 65-19-236 Distribution of Crack Cocaine 2nd
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) August 3, 2009 10 YEARS

(b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

NO

8. If you answered "yes" to (7), list:

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

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

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

(a) Did NOT know I could appeal

(b) \_\_\_\_\_

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

- (a) 1) IN EFFECTIVE ASSISTANCE OF COUNSEL
- (b) 2) BRADY VIOLATION
- (c) 3) PROSECUTION MISCONDUCT 4) IN VOLUNTARY PLEA

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

- (a) SEE MOTION OF ATTACHMENT TO P.C.R.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (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 "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_ *N/A*
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_ *N/A*
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_ *N/A*
- iv. \_\_\_\_\_

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

*No*

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_ *N/A*
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_ *N/A*
- iii. \_\_\_\_\_

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

- (a) Did not know i could appeal such grounds
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea?
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing?
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
No

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

- (a) the name and address of each attorney who represented you:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_

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

3 YEARS (TIME SERVED) NON-Violate

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

NO

STATE OF SOUTH CAROLINA )  
County of Edgefield )

VERIFICATION

I, Michael D Norris, 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.

Michael D Norris

SWORN to and subscribed before me this 27 day of OCTOBER, 2009.

Oscar Bunde (L.S.)  
Notary Public

My Commission Expires: 07-13-2019

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

I, Michael Norris, 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.

Michael Norris  
Applicant

SWORN or affirmed to and subscribed before me this

27 day of October 2009

[Signature]  
Notary Public

My Commission Expires: 07-17-2019

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF EDGEFIELD )  
 )  
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 Michael Norris, #249235, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 ELEVENTH JUDICIAL CIRCUIT

2009-CP-19-0343

**RETURN**

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 4, 2009, 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 Edgefield County Clerk of Court. The Applicant was indicted at the May 2009 term of the Edgefield County Grand Jury for Distribution of Crack Cocaine—3<sup>rd</sup> or Subsequent Offense (2009-GS-19-0236). On August 3, 2009, the Applicant pled guilty to Distribution of Crack Cocaine—2<sup>nd</sup> offense. The Applicant was sentenced by the Honorable William P. Keesley to confinement for a period of ten (10) years. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Edgefield County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with 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. "Did not know I could appeal."
2. "Invalid Guilty Plea;"
3. "Brady Violation;"
4. "Prosecutorial Misconduct."

### 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).

#### IV.

Here, in addition to making general allegations pertaining to Plea Counsel's performance, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known. Id. Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is

totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> 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 that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

## VI.

Respondent submits that the Applicant's third and fourth allegations raises direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss these allegations.

## VII.

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

## VIII.

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

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

A. WEST LEE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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Columbia, SC 29211  
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March 1, 2010.



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**APPLICANT'S EXHIBITS**

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Four letters		11

1 (The following proceedings are reported on  
2 November 30, 2011.)

3 MS. MAY: Your Honor, I will have our witness  
4 call in before we start the hearing. I alerted him to  
5 do so. The first case we will be calling up is Michael  
6 Norris v. State, case Number 2009-CP-19-0343.

7 While we are waiting for Mr. Wood to call in,  
8 Mr. Norris filed a application for P.C.R. November 4,  
9 2009. He was charged with distribution of crack cocaine  
10 third offense.

11 On August 3, 2009, he pled guilty to  
12 distribution of crack second offense before Judge  
13 Keesley, and he received a negotiated ten-year sentence.  
14 If we could hold off a minute to wait for Mr. Wood to  
15 call, I would like for him to hear all the testimony.

16 THE COURT: All right.

17 (Pause.)

18 (Court Reporter's Note: The following  
19 occurred via telephone conference call.)

20 MS. MAY: Mr. Wood?

21 MR. WOOD: Hey. How are you?

22 MS. MAY: Great. We are going to go ahead and  
23 get started with the hearing.

24 MR. WOOD: Okay.

25 THE COURT: Yes, sir.

MICHAEL NORRIS -- DIRECT -- MR. MARINE

4

1 MR. MARINE: Your Honor, Andrew Marine,  
2 attorney for the petitioner. As the attorney for the  
3 State has just stated, Mr. Norris has pled guilty, and  
4 we are calling him as a witness so he can explain his  
5 allegations.

6 THE COURT: Come around and get sworn.

7 MICHAEL DEON NORRIS, being  
8 first duly sworn, testified as follows:

9 CLERK: State your full name for me.

10 THE WITNESS: Michael Deon Norris.

11 **DIRECT EXAMINATION**

12 BY MR. MARINE:

13 Q Mr. Norris, did you plead guilty on August 3, 2009,  
14 to charges?

15 A Yes, sir.

16 Q And what charges did you plead guilty to?

17 A I was told I would be pleading to possession of  
18 crack cocaine instead of distribution of crack  
19 cocaine.

20 Q And why do you think that you were pleading guilty  
21 to possession instead of distribution?

22 A Because I was told I was pleading to a  
23 lesser-included offense. I had distribution third,  
24 but they told me if I pleaded now, they would let  
25 me plead to possession of crack cocaine second

1 offense.

2 Q And, in fact, at your guilty plea -- I am referring  
3 you to page 1 of the transcript of the trial of the  
4 guilty plea -- can you please read the second  
5 sentence -- I'm sorry -- the first sentence on page  
6 1, the whole sentence.

7 A Yes, sir.

8 Q This is a statement by the solicitor; correct?

9 A Yes, sir. "He has two convictions --

10 COURT REPORTER: I'm sorry. Can you read it  
11 slower.

12 Q Okay. I'll read it for you. This is the  
13 solicitor: "He has two convictions subjecting him  
14 to a third offense, but pursuant to negotiations,  
15 he is pleading guilty to possession of crack  
16 cocaine second offense to a ten-year sentence. I  
17 am dismissing all other charges he has pending  
18 resolving everything he has pending in Edgefield  
19 County." Is that the initial statement of the  
20 solicitor?

21 A Yes, sir.

22 Q Can you also read -- I will read for you at the  
23 bottom of the page, the last sentence by the Court,  
24 "Upon your arraignment it appears you wish to plead  
25 guilty to distribution of crack cocaine as a second

- 1 offense; is that right?"
- 2 A Yes, sir.
- 3 Q And you stated?
- 4 A "Yes, sir."
- 5 Q "Yes, sir." So it's your understanding that you  
6 were pleading to possession?
- 7 A Yes, sir.
- 8 Q And to your knowledge was it ever discussed with  
9 you that it was going to be distribution?
- 10 A No, sir.
- 11 Q Was that discussed with you prior to your pleading?
- 12 A Yes, sir. Before I plead it was told me my charge  
13 was distribution. That was my original charge.
- 14 Q And who is "they" that told you that?
- 15 A Solicitor Maye.
- 16 Q And did you discuss this matter with your attorney?
- 17 A Yes, sir.
- 18 Q And what did he tell you that you were pleading to?
- 19 A I supposed to be pleading to possession of crack  
20 cocaine.
- 21 Q Do you know the difference between possession and  
22 distribution of crack cocaine?
- 23 A Yes, sir.
- 24 Q What's the difference?
- 25 A Possession is to have in your possession.

1 Distribution is to sell to someone else.

2 Q Are you under medical care now?

3 A Yes, sir.

4 Q Were you under medical care in 2009?

5 A Yes, sir.

6 Q Can you explain what your condition is, your  
7 medical condition?

8 A I have a muscle deteriorating disease.

9 Q Can you please state the condition?

10 A Spinal stenosis.

11 Q Spinal stenosis?

12 A Yes, sir.

13 Q What happens with spinal stenosis?

14 A It cause my spine to become paralyzed.

15 Q And are you in pain?

16 A Yes, sir.

17 Q Were you under any drugs at the time of your guilty  
18 plea?

19 A No, sir, and I suffer from Post Traumatic Stress  
20 Disorder.

21 Q Okay. Are you asking that that plea be overturned?

22 A Yes, sir.

23 Q And are you asking the plea be overturned because  
24 you were confused?

25 A Yes, sir.

1 Q Now, your relationship with your attorney,  
2 Mr. Norman Staples Wood.

3 A Yes, sir.

4 Q First of all, did you retain Mr. Wood?

5 A No, sir.

6 Q He was appointed. Was he your first appointed  
7 attorney?

8 A No, sir, second.

9 Q Why was he your second appointed attorney?

10 A Attorney Greg Seigler said he had a conflict of  
11 interest because he represented my codefendant on  
12 other charges.

13 Q And so Mr. Wood was appointed your attorney?

14 A Yes, sir.

15 Q And can you describe the relationship with  
16 Mr. Wood?

17 A Yes, sir. On the day that he come to see me, I  
18 tried to explain to him about my charge. He would  
19 tell me, "Shut up," he didn't believe me, that I  
20 needed to go to prison because all I do was waste  
21 my life and sell drugs.

22 Q And do you know if he investigated your case?

23 A Not to my knowledge he didn't.

24 Q Do you know if he interviewed any witnesses in your  
25 case?

1 A No, sir.

2 Q Did he clearly explain the charges to you?

3 A No, sir. Because every time I would try to speak  
4 to him and ask him about my charges, we would  
5 always have a difference. Therefore, I filed  
6 paperwork to dismiss him as my attorney.

7 Q And you filed those with the Court?

8 A Yes, sir.

9 Q What did the Court say?

10 A They never did respond to it.

11 Q In fact, did you have differences with the Court on  
12 the day of your plea?

13 A Yes, sir. I let the Court know that me and  
14 Mr. Wood was having differences and that I needed  
15 time to retain a lawyer. They told me if I  
16 couldn't hire a private lawyer within 24 hours, I  
17 had to keep Mr. Wood and get ready for trial.

18 Q And did the Court explain to you that he was your  
19 attorney all the way through?

20 A Yes, sir, he did explain it to me.

21 Q And did Mr. Wood go over the charges with you?

22 A Yes, sir, he read the charges that they had  
23 initially charged me with. Yes, sir.

24 Q And did he explain to you what possession was?

25 A No, sir, he never did say anything about the

1 possession charges. Because the day I was coming  
2 to court, possession wasn't optional until after he  
3 told me if I plead right then, that I could plead  
4 to possession.

5 Q And did Mr. Wood ever tell you that you had a right  
6 to appeal your case?

7 A No, sir. I notified him on my own that I wanted to  
8 appeal verbally and through writing.

9 Q And did you ask him about the right to appeal your  
10 case?

11 A Yes, sir. He said there wasn't no need for me to  
12 appeal because they would look at me as someone  
13 with a bunch of time to complain.

14 Q I'm sorry. What was the last word you said?

15 A I said there was no need for me to appeal it  
16 because the Court would look at me as a person with  
17 a lot of time on my hands to complain.

18 Q I have here a couple of letters. Is this a copy of  
19 a clocked-in letter that you wrote?

20 A Yes, sir, to the Court explaining that I wanted to  
21 appeal the decision that was made.

22 Q And that letter is to the Clerk of Court for  
23 Edgefield County?

24 A Yes, sir.

25 Q Then there are a couple more letters here. This is

1 one from the Edgefield County Clerk of Court?

2 A Yes, sir, explaining to me that they did notify  
3 him, the Solicitor's Office, that I did want to  
4 appeal.

5 Q And there is a third letter. Can you please state  
6 the date on that one?

7 A September 23, 2009.

8 Q And then there is a fourth letter from the State  
9 Supreme Court. What is the date on that letter?

10 A October 5, 2010.

11 Q I will go over the contents of those letters in  
12 just a minute.

13 MR. MARINE: I move to introduce these as one  
14 exhibit.

15 MS. MAY: No objection.

16 (Applicant's Exhibit Number 1 is received into  
17 evidence.)

18 BY MR. MARINE:

19 Q The first letter is a letter to the Edgefield Clerk  
20 of Court. What is the date that letter was clocked  
21 in?

22 A August 11, 2009, at 2:00 P.M., 2:01 P.M.

23 Q So you sent a letter to the Clerk of Court's Office  
24 within two weeks requesting an appeal?

25 A Yes, sir, within the ten-day time frame.

- 1 Q And then the Edgefield Clerk of Court -- what is  
2 the date of this letter?
- 3 A August 12, 2009.
- 4 Q Can you read the letter to us.
- 5 A Yes, I can. "We have made a copy of your appeal  
6 letter to the Solicitor's Office; your attorney, N.  
7 Staple Wood; and one for your record."
- 8 Q Then the third letter dated September 23rd?
- 9 A "Enclosed you will find a copy of your notice of  
10 appeal. Please contact your attorney, N. Staple  
11 Wood."
- 12 Q And that is dated September 23rd?
- 13 A Yes, sir.
- 14 Q And this final letter dated -- I will get to that  
15 letter later -- but basically within a month, you  
16 had sent a request to the Court saying that you  
17 wanted to appeal your sentence?
- 18 A Within the ten-day time frame that is required.
- 19 Q Did you ever notify your attorney of this?
- 20 A Yes, sir.
- 21 Q And, in fact, what did he say to that?
- 22 A He never did respond.
- 23 Q Okay. You never heard from him?
- 24 A No, sir.
- 25 Q Never in writing?

- 1 A No, sir.
- 2 Q The last letter, what is the date of that letter?
- 3 A October 5, 2010.
- 4 Q Who is that letter from?
- 5 A The Supreme Court of South Carolina.
- 6 Q And can you read the last sentence?
- 7 A "We have checked the records in this office and the  
8 records at the Court of Appeals. We do not find  
9 where an appeal has been filed on your behalf."
- 10 Q So there was no appeal of your case made to the  
11 State Supreme Court or to the Court of Appeals?
- 12 A Right.
- 13 Q During or before the hearing, did you inform the  
14 Court of your differences with your attorney?
- 15 A Yes, sir.
- 16 Q And did you ask them to appoint a new attorney?
- 17 A Yes, sir, I asked them will they give me time to  
18 hire a new attorney. They said if I couldn't have  
19 one in 24 hours, I had to keep him.
- 20 Q Was that statement by the Court preserved on the  
21 record?
- 22 A Yes, sir, the record that I have.
- 23 Q But it's not part of the transcript in this case?
- 24 A No, sir.
- 25 Q Do you feel your attorney was ineffective in

1 presenting your case?

2 A Yes, sir.

3 Q Why do you feel he was ineffective?

4 A He was ineffective because he failed to object to  
5 the improper charge once it was read out. He  
6 should have had objected, saying, "This is what my  
7 client -- this is not the plea that the solicitor  
8 negotiated for my client."

9 Q At the time did you feel he would have been zealous  
10 in representing you?

11 A Yes, sir, because he showed no interest in  
12 representing me. On the days that he come to see  
13 me, the only thing he did say that I waste my time.  
14 He belittled me every time he'd come see me. We  
15 never did establish a relationship as far as  
16 discussing the case or anything. It was always a  
17 difference that we was having.

18 Q Did he ever state his opinion about your guilt or  
19 innocence?

20 A He just said I need to go to prison. All I did was  
21 waste my life to sell drugs.

22 Q So your attorney said that to you?

23 A Yes, sir.

24 Q The person appointed to represent you is saying  
25 this?

1 A Yes, sir.

2 MR. MARINE: That's all the questions I have,  
3 Your Honor.

4 THE COURT: Cross.

5 MS. MAY: May it please the Court, Your Honor.

6 CROSS EXAMINATION

7 BY MS. MAY:

8 Q Mr. Norris, do you recall the Court asking you if  
9 you and your attorney, Mr. Wood, had resolved your  
10 differences prior to appearing?

11 A Yes, ma'am.

12 Q And what did you tell the Court?

13 A I tell the Court we have -- Solicitor Maye told me  
14 if I go out and tell him I worked out my problem  
15 with him and the county solicitor, he would let me  
16 plead to ten.

17 Q So you told the Court that you and your attorney  
18 had resolved your differences?

19 A Yes, ma'am.

20 Q Was that the truth?

21 A Yes, ma'am.

22 Q Do you have a copy of the transcript?

23 A No, not with me.

24 MS. MAY: May I approach?

25 THE COURT: Yes, ma'am, of course.

1 BY MS. MAY:

2 Q On page 3, the one that is opened up right there,  
3 down towards the bottom, the judge, he reads your  
4 indictment on lines 18 through 24. What was the  
5 charge that he read off?

6 A Distribution of crack cocaine.

7 Q And he asked you, "Is that right?"

8 A Yes, ma'am.

9 Q And you said that it was?

10 A Yes, ma'am.

11 Q And then can I have you turn to page 5, please.

12 Are you able to do that?

13 A (Witness complies.)

14 Q Starting at line 19, the solicitor goes on to state  
15 the facts, and what charge does he reference on  
16 line 21?

17 A He was talking about distribution of crack cocaine.

18 Q When the judge asked you if that was correct, why  
19 didn't you tell him, no, that wasn't correct, it  
20 should be possession?

21 A I told my lawyer. I said, "That's not what y'all  
22 told me." He told me he would get it straight.

23 Q You didn't feel it necessary to tell the judge  
24 that?

25 A At the time, ma'am, I was confused because I'm not

1           versed in the law. When I say, "Yes, sir," I am  
2           just going on to answer because if I go ahead and  
3           tell him what he told me, that I worked out my  
4           problem, that I would go ahead and get this plea.  
5           Instead of the plea of ten years, 85 percent, I  
6           would get a plea of ten years with parole.

7           Q     And do you recall on page 7, the judge asking you  
8           whether -- I'm sorry. Beg the Court's indulgence.

9                     THE COURT: Line 4 maybe? No, that's not it.

10          BY MS. MAY:

11          Q     It's page 8, lines 5 through 10. The Court asked  
12          you if you had any complaints against anybody who  
13          had dealt with your case and you told the Court  
14          that you didn't?

15          A     Yes, ma'am. Early in the process we had already  
16          went through that before this. When I was sworn in  
17          and everything, I told him, I said, "I need time to  
18          get an attorney because I have problems with the  
19          county solicitor and my attorney," which I have  
20          paperwork showing I filed a complaint against the  
21          solicitor.

22                     So therefore they tell me they didn't give me  
23          a right to hire another attorney. They told me  
24          that I had to go to the back and talk my problems  
25          over right then. By me thinking I am doing right,

1 the right thing, I went there.

2 He said, "Well, if you go out here and tell  
3 them we done worked out your problems, I will let  
4 you plead to ten years possession of crack  
5 cocaine." Therefore I said yes, sir.

6 Q So that wasn't the truth? You did have complaints  
7 still?

8 A It was no need to have a complaint because they  
9 never would -- the issue was never brought forth to  
10 the Court. So therefore I went ahead and took the  
11 plea that I thought was best suitable at the time  
12 to receive the less sentence.

13 Q If there was a time -- when the Court asked if you  
14 had any complaints -- would you agree that was a  
15 good time to bring forth the complaints that you  
16 had?

17 A The reason I didn't bring them forth, again,  
18 because I had brought them to the Court one time,  
19 and they did not address it. I figured I might go  
20 ahead and take the plea. They ain't going to do  
21 nothing about it. If I can receive the realtime  
22 transcript, it would have everything on there that  
23 I said.

24 Q When did you notify Mr. Wood about your appeal,  
25 about the letter you received?

1 A When did I notify him?

2 Q Yes.

3 A I verbally notified him that I wanted to appeal  
4 after I was sentenced. Then I wrote a letter to  
5 the Solicitor's Office -- I mean -- to the Clerk of  
6 Court describing to them that I wanted to appeal  
7 the situation. They sent it back saying they had  
8 sent him a copy. Therefore I got his address and  
9 sent him a copy also.

10 Q Did you ask him after the plea or did you ask him a  
11 day later?

12 A I asked him immediately after the plea when we left  
13 out of the courtroom.

14 Q I have no further questions. Thank you.

15 THE COURT: Redirect?

16 MR. MARINE: I have no questions on redirect,  
17 Your Honor.

18 THE COURT: Mr. Norris.

19 THE WITNESS: Yes, sir.

20 THE COURT: I will show a copy of the  
21 sentencing sheet and ask you if that is your signature?

22 THE WITNESS: Yes, sir.

23 THE COURT: And can you tell me what -- read  
24 right up there (indicating).

25 THE WITNESS: It say distribution of crack

1 cocaine.

2 THE COURT: Second offense?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. You knew you were getting a  
5 ten-year deal; right?

6 THE WITNESS: Yes, sir.

7 THE COURT: How far did you good in school?

8 THE WITNESS: Two weeks ago I went and took my  
9 G.E.D. I passed everything except the writing.

10 THE COURT: All right. Okay. I don't think I  
11 have anything else. You can step down. Thank you,  
12 Mr. Norris.

13 (Witness leaves the witness stand.)

14 THE COURT: Anything else?

15 MR. MARINE: Yes. We have on the phone  
16 telephonically Mr. Staples Wood, attorney for  
17 Mr. Norris. I do have questions for him.

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. MARINE:

21 Q Mr. Wood, are you there?

22 A I am.

23 THE COURT: Hang on a second. Mr. Wood?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: I have never met you. I hope you

1 are doing well.

2 THE WITNESS: I'm doing very well. Thank you  
3 very much.

4 THE COURT: You an officer of the Court;  
5 right?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Raise your right hand, please.

8 NORMAN STAPLES WOOD, being  
9 first duly sworn, testified as follows:

10 THE COURT: I will let him beginning the  
11 questioning.

12 BY MR. MARINE:

13 Q Mr. Wood, this is Andy Marine. Were you appointed  
14 to represent Michael Norris?

15 A Yes, sir.

16 Q And did you examine the evidence in his case?

17 A I did. I examined all the evidence that I could,  
18 yes.

19 Q And how many times did you meet with Mr. Wood -- I  
20 mean -- with Mr. Norris?

21 A I would say approximately seven times.

22 Q And just as background how long did you practice  
23 law in South Carolina?

24 A I was licensed to practice law in -- I think maybe  
25 looking at November. I think I was licensed in

1 2008.

2 Q And what was your primary work in South Carolina?

3 A My primary work was estate planning and trusts and  
4 wills.

5 Q Did you ever do criminal law in South Carolina?

6 A Other than court-appointed cases, no.

7 Q What was Mr. Norris' medical condition when you met  
8 with him?

9 A He had -- he complained of his arm was getting  
10 smaller. He complained about back pains. I took a  
11 look at the issue, and I went and got his medical  
12 records. I took the medical records to -- I have a  
13 bunch of friends who are doctors.

14 I took the medical records to a doctor, who I  
15 am friends with, and went over them. He said he  
16 had a serious condition where his spinal cord was  
17 getting narrower, and that was causing paralysis.

18 Q And was he receiving care when you were  
19 representing him?

20 A Not at the time I was representing him.

21 Q You heard him testify regarding his guilty plea?

22 A Yes, sir.

23 Q And it's his understanding that he was pleading  
24 guilty to possession of crack cocaine versus  
25 distribution.

1 A I think I heard something like that on his direct  
2 testimony.

3 Q What was your understanding that he was pleading  
4 guilty to?

5 A I remember distribution second, and that was  
6 negotiated down from -- I'm sorry -- second  
7 offense, distribution second offense, as opposed to  
8 distribution third offense, which would have gotten  
9 him a higher mandatory sentence.

10 Q Did you encourage him to plead guilty?

11 A You know, it's my policy when I represent criminal  
12 defendants to lay the facts out in front of them.  
13 I show them the odds and show them what is probably  
14 going to happen, but I like to let the decision  
15 ultimately lie with my client.

16 Q Did you have differences with Mr. Norris?

17 A Absolutely. The first time I met with him  
18 everything was fine. We had a very long meeting.  
19 He had something like nine charges, and we went  
20 over all of the facts pertaining to all of the  
21 charges.

22 Then I went to talk to the Solicitor's Office,  
23 and they showed me evidence basically contrary to  
24 all the stuff that he told me. So I had two  
25 versions of the story, and I went and talked to

1 Mr. Norris about the second version of the story  
2 that I got from the Solicitor's Office, which is  
3 backed up by videotape.

4 That's where the relationship went south. I  
5 basically confronted him with the reality of the  
6 situation with what he was facing. He did not like  
7 that.

8 He basically, I guess you could say, began to  
9 pout. He began to not listen to what I was saying.  
10 He seemed to be under a lot of stress. So it was a  
11 very difficult attorney/client relationship.

12 Q Did you ever tell him that he needed to go to  
13 prison?

14 A No, absolutely not.

15 Q You never said, quote, "You need to go to prison"?

16 A Absolutely not.

17 Q Did you ever discuss appeal with him?

18 A I don't think so, at least not from what I -- I  
19 heard on direct that he asked to appeal. I don't  
20 remember any sort of request being made to appeal  
21 after the nearing.

22 If he had made the request to appeal after the  
23 guilty plea, I would have called him back out  
24 there, and I would have asked to verbally withdraw  
25 the guilty plea, and we would have taken it to

1 trial the next day.

2 Q Did he ever discuss with you appeal after the  
3 guilty plea?

4 A No.

5 Q Did you ever receive any letters from the Supreme  
6 Court or from the Edgefield County Clerk of Court  
7 about an appeal?

8 A No.

9 Q Did you appeal this case?

10 A I'm sorry?

11 Q Did you appeal this case?

12 A No.

13 Q Did you tell him he had a right to appeal?

14 A No.

15 Q That's all the questions I have.

16 MS. MAY: May it please the Court.

17 THE COURT: Yes, ma'am.

18 **CROSS EXAMINATION**

19 BY MS. MAY:

20 Q Mr. Wood, can you tell us, how many charges did  
21 Mr. Norris have pending against him?

22 A Like ten or nine, maybe eight.

23 Q And what kind of sentence was he facing with those  
24 charges?

25 A I mean, it was definitely decades, maybe even a

1 century. I don't recall right off the top of my  
2 head, but it was definitely a lot. There was a lot  
3 of -- there was mostly distribution charges.

4 Q And did you file a discovery motion in this case?

5 A I did.

6 Q Do you recall what the items that you received were  
7 in the discovery materials?

8 A A bunch of pages and then some still frames of the  
9 drug deal. In addition to that, I talked to the  
10 Solicitor's Office, and I watched the video.

11 Q Did you review the discovery that you received with  
12 Mr. Norris?

13 A Very closely.

14 Q And in reviewing the discovery, did Mr. Norris  
15 provide you with any witnesses who might have been  
16 beneficial to his case?

17 A He did not.

18 Q Did you and Mr. Norris get to the point of  
19 discussing possible defenses?

20 A Sort of. He wouldn't listen so it was hard to  
21 communicate with him. But, yeah, I definitely had  
22 a plan for his case.

23 Q Did you ever --

24 A If it was to go to trial.

25 Q Can you repeat that? I'm sorry.

1 A I said if it was to go to trial, I had a plan for  
2 the trial for sure.

3 Q What was your trial strategy going to be?

4 A Well, number one, there is a videotape involved. I  
5 am pretty good at the predicate issues of  
6 videotape, foundational issues of videotape. I  
7 have always been very comfortable with that in the  
8 courtroom.

9 Second, I was going to tell him to cut his  
10 hair and shave. Mr. Norris had a brother who  
11 looked a little closely like him. So I was going  
12 to raise the subtle inference that maybe the  
13 confidential informant got Mr. Norris mixed up with  
14 his brother.

15 Of course, they did use a confidential  
16 informant. Those guys are always really shady. So  
17 basically they always have a motive to do anything  
18 to get themselves out of trouble.

19 So I was going to plant the subtle inference  
20 or the subtle hint that the confidential informant  
21 hid the crack on his person and then produced it  
22 after the buy and gave it to the cops in order to  
23 set Mr. Norris up to get himself out of trouble.

24 That was --

25 Q Did you -- I'm sorry. Go ahead.

1 A That was just a few of the things that I could have  
2 done.

3 Q Did you discuss any of those strategies or  
4 potential strategies with Mr. Norris?

5 A I tried to, you know.

6 Q Okay. And you took part in plea negotiations on  
7 Mr. Norris' behalf?

8 A Yes.

9 Q Could you briefly summarize those or how long they  
10 went on for.

11 A Well, they went on for a long time. The  
12 Solicitor's Office was pretty firm on 15. Then at  
13 the last minute right before trial, they lowered it  
14 to ten.

15 They said, "We will throw out the -- we will  
16 lower it from distribution, third offense  
17 distribution, to distribution second." That's when  
18 they offered ten, and that's when Michael said, "I  
19 will take the deal," basically.

20 Q Do you recall at the beginning of the transcript  
21 the judge asked Mr. Norris if you and him had  
22 resolved your differences. Do you recall the  
23 conversation that y'all had just before the plea  
24 concerning the differences?

25 A I sure do. I was in court and Michael Norris has

1 just basically tried to fire me and said, "I want  
2 to get a lawyer." I am professional. So I went  
3 back there after that happened, and I shook his  
4 hand.

5 I said, "Michael, let's just put this behind  
6 us and move past it. I am still willing to work  
7 for you." We shook hands and he told me, "I was  
8 just trying to buy time," and I actually wrote that  
9 down on the folder. I believe Andy Marine has that  
10 folder with him.

11 He said, "I was just trying to buy time.  
12 Let's move on." So he agreed that we were going to  
13 put aside our differences, work together going  
14 forward in the trial, and then he ended up taking  
15 the guilty plea.

16 Q And just to review, after the guilty plea did  
17 Mr. Norris ever ask you to file an appeal?

18 A No. And had he done that, I would have yanked  
19 that -- I would have asked to withdraw the guilty  
20 plea, and I would have asked to go forward with the  
21 jury trial.

22 Q And despite the difficulty in communicating during  
23 y'all's meetings, do you feel that you were  
24 adequately able to inform Mr. Norris of the charges  
25 against him?

1 A Yes.

2 MS. MAY: Your Honor, I have no further  
3 questions.

4 THE COURT: Any redirect?

5 MR. MARINE: No questions on redirect.

6 THE COURT: You are a trust and estates  
7 lawyer?

8 THE WITNESS: Yes, Your Honor. I was when I  
9 was in South Carolina, Your Honor.

10 THE COURT: Where are you now?

11 THE WITNESS: I'm in Mobile, Alabama.

12 THE COURT: All right. Thank you very much.

13 THE WITNESS: I would add this. I was a  
14 prosecutor in Mobile, Alabama, before I moved to  
15 Georgia.

16 THE COURT: Okay. Anything else of this  
17 witness?

18 MS. MAY: No, Your Honor.

19 MR. MARINE: No, Your Honor.

20 THE COURT: Thank you, sir.

21 THE WITNESS: Yes, Your Honor. May I stay on  
22 the phone to the resolution of the case?

23 THE COURT: Sure.

24 MR. MARINE: That's all the witnesses, Your  
25 Honor.

1 THE COURT: Anything from the State?

2 MS. MAY: Nothing from the State.

3 THE COURT: Anything y'all want to tell me?

4 MR. MARINE: Your Honor, I do want to state  
5 that --

6 THE COURT: Let me ask you this. Does he know  
7 that if I grant what he wants, he is going back to face  
8 all these charges, mandatory/minimum 25 on this case  
9 alone?

10 Do you understand that?

11 MR. NORRIS: (Nods head.) (Indicating  
12 affirmative response.)

13 THE COURT: You are nodding yes?

14 MR. NORRIS: Yes, sir.

15 THE COURT: Okay.

16 MR. MARINE: I informed him about what P.C.R.  
17 involves.

18 THE COURT: All right, sir.

19 MR. MARINE: I do want to give the Court  
20 judicial notice of the Fourth Circuit Court of Appeals  
21 case of Frazier versus South Carolina where the Fourth  
22 Circuit Court of Appeals said it was counsel's duty to  
23 consult with the defendant generally and requires the  
24 attorney to discuss with the defendant when to pursue an  
25 appeal.

1           In this Fourth Circuit case, the Court did  
2 rule that even though the defendant pled guilty, that he  
3 was deprived of his right to appeal the case when he was  
4 not told by his attorney that he had a right to appeal.  
5 I do want the Court to take judicial notice of Frazier  
6 versus South Carolina.

7           We feel we don't have frivolous grounds for  
8 this appeal, which is one of the criteria for the  
9 Frazier case, that there was confusion over what he was  
10 pleading guilty to and that we feel --

11           THE COURT: Let's discuss that. What is the  
12 confusion?

13           MR. MARINE: The confusion was, if you look on  
14 the first page, the initial charges stated possession of  
15 crack cocaine.

16           THE COURT: The solicitor misstated originally  
17 what the charge was; right?

18           MR. MARINE: I can't say that.

19           THE COURT: Well, is there anything else in  
20 the record that shows that this was going to be a plea  
21 to possession as opposed to distribution? Anything else  
22 in the record?

23           MR. MARINE: Not that I know of.

24           THE COURT: And everybody knows that  
25 possession of cocaine second offense doesn't carry ten

1 years? Am I right about that?

2 MR. MARINE: You will have to ask her. I'm  
3 not a criminal attorney.

4 MS. MAY: That's correct.

5 THE COURT: I believe it's a five-year  
6 sentence on possession second if I'm not mistaken. I  
7 could be. How about it, Ben Aplin? You know that.

8 MR. APLIN: That sounds correct, Your Honor.

9 THE COURT: It's three years and 5,000 on a  
10 first, and I think it's five and 7,500 on a second.  
11 So there is no way it could have been a plea for ten  
12 years to a possession offense, second offense. But go  
13 ahead.

14 MR. MARINE: That was basically it for my  
15 argument.

16 THE COURT: All right. Anything from the  
17 State?

18 MS. MAY: I would just say that in Frazier in  
19 order to be required to file an appeal, the defendant  
20 has to indicate that he wishes for his attorney to file  
21 an appeal.

22 Based on counsel's testimony, he was never --  
23 the defendant never -- Mr. Norris never -- informed him  
24 that he wanted the appeal after sentencing, and if he  
25 had, he would have filed one.

1           THE COURT: All right. I think the  
2 applicant's response would be that the attorney never  
3 discussed his appellate rights.

4           But all that being said, Mr. Norris, I will  
5 deny your application, even -- I don't find that there  
6 is a non-frivolous ground to appeal from based on the  
7 record.

8           I don't find that your attorney was  
9 ineffective. He was ready to go to trial. The fact  
10 that there is this -- what I characterize -- there is a  
11 misstatement on, I think, page 3.

12           It's the very first -- it's the introduction  
13 of the case by the solicitor where he refers to  
14 Indictment Number 2009-GS-19-236 and then describes it  
15 as possession of crack cocaine second offense when, in  
16 fact, that indictment was for distribution of crack  
17 cocaine third offense.

18           That's more like a scrivener's error than it  
19 is a creation of confusion. It certainly appears to me  
20 that at the time of the offense, Mr. Norris knew exactly  
21 what he was pleading guilty to based on what's at the  
22 bottom of that page.

23           The judge asked him that he wishes to plead  
24 guilty to distribution of crack as a second offense, and  
25 he replies, "Yes, sir." I will deny the relief, and I

1 will ask the attorney general to prepare a proposed  
2 order.

3 MR. MARINE: Thank you, Your Honor.

4 THE COURT: Thank you very much. Thank you,  
5 Mr. Wood.

6 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Edgefield County, South Carolina, but heard in Lexington County, South Carolina, on the 30th day of November, 2011.

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

March 26, 2011

*L Coconut Pantsari*

Court Reporter

EDGEFIELD COUNTY  
CLERK OF COURT  
SHIRLEY F. NEWBY



2012 MAR 28 PM 3:15

Attn. Shirley F. Newby Clerk of Court

State of South Carolina

RECEIVED

County of Edgefield petitioner

MAY 9 2012

State of South Carolina vs

SC OFFICE OF  
APPELLATE DEFENSE

2012 AUG 11 PM 2:01

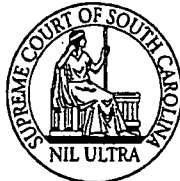
EDGEFIELD COUNTY  
CLERK OF COURT  
SHIRLEY F. NEWBY

Michael Dean Morris Defendant

I Michael Dean Morris wish to appeal  
the decision that was made in case #  
2009 GS-19-236 On the 3rd day of August 2009  
Please Consider this as a motion to Appeal.

Reasons I think my Case should be appealed.

1. Conflict of Interest against Asst Solicitor  
Ervin Mayes.
2. Motion to dismiss Counsel was filed but it wasn't  
recognized by the Court.
- 3.



EDGEFIELD COUNTY  
CLERK OF COURT  
SHIRLEY F. NEWBY

2012 MAR 28 PM 3:16

# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499

October 5, 2010

Mr. Michael Norris #249235  
F-5-C-208  
Evans Correctional Inst.  
610 Highway 9 West  
Bennettsville, SC 29512

Re: Michael Norris

Dear Mr. Norris:

This will acknowledge receipt of your letter of October 4, 2010, with regards to the above matter. We have checked the records in this office and the records at the Court of Appeals and do not find where any appeal has been filed in your behalf.

Very truly yours,

CLERK

/bs

## Edgefield County Clerk of Court Office

CLERK OF COURT  
SHIRLEY F. NEWBYShirley F. Newby  
Clerk of Court

2012 MAR 28 PM 3: 16

P. O. Box 34  
Edgefield, SC 29824  
Phone: (803) 637-4080  
Fax: (803) 637-4117

September 23, 2010

Michael D Norris #249235  
F5C 208  
ECI  
610 Hwy 9 West  
Bennettsville, SC 29512

Dear Mr. Norris:

Enclosed you will find a copy of your Motion to Dismiss Counsel N Staples Wood and a copy of your Notice of Appeal. Please contact your attorney N Staples Wood to check on the status of your appeal.

Sincerely,

A handwritten signature in cursive script that reads "Shirley F. Newby".

Shirley F Newby

EDGEFIELD COUNTY  
CLERK OF COURT  
SHIRLEY F. NEWBY

# Edgefield County Clerk of Court Office



2012 MAR 28 PM 3: 15

**Shirley F. Newby**  
*Clerk of Court*

P. O. Box 34  
Edgefield, SC 29824  
Phone: (803) 637-4080  
Fax: (803) 637-4117

August 12, 2009

Michael Norris  
200 Railroad Street  
Edgefield, SC 29824

Dear Mr. Norris:

We have mailed a copy of your appeal letter to the Solicitor's Office, your attorney Mr N Staples Wood Esquire, and one for your records.

Sincerely,

A handwritten signature in cursive script that reads "Shirley F. Newby".

Shirley F Newby

EDGEFIELD COUNTY  
 CLERK OF COURT  
 SHIRLEY F. NEWBY

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
 COUNTY OF EDGEFIELD ) ELEVENTH JUDICIAL CIRCUIT

2012 FEB -8 ) AM 11:04

)  
 ) 2009-CP-19-0343  
 )  
 )  
 Michael Norris, #249235, )  
 Applicant, ) **ORDER OF DISMISSAL**  
 )  
 )  
 v. )  
 )  
 )  
 State of South Carolina, )  
 Respondent. )

---

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed November 4, 2009. Respondent made its Return on March 1, 2010. An evidentiary hearing into the matter was convened on November 30, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Andrew Marine, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of Norman Wood, Esquire (Mr. Wood) Applicant's plea counsel. This Court also had before it the records of the Edgefield County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. The Applicant was indicted at the May 2009 term of the Edgefield County Grand Jury for Distribution of Crack Cocaine—3<sup>rd</sup> or Subsequent Offense (2009-GS-19-0236). The Applicant was represented by Norman Wood, Esquire. On August 3, 2009, the Applicant pled guilty to Distribution of Crack

THE ABOVE IS A TRUE COPY OF THE ORIGINAL WHICH IS ON FILE IN THE OFFICE OF THE CLERK OF COURT OF EDGEFIELD COUNTY, SC

*Shirley F. Newby*  
 SHIRLEY F. NEWBY, CLERK OF COURT OF GENERAL SESSIONS AND COMMON PLEAS

2-6-12  
 DATED

Cocaine—2<sup>nd</sup> offense. The Applicant was sentenced by the Honorable William P. Keesley to confinement for a period of ten (10) years. The Applicant did not appeal his guilty plea or sentence.

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. "Did not know I could appeal."
2. "Invalid Guilty Plea;"
3. "Brady Violation;"
4. "Prosecutorial Misconduct."

On August 5, 2010, Applicant filed an amendment to his Application for post-conviction relief which included the following claims:

5. Ineffective assistance of counsel
  - a. At guilty plea hearing, Applicant informed court that plea counsel was ineffective but court would not relieve plea counsel;
  - b. Plea counsel was unprofessional and there was a lack of communication;
  - c. Failure to investigate
6. Prosecutorial Misconduct
  - a. "solicitor forced defendant to take a plea by telling defendant he was facing 15 years, but if he would say on the record that you have worked out your problems with the solicitor ... I will let you plea to 10 years."

## II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

### EVIDENTIARY HEARING

#### Applicant's Testimony

At the PCR hearing Applicant testified that plea counsel told Applicant that he would be pleading to possession of crack instead of distribution of crack and that at his guilty plea hearing the solicitor initially stated to the plea court that Applicant was pleading to possession of crack cocaine. Applicant testified that he suffers from spinal stenosis and post traumatic stress syndrome, and that

he was asking this Court to overturn his guilty plea because Applicant was confused. Applicant testified that Mr. Wood was the second attorney appointed to represent Applicant, that counsel did not investigate, that counsel did not interview any witnesses, and that counsel did not explain the charges against Applicant. Applicant testified that at his guilty plea hearing he told the court that he wanted a new attorney but that the plea judge denied Applicant's request for a new attorney.

Applicant testified that Mr. Wood discussed the Applicant's charges with him, but that counsel did not explain possession, and that possession was not an option. Applicant testified that plea counsel told Applicant there was no need to appeal the guilty plea and that Applicant sent a letter dated August 11, 2009, to the Edgefield County Clerk of Court regarding filing an appeal. Applicant testified that he received a letter from the Clerk of Court dated August 12, 2009, indicating that a copy of Applicant's August 11<sup>th</sup> letter was forwarded to the solicitor's office and Applicant's plea counsel. Applicant testified that he filed a notice or request to appeal to the South Carolina Supreme Court and that Applicant notified his plea counsel. Applicant testified that he received a letter from the Supreme Court indicating that no appeal had been filed in Applicant's case.

Applicant testified that at the guilty plea hearing Applicant informed the plea court about the differences and difficulties that Applicant had with the solicitor and plea counsel. Applicant testified that when the plea judge asked Applicant if he and plea counsel, and he and the solicitor resolved their differences, that Applicant informed the plea judge all differences had been resolved. Applicant testified that the sentencing sheet contained Applicant's signature and that the charge listed on the sentencing sheet was "Dist of Crack Cocaine 2<sup>nd</sup> Offense."

Mr. Wood's Testimony

At the PCR hearing plea counsel testified that he was appointed to represent Applicant, that counsel met with Applicant approximately seven times, and that counsel's experience in criminal law consisted of court-appointed cases, while his primary work was in estate planning. Counsel testified that initially Applicant had serious medical issues and complaints, and that counsel obtained Applicant's medical records and took them to doctor for medical review. Counsel testified that Applicant was indicted for Distribution of Crack Cocaine 3<sup>rd</sup> Offense, but Applicant pled to the lesser included offense of Distribution of Crack Cocaine 2<sup>nd</sup> Offense. Counsel testified that he examined the evidence with Applicant, which included but was not limited to a toxicology report of the recovered drugs. Counsel testified that he discussed the elements and the nature of the charges against Applicant with Applicant. Counsel testified that he and Applicant discussed the Applicant's version of the facts. Counsel testified that at the outset of Applicant's case, Applicant was facing a total of ten (10) charges, almost of all which were Distribution of Crack charges. Counsel testified that Applicant possibly faced life without parole with all ten charges and four prior drug charges; however, counsel was able to get all but one of the charges (9 charges) dismissed.

Counsel testified that the solicitor provided counsel with evidence that contradicted Applicant's version of the story. Counsel testified that he viewed a video tape of the drug buy that Applicant was a participant in. Counsel testified that he never told Applicant that Applicant needed to go to prison, that Applicant would pout and refused to listen to counsel. Counsel testified that he did not recall discussing Applicant's right to appeal with Applicant nor did counsel recall Applicant requesting counsel to file an appeal. Counsel testified that if Applicant indicated that he wanted to appeal, then counsel would have filed an appeal; that counsel never received any letters from the

Clerk of Court; and that counsel did not file an appeal. Counsel testified that he was able to speak with the officers involved in the control drug buy, that counsel and Applicant discussed possible defenses, and that counsel discussed the benefits and drawbacks of proceeding to trial versus plead guilty with Applicant. Counsel testified that he never had any reason to think that he and Applicant were not provided with all the discovery materials from the state.

Counsel testified that he had good experience and was knowledgeable in the area of video technology and the use of videotapes in court, and that if Applicant chose to go to trial counsel's trial strategy would have entailed attacking the videotape. Counsel testified that Applicant's brother looked exactly like Applicant and that if Applicant chose to proceed to trial, as a trial strategy counsel would have tried to illicit from the confidential informant testimony saying it was Applicant's brother at the drug buy and in the video and not the Applicant.

Counsel testified that he engaged in plea negotiations on behalf of the Applicant, discussed all plea offers with Applicant, and that the solicitor was firm on a fifteen (15) year offer. Counsel testified that just prior to Applicant's trial the solicitor offered to lower Applicant's charge to Distribution 2<sup>nd</sup> offense and the solicitor offered a ten (10) year sentence. Counsel testified that approximately two days prior to the guilty plea hearing Applicant made a request to the court that plea counsel be relieved, but that Applicant told counsel Applicant made this request merely to buy some time. Counsel testified that Applicant never told counsel that Applicant did not want to plead guilty on the day of the guilty plea hearing. Counsel testified that if Applicant decided not to plead guilty that counsel was prepared to go to trial. Counsel testified that ultimately Applicant made the decision to plead guilty.

### III. APPLICABLE LAW

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).

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

##### **Ineffective Assistance of Counsel**

Applicant asserts that plea counsel was ineffective for failing to inform Applicant of his right to appeal; failing to file an appeal; failing to represent Applicant professionally and adequately communicate with Applicant; and for failing to investigate. This Court finds that Applicant has failed to meet his burden of proof in showing counsel's representation was ineffective. With regard to Applicant's claim that counsel was ineffective for failing to inform Applicant of his right to appeal and for failing to file an appeal, Applicant testified that counsel informed Applicant that there was no need to appeal. Counsel testified that he did not discuss Applicant's right to appeal with Applicant and that he never received any letters from Applicant or anyone indicating Applicant's desire for counsel to file an appeal. When the question is whether counsel was ineffective in failing to file a direct appeal from the conviction and sentence, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular

defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Counsel testified that had Applicant indicated to counsel that he wanted to appeal counsel would have filed an appeal. Under these circumstances, counsel's failure to file an appeal was not unreasonable.

This Court agrees with plea counsel and finds a complete lack of non-frivolous grounds on which to base an appeal. Applicant asserts that he was not aware that he was pleading guilty to Distribution of Crack Cocaine because allegedly plea counsel told Applicant he was pleading to possession, and due to the solicitor's initial statement to the court. Applicant directs this Court's attention to the solicitor's introduction at the guilty plea hearing where the solicitor stated for that court that Applicant was "pleading guilty to possession of crack cocaine, second offense. (Tr. p.1, line4-5). This Court finds and the record reflects that the plea judge read the charge in the indictment, which indicated distribution, and asked Applicant if he wished to plead guilty to distribution of crack cocaine; Applicant indicated to the plea judge that he wished to plead guilty to distribution of crack cocaine. (Tr. p.1, lines18-25). Additionally, Applicant admitted that he signed the sentencing sheet, which reflected Applicant was pleading guilty to Distribution of Crack Cocaine 2<sup>nd</sup> Offense. This Court finds that the solicitor's initial reference to a possession of crack cocaine charge was merely a misstatement and that Applicant was aware and understood that he was pleading to Distribution and not possession. Applicant has failed to show any resulting prejudice. This Court finds that counsel was not ineffective in failing to an appeal; therefore, this allegation is denied and dismissed.

As to Applicant's allegations that counsel was ineffective for failing to represent Applicant professionally, failing to adequately communicate with Applicant, and for failing to investigate, this

Court finds Applicant has failed to meet his burden of proof. Counsel testified that he met with Applicant several times, discussed the charges against the Applicant and Applicant's version of the facts with Applicant. Counsel testified that he discussed possible defenses with Applicant, obtained and viewed all discovery materials provided by the state, and reviewed the discovery materials with Applicant, and interviewed the Officers involved in Applicant's case. Counsel testified that Applicant was very stressed out, at times refused to listen to counsel simply because Applicant did not like what counsel was saying and that at times Applicant would not talk to counsel. Applicant testified that he made a motion to have counsel relieved but that it was denied. Regardless, under oath, Applicant told the plea judge that he and plea counsel were able to resolve their differences. (Tr. p.1, lines13-17). The record reflects that Applicant informed the plea court that he was fully satisfied with plea counsel and that there was nothing else Applicant wanted counsel to do that counsel had not done. (Tr. p.7, line24 – p.8, line4).

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). 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 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. Counsel was prepared to proceed to trial if Applicant chose to do so.

This Court finds the Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice. Therefore, this Court finds that these allegations are denied and dismissed.

### **Involuntary Guilty Plea**

Applicant asserts that as a result of his confusion as to the charge he was pleading to and the solicitor's conduct, that Applicant's guilty plea was rendered unknowing and involuntary. First, this Court has already found that Applicant was fully aware that he was pleading guilty to Distribution of Crack Cocaine and not possession; therefore, this allegation is denied and dismissed. Next, Applicant asserts that his guilty plea was involuntary because the court refused to grant his motion to relieve plea counsel and because the solicitor forced Applicant to plea by intimidation or threatening a longer sentence if Applicant did not plea. This Court finds that Applicant failed to meet his burden of proof in showing that his guilty plea was involuntary. At the plea hearing, plea counsel indicated to the plea judge that he explained to Applicant the nature and elements of the offense, the possible punishment, and his constitutional rights including Applicant's right to a trial by jury. (Tr. p.4, lines 1-5). Applicant told the plea judge that he was clear-headed and understood what he was doing at the guilty plea hearing. (Tr. p.4, line 24 – p.5, line 1). The plea judge asked Applicant if Applicant was aware and understood his right to a jury trial, and Applicant indicated that he understood and did not want a jury trial. (Tr. p.5, lines 2-17). Applicant admitted that he was guilty of distribution of crack cocaine 2<sup>nd</sup> offense and that nobody forced or coerced Applicant to get Applicant to plead

against his own will. (Tr. p.6, lines12-21). This Court finds that all plea negotiations testified to at the PCR hearing were fully represented in the record at the guilty plea hearing. (Tr. p.7, lines4-23). The record reflects that the solicitor informed the plea court that Applicant had previously made complaints against the solicitor and the sheriff's office in this case involving the state's handling of Applicant's case. (Tr. p.7, lines8-10). The solicitor requested that the plea court inquire into whether Applicant had any remaining complaints against the solicitor or sheriff's office. (Tr. p.7, lines11-14). The plea court asked Applicant if he had any complaints of any kind against anybody who dealt with Applicant's case, and Applicant indicated that he did not have any complaints. (Tr. p.8, lines5-7). Moreover, the plea court advised Applicant that whatever complaints he raised before that Applicant would be waiving those complaints by entering his guilty plea, and Applicant indicated that he understood and wished to give up any previous complaints. (Tr. p.8, lines8-10). This Court finds 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 no evidence in the record demonstrating that Applicant was forced or coerced into pleading guilty. Therefore, this Court finds that this allegation is denied and dismissed.

#### **Prosecutorial Misconduct and Brady Violation**

Applicant asserts that the solicitor committed prosecutorial misconduct when the state received Applicant's motion for plea counsel to be relieved the solicitor forced Applicant to enter a plea because the solicitor told Applicant that if he did not plead guilty 'right then and there' then Applicant would go to trial in the morning. Additionally, Applicant alleges that the solicitor informed Applicant that he was facing fifteen years, but that if Applicant would testify that Applicant

worked out his problems with the solicitor, the sheriff's office, and plea counsel then the solicitor would allow Applicant to plea to ten years instead of fifteen. This Court has already found that Applicant's plea was voluntary, that Applicant was not forced or coerced into pleading guilty, and that Applicant entered his guilty plea of his own free will. The guilty plea transcript directly contradicts Applicant's allegations of prosecutorial misconduct. 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 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976). This Court finds that Applicant did not present any evidence or testimony as to why he should be allowed to depart from his statements to the plea court that Applicant did not have any complaints against anyone involved in his case and that Applicant wanted to waive those previous complaints. (Tr. p.8, lines5-10). It is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). This Court finds that Applicant is unable to meet his burden to prove prosecutorial misconduct.

The Applicant also alleges the prosecution committed a Brady violation by failing to disclose all discovery materials to Applicant and plea counsel. This Court finds that Applicant presented no evidence at the PCR hearing showing that the state withheld evidence from the defense in this case. Counsel testified that he had no reason to think that the state withheld any evidence from Applicant. In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C.

385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268. Accordingly, the Applicant has failed to meet his burden of proof; therefore these allegations are denied and dismissed.

#### **All Other Claims**

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

#### **V. CONCLUSION**

Based on all the forgoing, 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 for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

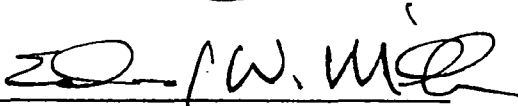
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the

obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 30 day of January, 2012.

  
Edward W. Miller  
Presiding Judge

, South Carolina

WITNESSES

MILLER

ECSO

ARREST WARRANT NUMBER

J605580

ACTION OF GRAND JURY

*Angela Bauer*

Foreperson of Grand Jury

Date: MAY 20 2009

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-19- 236

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MAY TERM 2009

THE STATE

vs.

MICHAEL DEON NORRIS

CDR#3039

Indictment for

DISTRIBUTION OF CRACK COCAINE  
3<sup>rd</sup> or Subsequent Offense

DONALD V. MYERS, SOLICITOR

