

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post-Conviction Relief

William H. Seals, Jr., Circuit Court Judge

Case No.: 2018-000214

RECEIVED
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S.C. SUPREME COURT

Hector Cases-Carreras #363117,..... Petitioner,

vs.

State of South Carolina,Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry)

TRANSCRIPT OF RECORD

February 23, 2015

STATE OF SOUTH CAROLINA,)

2014-GS-26-2135

Plaintiff,)

vs.)

HECTOR J.C. VAZQUEZ,)

Defendant.)

STATE OF SOUTH CAROLINA,)

2014-GS-26-2133

Plaintiff,)

vs.)

HECTOR CASES-CARRERAS,)

Defendant.)

B E F O R E:

Honorable Michael G. Nettles
Horry County Courthouse
Conway, South Carolina

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

David P. Caraker, Jr., Esquire
Attorney for Plaintiff

Dean N. Mureddu, Esquire
Attorney for Defendant Carreras

W. Thomas Floyd, Esquire
Attorney for the Defendant Vazquez

Dixie C. Eubank
Circuit Court Reporter

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E X H I B I T S

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16	<u>No.</u>	<u>ID</u>	<u>EV</u>
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(No Exhibits were marked during hearing.)

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1 (FEBRUARY 23, 2015)

2 THE COURT: Yes, sir. You are recognized.

3 MR. CARAKER: Thank you, Your Honor. May it please the
4 Court. Your Honor, we have the State of South Carolina,
5 County of Horry versus Hector Vazquez and Hector Javier Cases
6 Carreras. Mr. Vazquez is charged in true-billed indictment
7 2014-GS-26-02135 for trafficking in heroin over 28 grams.
8 Likewise, Mr. Carreras is charged in 2014-GS-26-02133 for
9 trafficking heroin 28 grams. It's my understanding that they
10 wish to enter a plea to the lesser included offense, each one
11 of them, to trafficking in heroin 4 to 14 grams -- 4 to 14
12 grams, first offense, Your Honor.

13 THE COURT: Might I have the sentencing sheet?

14 MR. CARAKER: Yes, sir, Your Honor. With regard to Mr.
15 Vazquez, we have made a negotiated sentencing range of fifteen
16 to eighteen years. And with regard to Mr. Carreras, there's
17 been a negotiated eighteen to twenty years.

18 THE COURT: Carreras is -- yes, sir, do you represent Mr.
19 Carreras?

20 MR. MUREDDU: Yes, sir, Your Honor. Dean Mureddu on
21 behalf of Mr. Cases Carreras.

22 THE COURT: Have you explained to him the offense of
23 trafficking in heroin, the potential penalties, elements of
24 the offense, potential defenses and his constitutional rights?

25 MR. MUREDDU: I have, Your Honor.

1 THE COURT: How does he wish to plea?

2 MR. MUREDDU: My understanding, he wishes to plead
3 guilty, Your Honor.

4 THE COURT: Does he understand the collateral
5 consequences of this plea in that it is a violent offense and
6 a serious offense?

7 MR. MUREDDU: I have explained to him the classification
8 of the offense, Your Honor.

9 THE COURT: And the fact that this is ~~non-paroleable?~~

10 MR. MUREDDU: We have gone over the fact that he will not
11 be parole eligible.

12 THE COURT: Very good.

13 Yes, sir. ~~Do you represent Mr. Vazquez?~~

14 MR. FLOYD: ~~Yes, sir, I do. Thomas Floyd.~~

15 THE COURT: Have you explained to him the offense of
16 trafficking in heroin, the elements of the offense, the
17 potential defenses and his constitutional rights?

18 MR. FLOYD: Yes, sir.

19 THE COURT: And how does he wish to plead?

20 MR. FLOYD: Wishes to plead guilty.

21 THE COURT: Do you agree with his decision to do so?

22 MR. FLOYD: Yes, sir.

23 THE COURT: Do you feel if called upon to do so, the
24 State could prove him guilty beyond a reasonable doubt?

25 MR. THOMAS: Yes, sir.

1 THE COURT: He understands the collateral consequences of
2 this plea?

3 MR. FLOYD: Yes, sir.

4 THE COURT: He understands it's a violent and serious
5 offense and that it's non-paroleable?

6 MR. FLOYD: Yes, sir.

7 THE COURT: Do you agree with his decision to do so?

8 MR. FLOYD: Yes, sir.

9 THE COURT: Do you feel if called upon to do so, the
10 State could prove him guilty beyond a reasonable doubt?

11 MR. FLOYD: Yes, sir.

12 THE COURT: All right. Let's place Mr. Carreras and Mr.
13 Vazquez under oath if we could.

14 ~~HECTOR CASES CARRERAS AND HECTOR J. CARRERAS~~
15 ~~VAZQUEZ, HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS:~~

16 THE COURT: Are you under the influence of any drugs or
17 alcohol here today, Mr. Carreras?

18 MR. CARAKER: Your Honor, I apologize for interrupting.
19 Do we need to swear the interpreters as well?

20 THE COURT: Yes, that would be -- yes, if we could.

21 I'm gonna ask the interpreters if we could to raise your
22 right hands while the Clerk administers the oath.

23 CLERK: Do you solemnly swear or affirm that you will
24 accurately interpret the language requested in this courtroom
25 of the Defendants without additions thereto or detractions

1 therefrom or any other amendments of your own interpretations
2 so help you God?

3 MS. LESTER: I do.

4 MR. HUNT: I do.

5 CLERK: Thank you.

6 MS. LESTER: And for the record, my name is Lydia Lester.

7 MR. BRITT: And Britt Hunt, B-R-I-T-T H-U-N-T.

8 EXAMINATION OF HECTOR CASES-CARRERAS AND HECTOR J.C. VAZQUEZ

9 BY THE COURT:

10 THE COURT: Are you under the influence of any drugs or
11 alcohol here today, Mr. Carreras?

12 (REPORTER'S NOTE: Responses of Carreras are through the
13 interpretation of Ms. Lester. Responses of Vazquez are
14 through the interpretation of Mr. Hunt.)

15 MR. CARRERAS: No, sir.

16 THE COURT: Mr. Vazquez.

17 MR. VAZQUEZ: No, sir.

18 THE COURT: Are you experiencing any kind of physical or
19 mental problem that could prevent you from understanding
20 what's going on here today? Mr. Carreras?

21 MR. CARRERAS: No, sir.

22 THE COURT: Mr. Vazquez?

23 MR. VAZQUEZ: No, sir.

24 THE COURT: Pay very close attention to the State
25 summarize the facts that bring us here today. I'm gonna ask

1 if you could go a little bit slower, you're about to run the
2 interpreters hot.

3 MR. CARAKER: Yes, sir, Your Honor.

4 THE COURT: Just slow it down.

5 MR. CARAKER: I apologize. Thank you, Your Honor. May
6 it please the Court. On November 16, 2013, in the Myrtle
7 Beach section of Horry County, Mr. Vazquez and Mr. Carreras
8 were found to be in possession of 298 grams of heroin. This
9 was discovered pursuant to a lawfully issued search warrant.
10 The drug report from SLED has returned a weight of 298 grams
11 and confirmed that it was heroin. And, Your Honor, if I may,
12 for the record, just so we have it on the record, the State's
13 witnesses are here and they're present ready to move forward
14 in the event that something does break down here.

15 THE COURT: Are those facts true and accurate, Mr.
16 Carreras?

17 MR. CARRERAS: Yes, sir.

18 THE COURT: Are you indeed guilty of trafficking in
19 heroin 4 to 14 grams first offense.

20 MR. CARRERAS: Yes, sir.

21 THE COURT: Are those facts true and accurate, Mr. Hector
22 Vazquez?

23 MR. VAZQUEZ: Yes, sir.

24 THE COURT: Are you indeed guilty of trafficking in
25 heroin 4 to 14 grams first offense?

1 MR. VAZQUEZ: Yes, sir.

2 THE COURT: Each of you are standing before me pleading
3 guilty but you don't have to plead guilty to anything. You
4 could exercise your right to a jury trial. In that process,
5 the jury would determine whether or not the State can actually
6 prove you guilty beyond a reasonable doubt. I would charge
7 the jury as a matter of law that you're presumed to be
8 innocent. No one can require that you take the witness stand.
9 However, if you wanted to, you could. You could subpoena
10 witnesses on your behalf. In addition to that, you and your
11 lawyer could cross examine the State's witnesses. You'd have
12 an opportunity to eyeball them and confront them as they
13 testified against you. Do you realize by pleading guilty
14 you're giving up all these rights, Mr. Carreras?

15 MR. CARRERAS: Yes, sir.

16 THE COURT: Mr. Vazquez?

17 MR. VAZQUEZ: Yes, sir.

18 THE COURT: All right. I understand plea negotiations
19 with regard to Mr. Carreras is a negotiated range between
20 eighteen and twenty years?

21 MR. CARAKER: Yes, sir, Your Honor.

22 THE COURT: Is that your understanding?

23 MR. MUREDDU: Yes, sir, it is, Your Honor.

24 THE COURT: With regard to Mr. Vazquez, is it your
25 understanding this is a negotiated range between fifteen and

1 eighteen years?

2 MR. FLOYD: Yes, sir.

3 THE COURT: Mr. Carreras, are you satisfied with your
4 lawyer?

5 MR. CARRERAS: Yes.

6 THE COURT: Any complaints against your lawyer, law
7 enforcement or this Court?

8 MR. CARRERAS: No.

9 THE COURT: Do you need any additional time to confer
10 with your lawyer?

11 MR. CARRERAS: No.

12 THE COURT: Mr. Vazquez, are you satisfied with your
13 lawyer?

14 MR. VAZQUEZ: Yes, sir.

15 THE COURT: Any complaints against your lawyer or law
16 enforcement or this Court?

17 MR. VAZQUEZ: No.

18 THE COURT: Do you need any additional time to confer
19 with your lawyer?

20 MR. VAZQUEZ: No, sir.

21 THE COURT: Has anybody promised you anything, threatened
22 you, pressured you, mistreated you in any way, shape or form
23 in an effort to get you to plead guilty here today, Mr.
24 Carreras?

25 MR. CARRERAS: No, sir.

1 THE COURT: Mr. Vazquez?

2 MR. VAZQUEZ: No, sir.

3 THE COURT: Have you understand all my questions, Mr.
4 Carreras?

5 MR. CARRERAS: Yes, sir.

6 THE COURT: Mr. Vazquez?

7 MR. VAZQUEZ: Yes, sir.

8 THE COURT: Have your answers been truthful, Mr.
9 Carreras?

10 MR. CARRERAS: Yes, sir.

11 THE COURT: Mr. Vazquez?

12 MR. VAZQUEZ: Yes, sir.

13 THE COURT: Each of you understand that you have ten days
14 to appeal this decision? Mr. Carreras?

15 MR. CARRERAS: Yes, sir.

16 THE COURT: Mr. Vazquez?

17 MR. VAZQUEZ: Yes, sir.

18 THE COURT: Based on your testimony, I find there is a
19 substantial factual basis for your plea. That your decision
20 was freely and voluntarily made, knowingly and intelligently
21 with the consent of competent counsel with whom you say you
22 are satisfied. I will accept your pleas and I will be glad to
23 hear from the State with regard to sentencing if you have
24 anything to add.

25 MR. CARAKER: Thank you, Your Honor. The only thing the

1 State would have to add with regard to sentencing is that the
2 sheer amount of heroin that these two gentlemen had in their
3 possessions is close to 300 grams. The maximum weight for a
4 heroin trafficking charge is 28 grams. To give you an idea of
5 where they fall on the spectrum, it's somewhere in the
6 neighborhood, and I'm guessing, about \$220,000 worth of heroin
7 if it's bagged up and sold by the slip on the street and we
8 would just ask Your Honor to take that into consideration when
9 going through the sentencing range. Thank you, Your Honor.

10 THE COURT: Mr. Carreras, be glad to hear from you, your
11 lawyer or anybody who would like to speak on your behalf.

12 BY MUREDDU:

13 MR. MUREDDU: Your Honor, may it please the Court. My
14 client is forty-two years old. He is originally from Puerto
15 Rico. He is married and has six children. That is his son
16 with him right now. That is one of them. They -- he has
17 other concerned family members in the back who love him and
18 care about him. I believe he's a good husband, father, a good
19 person. Your Honor, he has been residing in the State of
20 Florida during this proceeding, after it began and I think at
21 that time he was living there as well. He has been gainfully
22 employed. He works as a supervisor in the maintenance of
23 commercial trucking vehicles, I think that haul trash and
24 involved in the sanitation business. He is -- his role is
25 working on the trucks, supervising other employees.

1 Your Honor, I mean, this is clearly an unfortunate
2 situation for my client and his family. The recommendation
3 that we are asking you to follow here today is going to
4 require him to serve a number of years in prison. As the
5 Court knows and I have made my client aware that he is in the
6 no-parole-eighty-five-percent-category. So, basically, what
7 you give him here today is what he will have to serve with the
8 South Carolina Department of Corrections.

9 Your Honor, the language barrier in reviewing the
10 evidence has not been impossible but I think the way it has
11 shown itself is that we are entering into what I would call
12 kind of a plea, guilty plea at the eleventh hour. I do not
13 think that it's occurring because these two defendants were
14 not trying to accept responsibility for their wrong actions.
15 They are in fact accepting responsibility and have indicated
16 to myself and Mr. Floyd their remorse not for just getting
17 caught but for involving themselves in this transaction and
18 what went up to it.

19 Your Honor, we would ask the Court to sentence in the
20 minimum range here for the various reasons given by me. The
21 minimum sentence as it is being recommended is eighteen years.
22 That is a substantial penalty for this offense. I think that
23 if you take into consideration the totality of the
24 circumstances, I think that eighteen years would be a just
25 sentence and that's what we would ask the Court to impose here

1 today.

2 THE COURT: Does Mr. Carreras have a significant criminal
3 record? If so, what is it?

4 MR. CARAKER: No, sir, Your Honor. The only thing I
5 could find on his NCIC was a charge of aiding others to
6 possess cocaine with intent to distribute that stemmed from it
7 looked like a charge in Puerto Rico.

8 THE COURT: Very good.

9 MR. CARAKER: That's it for Mr. Carreras.

10 BY THE COURT:

11 THE COURT: Mr. Vazquez -- and would Mr. Carreras like to
12 say anything or anybody on his behalf?

13 MR. CARRERAS: ~~I just wanted to ask for, for forgiveness~~
14 ~~for what I did. I didn't mean to do it because, well, I~~
15 ~~didn't want to do it, I didn't do it with bad intentions. And~~
16 ~~I would very much appreciate any consideration that you could~~
17 ~~have for me in this.~~

18 THE COURT: Very good. Anything further from the Defense
19 with regard to Mr. Carreras?

20 MR. MUREDDU: Nothing, Your Honor.

21 THE COURT: Mr. Vazquez, be glad to hear from you and
22 your lawyer and anybody who would like to speak on your
23 behalf.

24 BY MR. FLOYD:

25 MR. FLOYD: May it please the Court, Your Honor. Hector

1 is twenty-four years old. He is original from Puerto Rico,
2 been living here in this area for a couple of year now. He is
3 working. He works construction as well as working for
4 Glasstec. He is married. He has one child, a relatively
5 newborn. He has absolutely no prior record. He stands before
6 you, Judge, today, of course, as you've heard, he's got family
7 here in the courtroom. I can tell you I have watched them
8 together, they all care about one another greatly. The
9 State's negotiation here is for a sentence in the range of
10 fifteen to eighteen years. As I've stated, Hector has got no
11 prior record. He's a very young man at twenty-four years old
12 and has a newborn that's gonna be grown when he completes this
13 sentence. And I'd ask you to consider coming in at the
14 fifteen-year mark which would be the minimum as recommended by
15 the State. Thank you.

16 BY THE COURT:

17 THE COURT: Mr. Vazquez, would you like to say anything?

18 MR. VAZQUEZ: Yes, sir. I'd just like to apologize to
19 the State of South Carolina. And my family, ask for
20 forgiveness. And I'm sorry for everything and it was a lack
21 of respect. And if you could have some consideration, I would
22 thank you very much for that.

23 THE COURT: Are they entitled to any time of
24 incarceration prior to this hearing?

25 MR. CARAKER: Your Honor, that I'm aware of, they weren't

1 under any ankle monitor, home detention or anything like that.

2 THE COURT: How long did it take for them to get a bond?

3 MR. CARAKER: They may be able to answer that a little
4 better than I can, Your Honor.

5 MR. MUREDDU: Your Honor, my bond paperwork says that
6 they were arrested on November the 16th of 2013 and it appears
7 they bonded out --- it looks like the bonding paperwork was
8 executed on the 21st of November. The bond was actually set
9 on the 17th, so ---

10 THE COURT: Six days maybe?

11 MR. MUREDDU: That sounds about right.

12 MR. CARAKER: Yes, sir, Your Honor.

13 THE COURT: How about Mr. Vazquez?

14 MR. CARAKER: It's the same for him as well, Your Honor.

15 MR. FLOYD: He tells me he was in almost a month, Judge,
16 before he made his bond.

17 THE COURT: Is it correct Mr. Carreras bonded out
18 significantly earlier?

19 MR. VAZQUEZ: That's right.

20 THE COURT: Probably of all the drugs that come before
21 this Court, heroin is the most dangerous. When I practiced
22 law, I did a lot of State court criminal defense work and I
23 can only recall handling two cases of heroin. It's making a
24 comeback and it's a terrible thing because so many people --
25 you don't know how potent it is and then once you start using

1 it, you become habituated to it and you start using more and
2 then you wake up dead the next morning. It's a terrible
3 thing. It ruins people's lives and people spend every dime
4 they have not to get high but just to stay -- keep from
5 getting sick. It's a terrible thing. It's a terrible plague
6 on our society. And obviously, Mr. Carreras and Mr. Vazquez,
7 y'all are going to have to pay the very dear price for that.

8 SENTENCE OF THE COURT:

9 On indictment 2014-GS-02133, trafficking in heroin, the
10 sentence of the Court is that you be committed to the State
11 Department of Corrections for a period of eighteen years and
12 you're given credit for six days.

13 Mr. Vazquez, on indictment 2014-GS-26-02135, trafficking
14 heroin, the sentence of the Court is that you be committed to
15 the State Department of Corrections for a period of fifteen
16 years, given credit for twenty-six days.

17 Good luck to both of you.

18 MR. CARAKER: Thank you, Your Honor.

19 MR. FLOYD: Thank you, Judge.

20 MR. MUREDDU: Thank you, Your Honor.

21

22 (ADJOURNED.)

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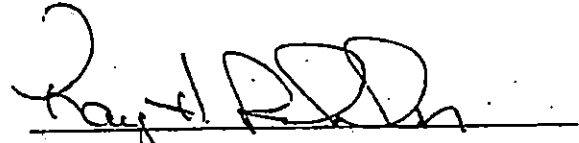
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Hector J.C. Vazquez and Hector Cases-Carreras, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 23, 2015, taken by Dixie C. Eubank.

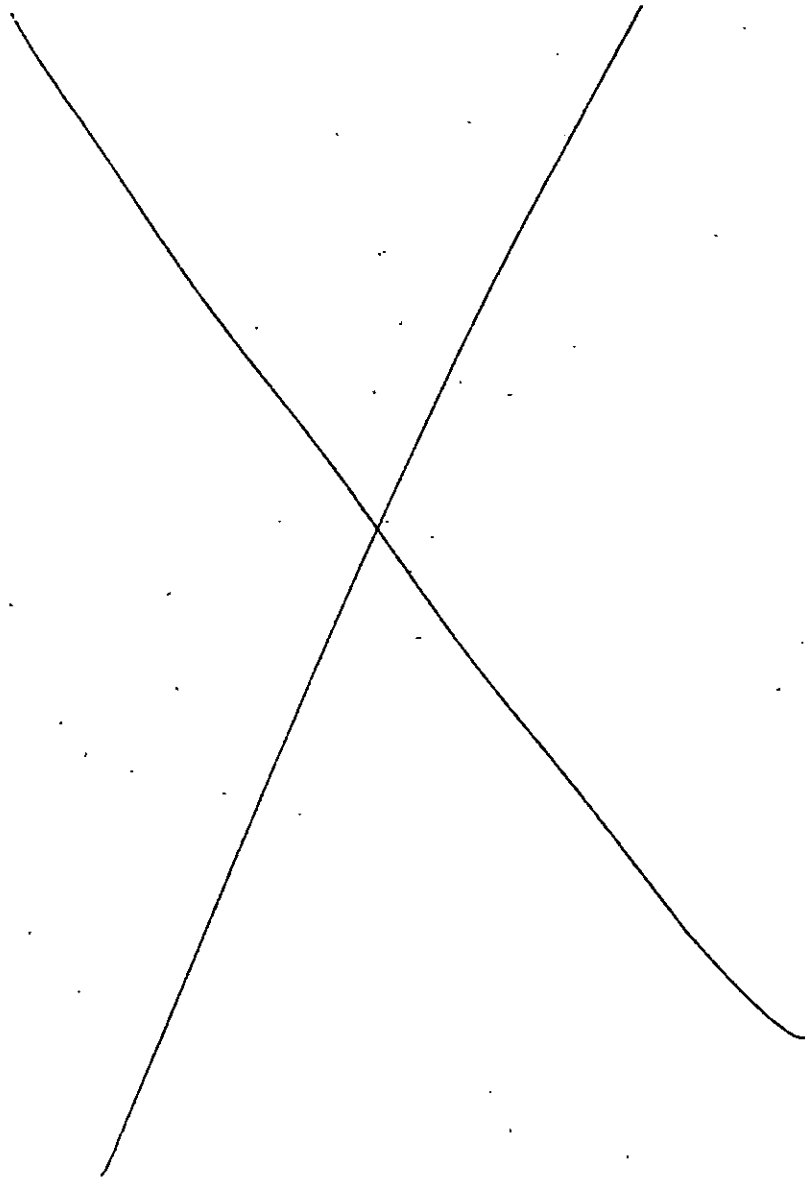
I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson
Official Court Reporter

December 29, 2015.

00018



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)	2015-CP-26-07903
HECTOR CASES-CARRERAS,)	
Applicant,)	Transcript of Record
vs.)	(Post-Conviction Relief)
STATE OF SOUTH CAROLINA,)	September 18, 2017
Respondent.)	

B E F O R E:

Honorable William H. Seals
Horry County Courthouse
Conway, South Carolina

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

Tommy A. Thomas, Esquire
Attorney for Applicant

Johnny E. James, Jr., Esquire
Attorney for Respondent

Kay H. Richardson
Circuit Court Reporter

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BY THE COURT

1 (SEPTEMBER 18, 2017 - 10:10 A.M.)

2 BY THE COURT:

3 THE COURT: All right. If the state will go ahead and
4 introduce the first case.

5 MR. JAMES: Thank you, Your Honor. My name is Johnny
6 Ellis James, Jr., State of South Carolina. The state calls
7 the matter of Hector Cases-Carreras versus State of South
8 Carolina. This is docket number 2015-CP-26-7903. Mr.
9 Carreras pled guilty on February 23rd, 2015 to trafficking in
10 heroin 4 to 14 grams. He was sentenced to 18 years in prison.
11 Mr. Carreras is here today in the courtroom. The defendant is
12 represented by Mr. Tommy Thomas, to whom I now give the floor.

13 THE COURT: All right. Mr. Thomas?

14 MR. THOMAS: If it please the Court, Your Honor, we would
15 call Mr. Hector Cases-Carreras to the stand.

16 THE COURT: All right. Has the interpreter been sworn?

17 CLERK: No, sir.

18 THE COURT: If you would go ahead and swear the
19 interpreter, please, ma'am.

20 MIRIAM BERROUET, HAVING BEEN SWORN,

21 AS INTERPRETER:

22 THE COURT: Thank you. All right.

23 MR. THOMAS: If it please the Court?

24 THE COURT: Yes, sir.

25 THE COURT: The interpreter has informed me that you all

1 need to go a little bit slower because she has to translate.

2 MR. THOMAS: Yes, sir.

3 THE COURT: If she raises her right hand, that means go
4 slower.

5 MR. THOMAS: Okay. Was it okay when we were ---

6 INTERPRETER: Yeah, it was fine. You just went a little
7 bit fast.

8 MR. THOMAS: Okay. I was reading. I apologize. I'll
9 slow down.

10 INTERPRETER: Thank you.

11 HECTOR CASES-CARRERAS, HAVING BEEN
12 SWORN TESTIFIES AS FOLLOWS THROUGH INTERPRETER:

13 CLERK: State your name for the Court.

14 INTERPRETER: Judge Seals, we're having a problem with my
15 equipment. Just hold on for one second.

16 THE COURT: Okay.

17 INTERPRETER: I apologize, Judge. He says he hears me
18 now.

19 MR. CASES-CARRERAS: Hector Cases-Carreras.

20 DIRECT EXAMINATION OF HECTOR CASES-CARRERAS BY MR. THOMAS:

21 Q: Mr. Carreras, you're serving time?

22 A: Yes, sir.

23 Q: And what are you serving time for?

24 A: In Lee County.

25 Q: And what was -- what did you plead guilty to?

- 1 A: Trafficking heroin.
- 2 Q: And was that 4 to 14 grams?
- 3 A: Yes, sir.
- 4 Q: And it's first offense?
- 5 A: Yes, sir.
- 6 Q: You were sentenced to how much time?
- 7 A: Eighteen years.
- 8 Q: You understood at the time it was negotiated plea?
- 9 A: I don't understand that.
- 10 Q: Okay. All right. Let's -- we'll just move on then.
- 11 What is your max-out date?
- 12 A: The maximum?
- 13 Q: Yes.
- 14 A: The year 2031.
- 15 Q: You and I discussed post-conviction relief?
- 16 A: Yes.
- 17 Q: You understand that you're asking that your sentence be
- 18 vacated?
- 19 A: Yes.
- 20 Q: You understand that there is certain exposure should the
- 21 Court grant it?
- 22 A: Yes, sir.
- 23 Q: You could -- the state could elect to retry you?
- 24 A: Yes, sir.
- 25 Q: Or enter into a different plea?

- 1 A: Yes, sir.
- 2 Q: Are you willing to -- are you willing to accept this
3 exposure?
- 4 A: Yes.
- 5 Q: You wish to go forward today?
- 6 A: Yes, sir.
- 7 Q: All right. When were you arrested?
- 8 A: November 13th of 2013.
- 9 Q: And you were charged with what?
- 10 A: Trafficking heroin.
- 11 Q: And did you retain an attorney?
- 12 A: Yes.
- 13 Q: And he represented you for how long?
- 14 A: For three months past until the discovery.
- 15 INTERPRETER: Interpreter is asking for clarification.
- 16 A: Okay. I was arrested in November and in January was the
17 discovery.
- 18 Q: Did -- did he make bond?
- 19 A: Yes.
- 20 Q: How long was he out on bond?
- 21 A: A year and two months.
- 22 Q: Did he change attorneys?
- 23 A: He quit. He said he couldn't continue with the case.
- 24 Q: All right.
- 25 A: Yes, his attorney ---

1 Q: Who represented you after that?

2 A: After?

3 Q: Yes, who was the second attorney?

4 A: The Court assigned me Dean Mureddu.

5 Q: And what did Mureddu, what did he do to prepare his case
6 for trial?

7 A: Nothing.

8 Q: How many times did he meet with him?

9 A: I saw him the first time in his office and then after
10 that, I saw him three times in the courtroom, five to 10
11 minutes in every situation.

12 Q: Did he go over the discovery with him?

13 A: No.

14 Q: Did he understand the elements that the state had against
15 him?

16 A: No.

17 Q: Did they have any evidence that he was -- that he was
18 dealing in drugs?

19 A: I don't know if they had evidence. They had a drug, but
20 I don't know if they had all the evidence. He didn't talk
21 about it -- I never saw anything about my discovery, proof, or
22 evidence. I never saw anything.

23 Q: Were there videotapes?

24 A: In all of our appointments, he mentioned a video, but he
25 kept saying the video wasn't ready. And then the day we were

1 gonna go to trial, he showed me a video, but I wasn't in any
2 of the video. And he kept saying it was me that was the
3 person in the video. He said it was me that was the person in
4 the video.

5 Q: But it was not him?

6 A: No.

7 Q: Okay. And when did he see this video?

8 A: One hour before I was going to go into trial.

9 Q: When he went to court the last time, why did he think he
10 was going to court?

11 A: I thought it was a hearing for me to report in because I
12 was under the understanding that we were gonna go over the
13 discovery and evidence and come up with a strategy.

14 Q: Did he know that he was set for trial?

15 A: At that moment, that he indicated me to that until up to
16 that day was my bond and everything was prepared for me to go
17 to trial. That the jury was prepared and the agents were
18 ready to start the trial. That's what he told me in the
19 hallway.

20 Q: That day?

21 A: Yes.

22 Q: And so he had to make a decision about the plea that day?

23 A: He called me into a room and told me the offer was 20
24 years or I would have to go to trial. And he told me he
25 didn't have a defense to go to trial and that he did not have

1 a way to win the trial, and I told him, you know we're not
2 ready. And I didn't know what they had and he never showed me
3 the video and, in that moment, he found a computer and showed
4 me the video.

5 Q: Did he ever discuss with his attorney how he was gonna
6 defend him?

7 A: No.

8 Q: Did he -- was he aware of any plea offers, any other plea
9 offers?

10 A: Before?

11 Q: Uh-huh (affirmative response).

12 A: And the pleas before, the first offer was 25 years. The
13 first one clearly wasn't in the court. The first normal one
14 was 18 years that I remember. The second one was 15. I was
15 hoping he was going to bring back another offer that was
16 better like 12 years. Then he brought me 18 and I said, well,
17 let's go to trial and see if I can get a better offer.

18 Q: There were other people that were arrested with him?

19 A: Yes, my older son and his wife.

20 Q: Is that Santiago Lopez?

21 A: Yes, sir.

22 Q: What was his understanding about the charges against
23 Santiago Lopez?

24 A: All right. You asked about Santiago Lopez?

25 Q: Yes.

1 INTERPRETER: Could you repeat the question, please?

2 Q: Sure. Was it his understanding that if he pled guilty
3 they were going to drop the charges against Ms. Lopez?

4 A: They went to court after two or three hours. The
5 attorney brought me an offer 18 years for me, 15 for my son.
6 And I said to my attorney, can you get 15 for me, 12 for my
7 son, and let her go free. And when he came back, he said it
8 was gonna be 18 for me, 15 for my son, and she would go free.
9 So, it was still his understanding that he needed to plea so
10 she would be released?

11 A: Yes, sir.

12 Q: Mr. Cases-Carreras, where are you from?

13 A: Puerto Rico.

14 Q: Okay. And Spanish is his language?

15 A: Yes, sir.

16 Q: Okay. And did you have difficulty understanding what was
17 happening?

18 A: Yes, sir.

19 Q: When you met with your attorney, Mr. Mureddu, how did you
20 communicate?

21 A: The first appointment we had in his office, my wife acted
22 as an interpreter. And the other occasions, there were other
23 interpreters, but I didn't really understand a lot of their
24 language because all Spanish is not the same.

25 Q: Does your wife understand the legal terms?

1 A: I don't know if she understands the legal terms, but she
2 understands a lot of English.
3 Q: Did he understand all the legal terms?
4 A: No.
5 Q: Okay. Now, when he entered into his plea, there was a
6 translator present?
7 A: Yes.
8 Q: Okay. Did he understand that day what was going on?
9 A: I understood when she was interpreting. The interpreter
10 says exactly what the attorney was. She was only interpreting
11 what exactly he said, she didn't explain further than what she
12 was told.
13 Q: We discussed guilty pleas?
14 A: Uh-huh, (affirmative response).
15 Q: We discussed that it must be freely and voluntarily
16 given?
17 A: Uh-huh, (affirmative response).
18 Q: We discussed that it has to be knowingly and
19 intelligently given?
20 A: Yes, sir.
21 Q: Those are legal terms?
22 A: Uh-huh, (affirmative response).
23 THE COURT: Would you say a yes or a no.
24 A: Yes, sir.
25 BY MR. THOMAS:

1 Q: Did he understand that he freely and voluntarily and
2 knowingly and intelligently enter into this plea?

3 A: I accepted the offer with, you know, the intelligence
4 that I have, but under pressure. It's the wife of my son and
5 the attorney told me I didn't have a defense and I could get
6 up to 45 years.

7 Q: We had this problem with these legal terms last night
8 when I met with you at the county jail?

9 A: Yes.

10 Q: And the most simple way to ask it is, did you understand
11 the legal process of what you're doing?

12 A: No, sir.

13 MR. THOMAS: Your Honor, I beg the Court's indulgence?

14 THE COURT: Sure.

15 MR. THOMAS: No further questions, Your Honor.

16 THE COURT: All right.

17 Mr. James?

18 CROSS EXAMINATION OF HECTOR CASES-CARRERAS BY MR. JAMES:

19 Q: Mr. Carreras, did you express to your attorney, your
20 version of what occurred the night you were arrested?

21 INTERPRETER: Defendant would like for you to repeat the
22 question.

23 Q: Did you tell your attorney what happened?

24 A: To which attorney, him?

25 Q: To your original plea attorney, Mr. Mureddu?

1 A: No, we didn't talk about it. He only discussed the
2 report of the police with me.

3 Q: Did you tell him anything?

4 A: No, sir.

5 Q: Did you give him any leads or witnesses to pursue?

6 A: No, sir.

7 Q: Did you never express to your attorney that you were
8 confused or did not understand what he was saying?

9 A: Yes, sir, various times.

10 INTERPRETER: The interpreter would like to ask for
11 clarification.

12 A: And at one time, he himself tried to be an interpreter to
13 me.

14 Q: Who is he?

15 A: My attorney.

16 Q: So, when you say your attorney tried to act as an
17 interpreter, do you mean that he tried to speak to you in
18 Spanish or in English?

19 A: He tried to speak Spanish. He said his family and his
20 wife were from Miami.

21 Q: Did you speak in English or Spanish to Mr. Canty when he
22 represented you?

23 A: I only talked with him one time in the office and my wife
24 was there to interpret us.

25 Q: With Mr. Canty?

1 A: Yes, sir.

2 Q: Do you know if Mr. Canty speaks Spanish?

3 A: He doesn't speak Spanish.

4 Q: At your arraignment, you were initially offered a plea of

5 15 years; is that correct?

6 A: At the beginning, no. I think it was the second offer.

7 Q: But you do agree that at your arraignment, you were

8 offered a plea offer of 15 years and you denied it?

9 A: At the beginning, they didn't offer me 15 years. When

10 the attorney, Dean Mureddu, called me and in the meeting that

11 I had in his office, the little bit that I could say, I asked

12 if he could get me 10 years and he told me it was impossible.

13 Q: Do you recall your arraignment?

14 A: Yes.

15 Q: And you recall turning down the plea offer at that time?

16 A: When they arrested me, they didn't offer me anything.

17 Q: Whose decision was it for you to ultimately plead guilty?

18 A: The decision of who it was?

19 Q: Who made the decision to plead guilty, you or your

20 attorney or anybody else?

21 A: The attorney brought me the offer. The other attorney

22 brought me the offer and they give me a better option.

23 Q: Other attorney referring to?

24 A: Dean Mureddu. And that was the last decision of the

25 offer.

1 Q: So, your attorney told you that you had to make a
2 decision on this final plea offer?

3 A: (Inaudible.)

4 Q: Wait for your interpreter to translate what I say.

5 INTERPRETER: The interpreter would like the attorney to
6 repeat the question.

7 Q: If I can remember it. Your attorney, Mr. Mureddu, told
8 you that this plea offer was the final plea offer and that you
9 had to make a decision on it, correct?

10 A: Yes, sir.

11 Q: And you made a decision?

12 A: I didn't have another option.

13 Q: You did not feel that trial was an option?

14 A: It would've been an option if I had an attorney who was
15 willing to investigate seriously, and to get all of the
16 evidence that he could and prepare himself adequately.

17 Q: But you said earlier, you didn't do anything to try and
18 help your attorney?

19 A: He never gave me a meeting in order to do it.

20 Q: Do you recall waiving various rights at your guilty plea
21 proceeding?

22 A: Giving up some rights, I don't remember giving up rights.

23 Q: Do you remember waiving your right to remain silent?

24 A: No.

25 Q: Do you remember waiving your right to a jury trial?

1 A: Uh-huh, (affirmative response).

2 THE COURT: You need to answer yes or no.

3 A: Yes.

4 Q: I beg the Court's indulgence?

5 Do you remember telling the Court that you were satisfied
6 with your attorney?

7 A: At what time, what moment?

8 Q: At your guilty plea proceeding?

9 A: It was the process. That's the process.

10 Q: But you told the Court that you were satisfied with your
11 attorney, correct?

12 A: It's part of the process. That's what they ask you in
13 order for you to declare yourself guilty.

14 Q: Were you not satisfied with your attorney at that time?

15 A: I was never satisfied with the services of my attorney.

16 Q: So, you lied to the Court in your guilty plea?

17 A: No, I was told I had to say it like that.

18 Q: By who; who told you you had to say it like that?

19 A: The attorney, because when somebody is going to declare
20 themselves guilty, they ask these questions and if you don't
21 answer them, then you don't get the plea.

22 Q: And he explained all of this process to you?

23 A: No, I just went in front of the Judge and I declared
24 myself guilty, we declare ourselves guilty. I wasn't gonna be
25 in agreements with more years than what they initially offered

1 me.

2 Q: Do you recall the solicitor putting certain facts on the
3 record during your guilty plea proceeding?

4 A: It could have happened, but I don't remember because I
5 asked for all of my records from the attorney and I never got
6 them; he never answered my letter from the jail. I don't have
7 documents of my case.

8 Q: Would it help to refresh your memory if I showed you a
9 copy of the transcript from your guilty plea?

10 A: Yes, sir.

11 Q: If I may approach the witness, Your Honor?

12 I have in my hand a copy of the transcript from your
13 guilty plea and it is turned to Page 7. I would ask you to
14 review Lines 5 to 17. I understand the transcript is written
15 in English. I suppose the translator may be able to assist
16 you with that.

17 Are you all done, Mr. Carreras?

18 A: It could've been in that moment being under pressure, I
19 didn't understand the amount. My accusation was not for that
20 amount of drugs.

21 Q: Mr. Carreras, you're answering a question that I haven't
22 asked yet. I'm only asking do you remember the state giving
23 the facts of your case.

24 A: That wasn't the question you asked before.

25 Q: It's the question I'm asking now, do you recall the state

1 giving you the facts of the case during your guilty plea?

2 A: Yes, sir.

3 Q: And you remember agreeing to those facts?

4 A: Yes, sir.

5 Q: Thank you.

6 I beg the Court's indulgence just one moment.

7 No further questions of this witness.

8 THE COURT: Any redirect?

9 MR. THOMAS: Your Honor, if it please the Court, just one
10 or two.

11 REDIRECT EXAMINATION OF HECTOR CASES-CARRERAS BY MR. THOMAS:

12 Q: You speak some English?

13 A: Not much.

14 Q: Okay. What is your -- what is your language?

15 A: Spanish.

16 Q: And that's what you feel most comfortable with?

17 A: Yes, sir.

18 MR. THOMAS: No further questions, Your Honor.

19 THE COURT: All right.

20 Anything further?

21 MR. JAMES: Only a single question.

22 RE CROSS EXAMINATION OF HECTOR CASES-CARRERAS BY MR. JAMES:

23 Q: You did understand the transcript I handed you just now,
24 correct?

25 A: Yeah, I read a little.

1 Q: And without the assistance of the interpreter?

2 A: No.

3 Q: No further questions.

4 THE COURT: All right. You may step down.

5 Call your next witness.

6 MR. THOMAS: Your Honor, if it please the Court, we'd
7 call Mr. Dean Mureddu to the stand.

8 DEAN MUREDDU, HAVING BEEN DULY SWORN

9 TESTIFIES AS FOLLOWS:

10 CLERK: You can have a seat. State your name for the
11 Court.

12 MR. MUREDDU: My name is Dean Mureddu, M-U-R-E-D-D-U,
13 Mureddu.

14 MR. THOMAS: If it please the Court?

15 DIRECT EXAMINATION OF DEAN MUREDDU BY MR. THOMAS:

16 Q: that was gonna be my first question that was I gonna ask
17 you how to pronounce your last name. I apologize.

18 A: No, nobody gets that right. That's okay.

19 Q: Counsel?

20 A: Yes, sir.

21 Q: You had an opportunity to represent Hector Cases-
22 Carreras?

23 A: Yes.

24 Q: All right, sir. And did you represent him from the
25 beginning?

1 A: No, Mr. Canty was involved. I got appointed sometime
2 after a preliminary hearing was held, that's my understanding.

3 Q: All right. But for the most part, you represented him
4 through the duration?

5 A: Yes, sir.

6 Q: Okay. And you made negotiations for the plea?

7 A: Yes.

8 Q: Okay. Just to ask you a couple of questions about in
9 preparation of this case for trial, what all did you do?

10 A: Well, I made sure that I had all the discovery, reviewed
11 it and, you know, looked for any defects in -- in the
12 procedures. It was a search warrant case. There was a CI
13 involved, there were co-defendants. You know, there was
14 obviously drug reports, chain of custody issues. I reviewed
15 the documents for myself to prepare for trial, and then tried
16 to figure out exactly how, if we went to trial, would we --
17 what our best defense would be.

18 Q: Now, initially -- I beg the Court's indulgence.

19 Your Honor, may I approach?

20 THE COURT: You may.

21 Q: Let me show you this document and see if you can identify
22 that?

23 A: It's the Grand Jury case summary.

24 Q: Did you receive that in your discovery?

25 A: Yes, sir.

1 Q: Okay. Let me ask you about, turn over to Page 12 ---

2 A: Of the document you just handed me?

3 Q: --- yes, one paragraph on the last page.

4 A: Yes, sir. The last page?

5 Q: All right. And it talks about 117.7 grams.

6 MR. JAMES: Just a point, Your Honor, is this document
7 being introduced into the record or is it being used to
8 refresh his memory?

9 MR. THOMAS: I would like to introduce it into the
10 record, Your Honor.

11 MR. JAMES: No objection.

12 THE COURT: All right.

13 APPLICANT'S EXHIBIT NUMBER 1

14 ADMITTED INTO EVIDENCE

15 MR. THOMAS: And I have a copy for the Court as well.

16 BY MR. THOMAS:

17 Q: And that amount is incorrect?

18 A: Yeah, as far as what they found or what it's got on the
19 report?

20 Q: They say 117 and I guess actually, I guess, in some odd
21 way, they found more ---

22 A: Well, here's my understanding of the evidence -- and I'll
23 go into the specific document. I think on the search warrant,
24 they were expecting to find a certain amount, and then when
25 they actually did the search they found a different amount.

1 That was my understanding of kind of how the case developed.

2 So, I certainly would not disagree that in the search warrant
3 what they expected to find was probably 117, the 117.

4 Q: All right.

5 A: There's a discrepancy.

6 Q: Did you, and I guess the question is, was there anything
7 that you could use this as far to suppress, or I mean was
8 there anything, any argument available on that on that
9 mistake?

10 A: Well, not one that I thought would work because again, my
11 interpretation was this and, again, there was a CI that was
12 dealing with my client's son and they were -- they did a few
13 buys, it's my understanding, and then which was the set up for
14 a larger buy and -- and when I finally saw the CI videotape, I
15 think that the negotiations were they wanted a certain amount
16 and that my guess was, when they were expecting to find 117
17 grams or in that amount, it was based on what the
18 conversations were, they were like, okay, we think that that's
19 what they're going to find. But when they actually did the
20 search, it just, I mean there was -- there was more drugs in
21 the house. So, I didn't see that that was going to help us
22 any. It was certainly not close to the 28 which was required
23 to take it into the mandatory 25 to 40. And, and I certainly
24 expected that that was going to be the explanation given by
25 law enforcement if I challenged it.

1 MR. THOMAS: I beg the Court's indulgence. May I
2 approach, Your Honor?

3 THE COURT: You may.

4 BY MR. THOMAS:

5 Q: Counsel, let me ask you and see if you can identify that
6 document?

7 A: The search warrant. I mean, the actual arrest warrant.

8 Q: All right. Was that in your discovery?

9 A: Yes.

10 MR. THOMAS: All right. Your Honor, I'd like to
11 introduce this as Applicant's 2?

12 THE COURT: Any objection?

13 MR. JAMES: No objection, Your Honor. As previously
14 indicated to Defense counsel, this document should be in the
15 Judge's packet that was provided to you previously.

16 THE COURT: Thank you.

17 APPLICANT'S EXHIBIT NUMBER 2

18 ADMITTED INTO EVIDENCE

19 BY MR. THOMAS:

20 Q: Now, what does it show the amount that was in that arrest
21 warrant?

22 A: 116.7.

23 Q: And that is -- would have been logically issued after the
24 search warrant was executed?

25 A: Yes, sir.

1 Q: So, it's incorrect as well?

2 A: If, if what they found was actually 300, yes, there's a
3 -- there was a discrepancy in the weights. I would certainly
4 agree with that.

5 Q: All right. Let me also take you back to Applicant's 1
6 and look at Page 10 and this is one, two, three, four, fifth
7 paragraph. If you would look at that please and it starts
8 with, due to the language barrier?

9 A: Yes.

10 Q: Okay. So, obviously, there was some difficulty with the
11 language when the police, I guess, arrested the defendants?

12 A: Yes, sir. I mean he ---

13 Q: Okay.

14 A: Yes, sir.

15 Q: Okay. So, there's some notation in the record about the
16 language problem?

17 A: Yes, sir.

18 Q: Now, and in fact and I'll ask you about this, too. In
19 the transcript -- and Your Honor, and I'm referring to Page
20 12, Lines 9 through 12. If I can approach, Your Honor?

21 THE COURT: You may.

22 Q: This is the second paragraph and ---

23 A: Yes, sir.

24 Q: You mentioned here in front of the Court at the time of
25 the plea, you talk about a language barrier?

1 A: Yes, sir.

2 Q: Okay. Do you feel that there was some sort of language
3 problem between you and your client?

4 A: Well, he doesn't speak very good English and I don't
5 speak very good Spanish. So, without -- and I'll put it to
6 you like this, without an interpreter, we would not have
7 gotten anywhere.

8 Q: All right. And how many times did he come to see you?

9 A: I met him several times. It was usually at court. Every
10 time that I met him at court, I always had an interpreter with
11 me or we had one available. But, the most significant meeting
12 that he and I had, where we reviewed the evidence, was at my
13 office and with a woman that I understood to be his wife
14 acting as the interpreter. He -- they came in together and I
15 gave them copies for us to go over everything.

16 Q: But you would not have known her skills in regards to
17 being able to interpret?

18 A: Well, I mean, they -- she said -- she spoke very good
19 English and he spoke a little bit of English, but she was --
20 when I would tell her something and she would translate and
21 she would give me the answer back, it was clear to me that she
22 understood what I was saying, because the answers that he
23 gave, I mean ---

24 Q: Yes, sir.

25 A: --- they went together.

1 Q: Do you know if she was able to translate the legal terms
2 accurately?

3 A: Oh, no, I wouldn't -- I mean, she could repeat the words
4 that I said as far as if she asked me what they meant, I would
5 tell her what they meant, but I don't know her degree of
6 knowledge as far as legally.

7 Q: All right. You and I discussed about the confidential
8 informant. To your knowledge, was the CI able to speak
9 Spanish?

10 A: I know the CI through his name and through viewing
11 videotapes; and he did not appear to speak a word of Spanish.
12 He was speaking in English. And the co-defendant, my client's
13 son, was speaking English as well. His -- but you could tell
14 his -- the co-defendant, my client's son, didn't speak English
15 that well, but they were able to communicate. And the CI, he
16 didn't speak any English that I heard on -- or any Spanish,
17 I'm sorry.

18 Q: Okay. And what was your theory of defense going to be if
19 this case went to trial?

20 A: Well, I -- and I told my client this. The only workable
21 defense as I saw it would be to blame it on his son. I mean,
22 the -- because the case as I understood it was this. The
23 police had an informant who made contact with my client's son,
24 not with my client. And to my knowledge, there was never any
25 police contact with my client until he was arrested pursuant

1 to the search warrant raid. So, my understanding of the case
2 was, you have a CI dealing with my client's son. There were
3 some controlled buys, and then there was a negotiation for a
4 larger buy. And now, so, my theory of the case would have
5 been that my client was merely present at the scene because he
6 was in fact present, there were drugs in there, and that the
7 drugs belonged to his son and whatever illegal activity that
8 was going down, my client -- that was my client's son, not my
9 client. That would've been the gist of my defense.

10 Q: Now, Mr. Carreras, he lived in Florida?

11 A: My understanding is, yes.

12 Q: And the home in which the search warrant was executed
13 against, was that his son's or his?

14 A: That was to -- I believed it to be or I certainly would
15 have argued that was his son's residence that my client -- I
16 would have argued my client lived in Florida. Whether or not
17 they could've tied him into some type of lease or ownership, I
18 didn't think that they could.

19 Q: So, he could have potentially had a possible defense?

20 A: Yes, I mean, mere presence. His defense as I saw it, the
21 only defense was mere presence and I'll say that too because I
22 didn't see any technical defense. One of the things that when
23 I reviewed with my client, we went over the search warrant and
24 I gave him a copy of the search warrant, and it was my
25 opinion, that the search and seizure was legal. So, I didn't

1 think we had a suppression motion. So, then we had go into
2 what would have been a factual defense and our factual defense
3 that I would've presented was mere presence. My client was
4 merely present; he was not involved in illegal activity.

5 Q: At which made me think about the next question. Were
6 there any problems with the chain or with the drug analysis or
7 anything like that?

8 A: Well, you had -- again, there was this weight
9 discrepancy. I didn't see -- whatever problems or
10 inconsistencies they -- the inconsistencies were -- did not
11 work to the benefit of my client. I mean, there -- we were
12 nowhere near -- I didn't see any problems with the chain and I
13 didn't see any way that they wouldn't be able to establish
14 greater than 28 grams.

15 Q: Okay. All right. Plea offers?

16 A: We officially had two. The first offer was 18 years and
17 -- and it was -- when my client and I met in my office for
18 around two hours with his wife. I believe at that time, the
19 offer was 18. I told him that I thought I might be able to
20 get it as low as 15. He did, as in his testimony, he was
21 talking 10. I had negotiations. I told him I didn't think it
22 was likely, but certainly I was trying to negotiate as best as
23 I could. So -- but I didn't want to give him any false hope.
24 I told him I thought it might go as low as 15 and that's
25 actually where it officially went to. I think when he got

1 arraigned, on the record, I think the offer had actually gone
2 from 18 to 15.

3 Q: So, getting back to the idea of a trial, if he had taken
4 the case to trial, would they have tried he and his son
5 together?

6 A: Yes. I -- one of the things in my preparation for the
7 case is that I didn't -- neither he nor his son gave a
8 statement. So, I didn't see any *Bruton* issue. I was gonna
9 try to sever, but I didn't really think that -- that that
10 motion to sever would be granted. Now, my argument in that
11 would be there would be evidence that would come in against
12 his son that I don't think that would be prejudicial to him
13 that I don't think would be admissible in his case in chief
14 because what -- if they would've been tried together,
15 certainly the evidence of his son's dealing with the informant
16 and those videotapes and that type of thing, that would've
17 come in and that would have been collateral damage in our
18 case. But, I didn't think the Judge would grant a severance
19 and so then and we were also working on if, you know, Mr.
20 Caraker, the prosecutor, was not going to allow me to make all
21 these motions to suppress and then give us a plea offer
22 outside of the 25 to 40 grams, so that was one of the
23 calculated gambles. All right. Do we make a bunch of pre-
24 trial motions? If they're denied, we're at least 25, possibly
25 40. So, that was -- I expressed some -- that was when I'm

1 telling Mr. Carreras, look, we have to make a decision. We're
2 not going to be able to explore some of these defenses and --
3 and yet, go underneath 25 years. That was the dilemma in the
4 case, one of the dilemmas.

5 Q: And I guess the problem is that although he has the right
6 not to testify, if he had taken this case to trial, he would
7 more than likely have ended up having to testify against his
8 son?

9 A: Well, it's -- this would have been a case to where when I
10 discuss with my client, should you or should you not testify
11 -- you know, certainly I'm gonna tell him he doesn't have to;
12 it's his Fifth Amendment right. But, this was a case that I
13 would have felt, look, you need to tell your story on this,
14 but I -- I did tell him -- here's what I told him was, I'm
15 like, we're gonna have to blame your son. That's the only
16 defense that we have. I don't know how comfortable you are
17 doing that, but that's the only defense that I see. And then
18 as far as the specifics of whether he would testify or not, I
19 don't know that we discussed if we went with that strategy,
20 whether or not he had to testify. I would've told him -- I
21 wouldn't have told him he had to.

22 Q: Right. Right. But I mean just in thinking about it in,
23 I guess logistically or defense theory, he would have to
24 distance himself some way from, from the evidence that was
25 coming in about his son?

1 A: Oh, I believe so.

2 Q: Yeah.

3 A: Right. And, and a factual problem we had with the case
4 was, according to the police reports and as I understand them
5 how they were going to testify, the drugs, the bulk of the
6 drugs were found in the bathroom. And, if you look in the
7 report, the police say when they broke in, they say that my
8 client was actually running from the bathroom. So, the police
9 would've said basically, he was with the drugs, so there
10 would've been knowledge ---

11 Q: Right.

12 A: --- so, but certainly we would have argued mere presence
13 and we would have blamed the other two. I mean, we could've
14 blamed the girl either, but I didn't see that as, one, she
15 wasn't going to trial with us at that time, and there would've
16 been -- I think that's the reason Mr. Caraker didn't bring her
17 case to trial. There was a *Bruton* issue at that time, because
18 she actually gave a statement. So, the state was gonna go
19 forward that day against my client and his son and so, yes, he
20 would have had to, in that trial, I think, distance himself
21 and blame his son.

22 Q: And it's an interesting situation, because really most of
23 the evidence would've come in to convict him would've been
24 through the son?

25 A: Oh, absolutely. There was, in my opinion, there was a

DEAN MUREDDU - DIRECT BY THOMAS

1 wealth of incriminating evidence against his son that would've
 2 come in in his trial merely because they were tried together.
 3 I don't know that they could've gotten that in. Now, again,
 4 I'm sure they would've tried to get it in against my client.
 5 Whether or not -- I think we would have had a better chance of
 6 a Judge ruling in our favor, if he was solitary defendant.

7 Q: Let me ask you this question and I don't know if you know
 8 the answer, but I'll ask it. So, it's possible that his plea
 9 would have resulted in a lower sentence for his son?

10 A: Well, I don't -- I don't know how to answer that
 11 question. I'll say it like this --- and I heard his testimony,
 12 I -- I tell my client's this. I'm very brutal with them and I
 13 was brutal with him. I told him I didn't care what happened
 14 to his son or his son's girlfriend. My job was negotiate for
 15 him. Now, he was constantly asking about what was gonna
 16 happen to his son and, of course, I would expect a father to.
 17 So, he was asking about what's gonna happen with his son's
 18 case and he was asking about what was gonna happen in the
 19 girl's case, but I told -- so, I answered his questions to the
 20 best of my ability. I wasn't gonna withhold information, but
 21 I was clear to him as I don't care. My job is not to take
 22 care of them.

23 Q: Right.

24 A: I don't care what happens to them.

25 Q: It seems to me in looking at the file and in talking to

1 my client, that it was kinda like a package deal. Is that --
2 is that correct, between he and his son and these negotiated
3 pleas and ---

4 A: Were my negotiations on his behalf including anyone other
5 than him, no. What the -- what he believes, I mean what the
6 state's intent was, I'm -- I wouldn't call it a package deal
7 just because that's not how I was working the case.

8 Q: Okay. But it appeared to you that he was concerned about
9 what was gonna happen to his son?

10 A: Oh, he, he asked more than once, yes, sir.

11 Q: And how about the daughter-in-law?

12 A: I mean, he asked about both of them.

13 Q: Right.

14 A: You know, he was asking, well what he said on his -- on
15 the witness stand or what I can recall was asking, you know,
16 what was gonna happen with them, but again, I -- I would tell
17 him what I knew, but I would continually reinforce, I'm not
18 interested in brokering a deal for these other two
19 individuals.

20 Q: Do you know what happened to the daughter-in-law?

21 A: Well, my -- when I left the courtroom that day, the talk
22 that I heard was is they weren't going to prosecute her. What
23 ultimately happened to her, I honestly don't know, but again,
24 I wasn't the least bit concerned about what was happening
25 there. I just wanted to -- with her, my focus was, was she

1 going to be able to testify in our case or not.

2 Q: Right.

3 Your Honor, if I could beg the Court's indulgence?

4 THE COURT: You may.

5 MR. THOMAS: No further questions, Your Honor.

6 THE COURT: All right.

7 Mr. James?

8 CROSS EXAMINATION OF DEAN MUREDDU BY MR. JAMES:

9 Q: Mr. Mureddu?

10 A: Yes, sir.

11 Q: I'm gonna try very hard to remember.

12 A: You can call me Dean.

13 Q: It might be the last time we get to talk to one another.

14 How long you been doing this, Dean?

15 A: Around 24 years?

16 Q: How much of that is criminal?

17 A: All of it.

18 Q: And has it always been in the public defender's office?

19 A: I worked at the public defender's office for about four
20 and a half years. I've been in private practice almost 20.

21 So, the four and a half years at the public defender's office.

22 I actually got Mr. Carreras' case for, I want to say around
23 July of 2013 to around July of 2015, I was doing 608 conflict
24 cases for the public defender's office under contract. So,
25 that's how I got Mr. Carreras' case.

1 Q: I assume because the public defender was representing
2 other members of his family?

3 A: Yes, the public defender had his son, and there were two
4 608 lawyers involved, me, I had Mr. Carreras and Barbara
5 Pratt, I think, had the girl that was arrested.

6 Q: About how many times did you meet with Mr. Carreras?

7 A: Oh, probably about five or six. There were a couple of
8 phone calls, but we really didn't get anywhere on the phone.
9 But in court several times and, and the best meeting we had
10 was a lengthy meeting around two hours in my office. I had
11 discovery, I was with his wife. I provided them copies, so, I
12 -- and I went over everything that I had at that time, which
13 was all of the discovery except for the stuff that was
14 revealed with the informant, the video shortly before trial,
15 which as I told him, I told him I didn't have that. I told
16 him the state was allowed to withhold that until shortly
17 before trial to protect the identity. I'd had the
18 conversation with Mr. Caraker. I just -- I explained to him
19 the rules, that the reports indicated there was a CI, that
20 there was video, there were buys between he and his son. I
21 didn't have it, but I had no reason to doubt it, just based on
22 my experience and it in fact, turned out to be exactly, if not
23 more than what it said it was in the report.

24 Q: Was Mr. Carreras your first client who spoke primarily
25 Spanish?

1 A: Ever?

2 Q: Ever?

3 A: No.

4 Q: Okay. So, this is not your first time having to work
5 with interpretation?

6 A: Oh, no, no, no, no.

7 Q: And your understanding, particularly from your extended
8 two-hour meeting that you just indicated -- if I may rephrase
9 that question. Mr. Carreras' wife translated while you were
10 at that meeting, correct?

11 A: Yes. Yes, sir.

12 Q: And Mr. Carreras, did he express any confusion that you
13 were not able to overcome?

14 A: I was satisfied that even though it was a slow lengthy
15 process, I was satisfied that he understood. Because look, I
16 make it in no uncertain terms, I made it clear that he was in
17 a tough spot, that the case was very, very difficult, if not
18 impossible to defend. It really -- the only workable defense
19 that I could see was blaming it all on his son, but I was
20 certain that we understood each other in every single detail
21 over the course of our meetings.

22 Q: While we're on that note, you've repeatedly indicated
23 that you told Mr. Carreras that his only option would have
24 been to blame his son; did he express an opinion about that
25 defense?

1 the residence, they said the drugs were found, the bulk of the
2 drugs were found in a bathroom and the police were going to
3 testify that Mr. Carreras was exiting, running from the
4 bathroom. So, that would have put him in there where the
5 drugs were. And then, what I believe would have come in
6 through trial would have been the CI transactions with his son
7 to where he's telling the CI, my daddy is the supplier, my
8 daddy is, you know, coming with the drugs from Florida. They
9 were given a location. So, his son identified him, he didn't
10 identify him by name, but he identified him as the source and
11 -- and he had gave them very -- they had very specific details
12 on my client that they got from the son's interaction with the
13 CI and I expected all that to, if they were tried together,
14 which I expected that was gonna happen, that was gonna come
15 in.

16 Q: Did he ever give you his version of the events that
17 occurred?

18 A: He really didn't, you know, and I don't -- I wouldn't --
19 he wanted to talk about getting as little time as possible and
20 he really never admitted or denied his involvement in that.
21 He really didn't want to have those conversations.

22 Q: And did you do anything to investigate this case other
23 than review the discovery materials or were there even
24 anything to investigate?

25 A: Well, I didn't -- I didn't go to the scene. I did --

1 A: Well, he -- Mr. Carreras, mainly, the feedback that I got
 2 from him was mainly that he didn't want to do a lot of prison
 3 time. He never admitted nor denied that, you know, that he
 4 was active -- he really -- he wanted to discuss the case in
 5 terms of, you know, plea negotiation, and he didn't feel like
 6 that he was being treated fairly, main -- and that was just --
 7 and that was based on he thought he was getting too much time.
 8 And I told -- you know, so, but he didn't really want to
 9 discuss any real trial strategies during the course of our
 10 meetings.

11 Q: So, the conversation just didn't get that far?

12 A: Well, I told him what I was gonna do.

13 Q: Right.

14 A: Which was, you know, if we're trying the case, I'm
 15 blaming his son and I told him why. I also explained to him
 16 that there are factual defenses and there are legal defense,
 17 technical defenses, I'll call them, technicalities. And I
 18 went through with him about the search, the seizure, the
 19 discrepancy in the drug weights, that I didn't see a technical
 20 defense, only a factual defense, and the only factual defense
 21 would have been the drugs belonged to somebody else and he
 22 wasn't involved.

23 Q: How would you gauge the strength of that factual defense?

24 A: Not good at all and -- and for a number of reasons. I
 25 work backwards and, like I said, when the police burst into

1 viewing the video, so much of this stuff was -- was, you know,
2 on video surveillance, the scene, so, I didn't really see
3 anything. I mean it's a -- even though it's trafficking,
4 basically a possession case. You've got drugs which tested
5 out positive, you've got where they were found, you've got
6 three individuals, we've got a CI who wasn't present. So, I
7 didn't really see any collateral evidence that was out there
8 to be gained that would be exculpatory for my client.

9 Q: And you negotiated how many -- how many plea offers did
10 you manage to negotiate?

11 A: In this case?

12 Q: In this case.

13 A: There were two official offers to my understanding. He
14 -- the first one when we met in our office was the original
15 offer was 18 years and -- and Mr. -- they came down to 15. I
16 think he was arraigned on 15, but no, it was never less than
17 that.

18 Q: And obviously, you communicated those offers to Mr.
19 Carreras?

20 A: Oh, yeah, absolutely.

21 Q: And you communicated to him all the things that would go
22 along with a guilty plea, such as giving up his rights to
23 silence, a jury trial, and confront the witnesses?

24 A: Oh, absolutely, yeah, we go through all these
25 constitutional rights and explained to him the difference

1 between a trial and a guilty plea and the consequences of
2 both.

3 Q: And ultimately, whose decision was it to plead guilty?

4 A: It was his decision.

5 Q: If Mr. Carreras had held firm and demanded a trial, would
6 you have been prepared to proceed to trial?

7 A: Yes.

8 MR. JAMES: I beg the Court's indulgence just one moment.

9 BY MR. JAMES:

10 Q: Just to specifically cover a few points, Mr. Mureddu, did
11 you discuss the technical issues in the case with Mr.
12 Carreras, such as chain of custody and SLED reports regarding
13 the drugs in question?

14 A: Yes, I mean we went through the search warrant, the
15 chain, you know, the chain indicated. I explained to my
16 clients, I actually have to put those witnesses up, but
17 everything -- we went through technical exploration of defense
18 and I didn't see any, but, yes, I went through that with him.

19 Q: And to your knowledge, there was no sort of quid pro quo
20 to the tune of plead guilty and your daughter-in-law will go
21 free?

22 A: Oh, no, look, I was not interested in that. That doesn't
23 help my client and, in any case, it's -- you know, he asked me
24 about it. He was -- I kept him abreast of what was going on,
25 but that -- that wasn't a concern of mine in negotiations. It

1 didn't help him at all in my opinion.

2 MR. JAMES: I have no further questions, Your Honor.

3 THE COURT: Yes, sir?

4 MR. THOMAS: May it please the Court, I just have three.

5 THE COURT: All right..

6 REDIRECT EXAMINATION OF DEAN MUREDDU BY MR. THOMAS:

7 Q: Counsel, you said that when you spoke with him on the
8 phone, that that was difficult?

9 A: Yes.

10 Q: Because of the language?

11 A: Yes, sir, yeah and it's just himself and me; there's no
12 interpreter. So, he doesn't speak enough -- I don't claim to
13 speak Spanish and he doesn't speak enough English. Yeah, it's
14 -- it was not workable.

15 Q: Now, you said that when you were speaking with him, he
16 appeared to be concerned about the amount of time that he was
17 gonna do?

18 A: Yes, he was, yes.

19 Q: And would that be consistent with him thinking that these
20 pleas were too much time for him to do trying to protect his
21 son or save his son? I mean is that kind of consistent with
22 all that?

23 A: My impression was, he went -- he was concerned with
24 himself about the -- I'm not saying he's unconcerned with his
25 son, but, but I wasn't concerned with his son. I wanted to

1 make sure he understood, you're gonna have to do 18 or 15 or
2 you're looking at 25 to 40, so, and he did not -- he felt like
3 that was too much time, that I should be able to get it down
4 to 10 or, you know, and he said in more than one occasion that
5 I should be able to get him a much better deal than I'm
6 getting him.

7 Q: But he was concerned about his son?

8 A: Yes, absolutely.

9 Q: No further questions, Your Honor.

10 THE COURT: All right.

11 MR. JAMES: Nothing else, Your Honor.

12 THE COURT: Call your next witness.

13 MR. THOMAS: Your Honor, if it please the Court, that's
14 the applicant's case.

15 THE COURT: Anything from the state?

16 MR. JAMES: Yes, Your Honor, we have two witnesses from
17 the state very briefly. The state would respectfully call Mr.
18 David J. Canty.

19 DAVID J. CANTY, HAVING BEEN DULY
20 SWORN TESTIFIES AS FOLLOWS:

21 CLERK: Please have seat. State your name.

22 DIRECT EXAMINATION OF DAVID J. CANTY BY MR. JAMES:

23 Q: Good morning, Mr. Canty?

24 A: Good morning, sir.

25 Q: How are you doing today?

1 A: Quite well; thank you.

2 Q: How long have you been engaged in criminal law, Mr.
3 Canty?

4 A: Thirty-six years.

5 Q: And is that the entirety of your legal career?

6 A: That's correct. Half my practice is criminal defense.

7 Q: What's the other half of your practice?

8 A: Primarily worker's compensation, but there's some more
9 esoteric things, I do elections and stuff like that.

10 Q: About how many times did you meet or how did you come to
11 represent Mr. Carreras?

12 A: A client that I had represented on a number of occasions,
13 referred him to me and he came and met with me at my office.
14 His initial interview was with my paralegal and then I met
15 with him after that.

16 Q: And what was the terms of your representation?

17 A: Through the preliminary hearing only.

18 Q: And you made that very clear to him?

19 A: I did. The fee that I quoted him and the fee that he
20 paid me was for the preliminary. I could have continued to
21 represent him, but based on what I learned at the preliminary,
22 I was not willing to unless the case was removed to Federal
23 Court.

24 Q: What did you -- scratch that. Did you make any
25 particular motions on behalf of Mr. Carreras at the

1 preliminary hearing?

2 A: Only to dismiss the case, which was unsuccessful.

3 Q: Do you remember the substance of those motions?

4 A: It's simply a matter to dismiss the case for lack of
5 probable cause and the motion was denied and my notes of my
6 direct examination of Officer Phillip Phillips and my cross
7 examination, and he presented a fairly seamless case.

8 Q: And you said that was one motion. You said that you had
9 two motions?

10 A: No, no, that's the only motion I made was to dismiss for
11 lack of probable cause and I knew that it was unlikely to be
12 granted and it was denied.

13 Q: In your interactions with Mr. Carreras, did he appear to
14 speak English to you?

15 A: I'm fluent in Spanish. My paralegal is fluent in
16 Spanish. My secretary at the time spoke Spanish and my
17 conversations with him in the office were in English. I've
18 been to Puerto Rico a dozen times at least and most Puerto
19 Ricans I know are bilingual and I don't doubt that he's fluent
20 in Spanish, but we could have easily communicated in Spanish,
21 but we spoke in English. I usually ask the client if they
22 have a preference when they're bilingual and whatever language
23 they prefer is what we use.

24 Q: And you are in regular practice with Spanish speaking
25 clients?

1 A: Every day. I began learning Spanish in 1969, studied the
2 language for four years thereafter, in undergraduate school
3 for another four years I studied Latin-American history,
4 politics, culture, and as I said I speak Spanish every day.

5 Q: After you ceased representing Mr. Carreras, did you turn
6 over your file to Mr. Mureddu?

7 A: I don't remember any interaction with Mr. Mureddu. I
8 sent Mr. Cases a letter on the 30th of December outlining what
9 had gone on at the preliminary hearing and this letter is in
10 English and it could just easily have been in Spanish, and
11 what I told him was that probable cause had been established
12 at the preliminary hearing. There was a typographical error
13 about the weight of the drugs. The officer characterized him
14 as the broker and his son as the delivery person. That they
15 had observed his son depart the apartment for a transaction
16 with a confidential informant and then return to the
17 apartment. They had him under continuous surveillance and
18 that was the basis for them obtaining the search warrant. And
19 that the testimony of the officer was that as they came into
20 the apartment, they saw him coming from the bathroom, where
21 they found the quantity of heroin. I told him that I had
22 learned at the preliminary that the assistant solicitor
23 handling his case was one with whom I had, a, I think a series
24 of strong disagreements would be the best way to characterize
25 it and that given the fact that she had the case, I would not

1 be the best attorney to represent him and I quoted a fee if
2 the case were removed to Federal Court.

3 Q: But you did explain to him a number of strengths and
4 weaknesses you saw in his case from your time representing him
5 up to and through the preliminary hearing?

6 A: Well, I think the letter speaks for itself. I outlined
7 the evidence that was presented against him and I think
8 anytime there's a search warrant involved, my first analysis
9 tends to be toward the validity of the search warrant, and the
10 testimony of the officer was, we had a CI, he made a deal to
11 buy some heroin, we watched the son leave the apartment and go
12 to the CI, deliver the heroin, take the money and go back to
13 the apartment and that was the basis for the search warrant.

14 Q: Okay, Mr. Canty, I have no further questions.

15 THE COURT: All right.

16 MR. THOMAS: May it please the Court?

17 CROSS EXAMINATION OF DAVID J. CANTY BY MR. THOMAS:

18 Q: Mr. Canty, we've been practicing for about the same
19 amount of time. It's amazing how fast it goes by.

20 How much time did you spend with Mr. Carreras?

21 A: I don't have a note as to the time that the interview
22 began and the time that it concluded. I can tell from --
23 there's two sets of handwriting on the interview sheet ---

24 Q: Yes, sir.

25 A: --- that means my paralegal interviewed him first and

1 then he came in and she hands me the interview sheet. I go
2 over the interview sheet and I fill in whatever she has not
3 filled in and I also focus on things that appear important to
4 me. So, I would say all in all, maybe on the order of an
5 hour, 45 minutes or an hour.

6 Q: Okay. And during that period of time, your conversation
7 was in English?

8 A: Yes.

9 Q: Okay.

10 A: Although as I said, whenever I have bilingual clients,
11 the first thing I ask is which language they prefer. Spanish
12 is just as easy for me as English.

13 Q: Okay. And but you personally wouldn't have any ability
14 to know how much he understood or what you were talking about?

15 A: Oh, conversing with him for close to an hour, yes. He
16 seemed perfectly fluent in English to me. As I said, when I
17 wrote to him, when I have a Spanish speaking client, I write
18 in Spanish. In this case, Mr. Cases, I knew to be perfectly
19 fluent in English and that's why I wrote to him in English.

20 Q: Were you involved in any of the plea negotiations?

21 A: No.

22 Q: And did you have any involvement in the case after the
23 preliminary hearing?

24 A: Only when I received the discovery package from Mr.
25 Caraker and I immediately turned around and sent it back to

1 him and reiterated to him or explained to him that I was only
2 retained for the preliminary hearing.

3 Q: Okay. All right.

4 No further questions, Your Honor.

5 THE COURT: Anything else?

6 MR. JAMES: Nothing else, Your Honor.

7 THE COURT: You may step down.

8 MR. CANTY: Thank you, Your Honor.

9 THE COURT: Call your next witness.

10 MR. JAMES: Before I do that, Your Honor, if Mr. Canty
11 may be released from his subpoena?

12 THE COURT: Any objections?

13 MR. THOMAS: No objection.

14 THE COURT: Have a good day.

15 MR. CANTY: Thank you, Judge.

16 MR. JAMES: Your Honor, the state would call David P.
17 Caraker.

18 DAVID PIERCE CARAKER, JR., HAVING
19 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

20 CLERK: Have a seat. Please state your name.

21 MR. CARAKER: My name is David Pierce Caraker, Jr., Last
22 name is spelled C-A-R-A-K-E-R.

23 DIRECT EXAMINATION OF DAVID P. CARAKER BY MR. JAMES:

24 Q: Mr. Caraker, what do you do for a living?

25 A: I'm a senior assistant solicitor for the Horry County

1 Solicitor's office.

2 Q: How long have you been working for the solicitor's
3 office?

4 A: Since January of 2014.

5 Q: And have you been a senior assistant solicitor that
6 entire time or did you get promoted to that while working in
7 the office?

8 A: Promoted while working in the office. I was an Assistant
9 Solicitor for about a year.

10 Q: How did you get involved in this case?

11 A: This case came to me. Solicitor Richardson started a
12 drug prosecution unit and hired me to work in that unit and
13 this case came to me along with a number of other drug cases.
14 As the team got started, we sort of filtered drug cases from
15 the general population of the solicitor's office into the drug
16 unit.

17 Q: So, you were part of the drug unit and that's how you ---

18 A: That's correct.

19 Q: In the course of your attending to this case, did you
20 ever establish any quid pro quo with Mr. Carreras that if he
21 pled guilty, his daughter-in-law would receive a reduced or no
22 sentence?

23 A: No, I do not recall doing that.

24 Q: Did you negotiate the plea with Mr. Carreras in terms of
25 a group package?

1 A: No, we were gonna try them together as a conspiracy, but
2 it was never, I'll do this for your son, if you do that or
3 vice versa. It was -- the plea negotiations were based on
4 each individual. His was higher because he had a prior
5 conviction and to my recollection, the son had no record,
6 which is the difference between the two.

7 Q: So, anyone of them could have pled and the other could
8 have gone to trial?

9 A: That's correct.

10 Q: Okay. Did you turn over all the discovery that you had
11 in your possession pursuant to Rule 5 and Brady requests?

12 A: Yes, sir.

13 Q: Do you know if Mr. Carreras speaks English at all?

14 A: Having really never spoken to him, the only indication I
15 have is from the investigative report of the drug unit. In
16 that investigative report, when they're describing the buys
17 with the son, the CI is asking for another delivery. The son
18 says, talk to my father, talk to my father. There's
19 indication in the report that the CI is talking to the father
20 when he's brokering the deals and that the son is the one who
21 actually makes the delivery of the heroin itself and there's
22 no indication in the report that these conversations took
23 place in Spanish. I would think that they would've been noted
24 if it had.

25 MR JAMES: No further questions, Your Honor.

1 THE COURT: All right.

2 Yes, sir?

3 MR. THOMAS: Your Honor, if it please the Court?

4 Your Honor, may I approach?

5 THE COURT: You may.

6 MR. THOMAS: Your Honor, and I'm gone refer and I think

7 this is Applicant's 1, Page 10.

8 CROSS EXAMINATION OF DAVID PIERCE CARAKER, JR. BY MR. THOMAS:

9 Q: I believe this is what you were talking about. Is this
10 the same thing as a -- I apologize.

11 A: This looks like the investigative report.

12 Q: Okay. All right. And I want to bring you over to page
13 10 and let you look at one, two, three, four, fifth paragraph,
14 okay. Does it mention a language barrier?

15 A: It does.

16 Q: Okay. So, in this report, there is a notation that there
17 was a language problem?

18 A: Between him and the police officers, yes.

19 Q: Okay. All right. And you said in your negotiations,
20 there was no quid pro quo and no group package in regards to
21 the plea?

22 A: Not as a package. We did speak about it together because
23 we were gonna try them together because we believed -- our
24 theory in the case as a prosecutor's office, that they were in
25 a conspiracy to trafficking heroin. So, we were gonna do our

1 best to try them together.

2 Q: Yes, sir.

3 A: Insomuch as that is the case, you may call it a package,
4 but it was never one of those I'll do X for your son if you do
5 Y or vice versa. That's not how it happened.

6 Q: What happened to Santiago Lopez?

7 A: We dismissed the trafficking heroin charges against her
8 and she pled guilty with intent to distribute marijuana for a
9 probationary sentence.

10 Q: You personally don't know what was transmitted to Mr.
11 Carreras from his attorney, do you?

12 A: No, sir.

13 Q: Okay. So, you don't have any idea as to what he
14 understood in regards to the plea?

15 A: No, sir.

16 Q: Okay. I have no further questions, Your Honor.

17 THE COURT: All right.
18 State?

19 REDIRECT EXAMINATION OF DAVID PIERCE CARAKER, JR. BY MR.

20 JAMES:

21 Q: Do bilingual defendants, in your experience, occasionally
22 feign ignorance to English when speaking with law enforcement?

23 A: In my experience as a police officer and a prosecutor,
24 yes.

25 MR. JAMES: No further questions, Your Honor.

1 THE COURT: All right.

2 MR. THOMAS: Your Honor?

3 RECROSS EXAMINATION OF DAVID PIERCE CARAKER, JR. BY MR.

4 THOMAS:

5 Q: But you don't have any indication that that's what's
6 going on -- that that's what happened when this plea was
7 presented to the Court, do you?

8 A: That he did not understand?

9 Q: No, that he was pretending not to understand?

10 A: I have no idea what he was doing.

11 MR. THOMAS: Thank you, Your Honor.

12 THE COURT: All right. You may step down.

13 MR. CARAKER: Thank you.

14 THE COURT: Any other witnesses?

15 MR. JAMES: No, Your Honor, that's all the state's case.

16 THE COURT: Anything else from the applicant?

17 MR. THOMAS: Nothing further, Your Honor.

18 BY THE COURT:

19 THE COURT: Let me ask y'all something and I'm just gonna
20 throw this out there and beat it around a little bit. Where
21 in the record does it show that the applicant was given the
22 maximum and minimum penalty ranges and does that matter?

23 Let me hear from the state?

24 MR. JAMES: If you'll give me just one moment, Your
25 Honor. According to my notes, it's on Page 3 of the guilty

1 plea transcript.

2 THE COURT: It is. But where does it specifically show
3 that he was given the minimum and maximum penalty ranges? The
4 only place I see anything referring to it is Line 22.

5 MR. JAMES: On Line 16 and 17 with regard to Mr.
6 Carreras, there's been a negotiated 18 to 20 years.

7 THE COURT: Negotiated. What about the maximum and
8 minimum ranges for the actual guilty plea crime? I mean, the
9 first thing I -- I go over with everybody is their right to a
10 jury trial and then I'll tell them, you're pleading guilty to
11 so and so and it carries a maximum of 20 years. There are a
12 lot of South Carolina cases out there that require that a
13 defendant entering a guilty plea be made aware of the nature
14 and crucial elements of the offense. I'm okay with that. The
15 maximum and any minimum penalty. That's a little blurry in
16 this case, and the nature of the constitutional rights being
17 waived, and I'm okay with that one.

18 MR. JAMES: Yes, sir.

19 THE COURT: Maybe it's the first transcript that I've
20 ever seen where I haven't seen the maximum and minimum penalty
21 referenced and I could've missed it.

22 MR. JAMES: I trust Your Honor's eyes to skim through
23 this transcript.

24 THE COURT: Don't trust mine.

25 MR. JAMES: Well, as you can see from my glasses, mine

1 aren't particularly great either.

2 Your Honor, I think they may have only pointed out the
3 negotiated range of 18 to 20 years. Unfortunately, I did not
4 ask any questions of the witnesses as to that point because
5 that was, to my knowledge, not an allegation raised in the
6 application or in the subsequent amended filed by Mr. Thomas.

7 THE COURT: If you go down, go to Page 3 and go to Line
8 22, the Court does say, have you explained to him the offense
9 of trafficking in heroin, the potential penalties, elements of
10 the offense, potential defenses, and his constitutional
11 rights. And, Mr. Mureddu?

12 MR. JAMES: Mureddu.

13 THE COURT: Mureddu said, I have, Your Honor. That's the
14 only reference I have in the whole transcript to any maximum
15 and minimum penalty ranges other than what Mr. Mureddu said on
16 the witness stand, that I went over that with him and all he
17 was concerned with was getting a minimum sentences, but is
18 this -- have I pointed out something that's fatal or not?
19 What's the state say?

20 MR. JAMES: Your Honor, I don't think it's any problem
21 whatsoever. I believe Mr. Mureddu did testify that he
22 repeatedly spoke with his client and expressed to him that he
23 would be facing the minimum 25 for the amount of drugs he was
24 caught trafficking if they did not accept the plea. So, my
25 inference from that is that there was discussion of the

BY THE COURT

1 minimum and maximum of both the charges he was initially
2 facing as well as the charges he ultimately pled down to. And
3 even if he didn't, I don't necessarily think that that's a
4 problem given the overwhelming evidence against Mr. Carreras
5 in this case ---

6 THE COURT: And it may not. It concerns me a little bit.

7 MR. JAMES: --- and his apparent voluntary nature of the
8 plea.

9 THE COURT: Eight and a half years ago, when I sat with
10 Ralph King Anderson my first week out as being a judge, he
11 said the first thing you tell them is the maximum and minimum
12 penalty ranges. That is the first thing I look for. I
13 cruised through this and my clerk has cruised through it and
14 we don't see it and I'm just tossing it out so you can educate
15 me, the two of you.

16 MR. THOMAS: Your Honor, if it please the Court, since
17 this issue is now before the Court, we would move to amend to
18 include this issue.

19 MR. JAMES: I would object and oppose that, Your Honor.
20 We have already taken testimony and had the opening and close
21 of the case.

22 THE COURT: I tend to agree. Either way, why don't the
23 two of you send me a little memo by Wednesday as to this issue
24 and what you think.

25 MR. THOMAS: Your Honor, if it please the Court, I'll be

1 glad to do that. I saw that issue. My concern I think when I
2 saw the record, was the fact that it was a negotiated
3 sentence. Mostly my experience with the negotiated sentences
4 I've seen have been like for a set amount, like 18 years
5 negotiated. This is a hybrid of some sort and why I would
6 think or it's not a negotiated -- it's almost like a
7 recommendation between 18 or 20 years or whatever. And I
8 think under those circumstances, it would, one, highlight that
9 he should've been told what the maximum amount was he could
10 receive, just as the ---

11 THE COURT: I think it's important that he know the
12 maximum amount and that way he can interpret whether or not
13 he's making a good decision or not.

14 MR. THOMAS: And I think it's relevant in the testimony
15 that's been presented to the Court because he keeps saying,
16 you know, I didn't understand. He talks -- my client
17 testifies that he thought it was 45 years. There's some issue
18 in here about, you know, what was his exposure, what was he --
19 he felt like that he was kinda trapped in and that he had to
20 do this -- he was trapped and had to do this for his son and
21 he had his daughter-in-law, and then also he's also saying
22 that -- and he testified to that, and he testified to that, I
23 thought that if I didn't accept the plea, I was gonna get 45.
24 Well, that's probably incorrect.

25 THE COURT: Anything you want to add to it? Why don't

BY THE COURT

1 you research it, the two of you, and let me know something by
2 Wednesday.

3 MR. JAMES: Your Honor, respectfully, may I have until
4 Friday in order to submit that to you. That way I'll have
5 time to return to Columbia and actually attend to it outside
6 ---

7 THE COURT: Or maybe you can get some of your assistants
8 to be checking on that while we're in court this week.

9 MR. JAMES: Yes, sir.

10 MR. THOMAS: Thank you, Your Honor.

11 THE COURT: Sounds good. I take the matter under
12 advisement and we'll see where it goes.

13 MR. THOMAS: Thank you.

14 (ADJOURNED - 11:47 A.M.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Hector Cases-Carreras v. State of South Carolina held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on September 18, 2017.

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



Kay H. Richardson
Official Court Reporter

April 25, 2018.

STATE OF SOUTH CAROLINA
 COUNTY OF Horry
 STATE VS.
Hector Javier Cases-Carreras
 AKA:
 Race: HISPANIC Sex: M Age: 43
 DOB: _____ SS#: _____
 Address:
 City, State, Zip: Macclenny, FL 32063
 DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2602133
 A/W#: 2013A2610703553
 Date of Offense: 11/16/2013
 S.C. Code § : 44-53-0370(e)(3)(c)
 CDR Code #: 0149

SENTENCE SHEET

CONVICTED OF or PLEADS

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Trafficking in Heroin, 4-14 grams, 1st offense

in violation of § 44-53-0370(e)(3)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2361
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: _____ 100039 _____
Caraker, Jr., David P. SC Bar# _____ Defendant _____ Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 6 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-20 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 288.40 190 = 328.40

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 25.00 beginning 02/23/2013
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Melanie Huggins Ward Presiding Judge _____
 Court Reporter: Diyce Babank Judge Code: _____
 SCCA/217 (03/2011) Sentence Date: 02/23/15

FILED
 Horry County
 Clerk of Court
 2015 FEB 23 PM 3:29

100080

WITNESSES

P Phillips 15th Circuit Drug Enforcement Unit

C#

The State of South Carolina

County of Horry

David P. Carakor, Jr.
13H05846

COURT OF GENERAL SESSIONS

May, 2014 TERM

ARREST WARRANT NUMBER

2013A2610203553

CDR: 0149 44-53-0370(e)(3)(c)

DOA: 11/17/2013

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

Hector Javier Cases-Carreras

H/ M

Macclennv. FL 32063

DOB: 1

SSN:

Foreperson of Grand Jury
Date: MAY 22 2014

ATTORNEY: Mureddu, Dean Nicholas

VERDICT

Indictment for

Trafficking in Illegal Drugs (Heroin)

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

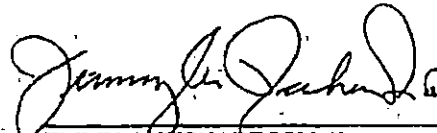
At a Court of General Sessions, convened on May 22, 2014, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING IN ILLEGAL DRUGS
(HEROIN)

CDR: 0149 44-53-0370(e)(3)(c)

That Hector Javier Cases-Carreras did in Horry County on or about November 16, 2013, sell, deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was knowingly in actual or constructive possession of a quantity of Heroin in an amount of twenty-eight grams or more, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(e)(3), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

FILED
HURRY 2014

2015 FEB 23 PM 3:29

RELAY
CLERK OF COURT

COURT DATE
PLED GUILTY/TRIAL

ARREST WARRANT

2013A2610203553

STATE OF SOUTH CAROLINA

County/ Municipality of

Horry

THE STATE

against

Hector Javier (Cases-Carreras)

Address:

Maccleddy, FL 32063-

Phone:

SSN:

Sex: M Race: H Height: 5 9 Weight: 193

DL State: SC DL #:

DOB: Agency ORA #: SC0260900

Prosecuting Agency: Horry County - Deu

Prosecuting Officer: P Phillips - 6840

Offense: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

Offence Code: 0149

Code/Ordinance Sec: 44-53-0370(e)(3)(c)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

Hector J Cases-Carreras

11/17/13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Horry

Personally appeared before me the affiant P Phillips who

being duly sworn deposes and says that defendant Hector Javier Cases-Carreras

did within this county and state on or about 11/16/2013

State of South Carolina (or ordinance of County/ Municipality of Horry)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 11/16/2013, Agents with the 15th Circuit Drug Enforcement Unit executed a drug related search warrant at Cedar Street, Unit 5, in the Myrtle Beach section of Horry County. During the search of the residence, the Defendant (HECTOR JAVIER CASES-CARRERAS) was found to be in possession of approximately 116.7 grams of a light brown chunked substance. This substance did field test positive for the presence of heroin. Given the above-stated facts, there is probable cause to believe the Defendant did violate the SC State Statute 44-53-370 "Trafficking Heroin" (28 or more grams).

r/o Det. P. Phillips: DEU 13-360.3

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Horry

Affiant's Address P.O. Box 1276
Conway 29528-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/16/2013 defendant Hector Javier Cases-Carreras

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Horry) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/17/2013

Signature of Issuing Judge (L.S.)

Christopher John Arakas

Judge Code: 5080

Judge's Address J. Ruben Long Detention Center
Conway, SC 29526-1071

Judge's Telephone (843)365-9222

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

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AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SOCA 518

1000082

FORM 5

Handwritten initials

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
HECTOR GABES CARRERAS # 363117)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

15

7903

APPLICATION FOR
POST-CONVICTION RELIEF

HORRY COUNTY
FEBRUARY 11 PM 2:27

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee County Correctional Institution
2. Name and location of Court which imposed sentence Horry County Judicial Building
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-26-2133, Trafficking Illegal Drug (HEROIN)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) FEBRUARY 23, 2015, 18 YRS. SENTENCE IMPOSED
 - (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 Yes _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

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

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

i. N/A _____

ii. _____

iii. _____

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

i. N/A _____

ii. _____

iii. _____

(c) the date of each such result:

i. N/A _____

ii. _____

iii. _____

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

i. N/A _____

ii. _____

iii. _____

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

(a) Not advise by Counsel ... OR COURT _____

(b) _____

(c) _____

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

- (a) SEE ATTACHMENT (d) SEE ATTACHMENT
- (b) SEE ATTACHMENT (e) SEE ATTACHMENT
- (c) SEE ATTACHMENT

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

- (a) SEE ATTACHMENT (d) SEE ATTACHMENT
- (b) SEE ATTACHMENT (e) SEE ATTACHMENT
- (c) SEE ATTACHMENT

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

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

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

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

- iv. _____
- (d) the date of each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. N/A
 - ii. _____
 - iii. _____

- (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. _____
 - iii. _____

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

- (a) ISSUES WERE NOT PRESERVED... OR NOT PREVIOUSLY APPLICABLE
- (b) TO BE HEARD... OR COUNSEL WERE INEFFECTIVE FOR NOT RAISING
- (c) GROUND.

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? NO

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

*Pre Hearing
Plea*

- (a) the name and address of each attorney who represented you:
 - i. David J. Canty, Esq., 4612 Oleander Dr. Myrtle Beach, SC, 29577
 - ii. Dean Nicholas Mureddu, Esq., 1300 Professional Dr. Ste. Myrtle Beach
 - iii. 29577
- (b) the proceedings at which each such attorney represented you:
 - i. Preliminary Hearing
 - ii. Plea Hearing
 - iii. _____

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

vacate conviction / sentence, for trial

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

NO

00088

ATTACHMENTS; NUMBERS 10 & 11:

(a) Preliminary Counsel/Plea Counsel(s) were ineffective where counsel(s) fail to make Preliminary objection to terminate ambiguous statutory configured charges, and/or file motion to Quash Indictment prior to trial, or plea; and Prosecutorial Misconduct violated his rights guaranteed pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

The Applicant submits that he did not receive effective assistance of Preliminary Counsel, or Plea Counsel. Where the Circuit Court does not have Subject-Matter Jurisdiction to convict / accept plea from defendant on charge unless properly indicted upon probable cause for charge offense, or the defendant waives presentment, or the offense is a lesser included offense of the crime charged in the indictment. Counsel's failure to challenge, and motion for Grand Jury Report / Minutes that both determines whether there is probable cause to believe that a crime has been committed; that protects citizen against unfounded prosecution, and against prosecutorial misconduct, challenges should have been brought on Due Process. The Fifth Amendment forbids discrimination that is so unjustified as violative of Due Process and Equal Protection, and further challenge the false and baseless testimony sponsored by prosecutor where record is silence on alleged defendant Juliana Marie Santiago Lopez, suspicion, criminal intent, or criminal culpability, yet Grand Jury votes was based on those bias. First, the Applicant submits that bogus charges against Juliana Marie Santiago Lopez were the motivating factor to enter plea-bargain that bogus charges against her would be rescinded / Nolle Prose Qui. The Applicant was misled to believe that mere present / mere association with admitted defendant for drug trafficking without more were sufficient to constitute guilt, they would not have enter plea if not for bogus indictment, and misadvice by counsels.

Second, the Applicant submits that the caption of indictment alludes to "...CDR 0149,44-53-370(e)(c)..." however the body of indictment read at pertinent part, "...sustance all within the meaning of §44-53-110, et. seq., S.C. Code of Law 1976, as amend in violation of Section 44-53-370(e)(3), S.C.

Code of Law 1976, as amended for crimes of trafficking". However, §44-53-370(e)(3)(2) refer to second offense and subsection (c) Annex as a fixture of that subsection. If viewed in any other configuration would be ambiguous and uncertainty of meaning or intention as a statutory provision, and raise a doubtful meaning. Applicant submits that he were indicted pursuant to §44-53-370(e)(3) S.C. Code of Law 1976, for first offense (emphasis added).

Third, the Applicant submits that arrest warrant(s) submitted to the Grand Jury and alleged defendant(s) was served respective warrants, Agent Phillips affidavit narrative read, "...116.7 grams for Cases-Carreras;" however, unlawful changes was entered into record after warrant(s) was served the Grand Jury and defendant(s)...and after indictment(s) was drafted, as a consequence warrants was invalid and indictment Annex or proscribed are likewise defected and invalid / void, and subversion of legal principles. Violates rights pursuant to the Fourth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

ATTACHMENTS; NUMBER 10 & 11:

(b) Preliminary/Plea Counsel(s) was ineffective for failure to raise / preserved substantial Fourth Amendment claim(s) of illegal search and seizure, in violation of his Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

Preliminary / Plea Counsel(s) was ineffective for failure to move prior to trial / plea to suppress fruits of unlawful warrantless search and seizure. Where the Myrtle Beach Police smashed through apartment door, entered Cases-Vazquez apartment with weapons drawn, forced all occupants to the floor, hand-cuffed, and searched through each room, kitchen cabinets, closets, clothing, bag, etc., seizing evidence not in plain-sight, that was done a halfan hour prior to D.E.U. Agent Phillips arrived with, and served search warrant. No exigent circumstance existed, and no arrest warrant pending for either occupants that support warrantless search of premise, nor was consent

00090

given. On November 13, 2013 Agent Phillips asserted he obtain a search warrant for 209-c Cedar Street, unit 5 Myrtle Beach. On November 16, 2013 Agent Phillips decided to set up a "buy / bust." Agent Phillips and Miller proceeded to pre-determined meeting location to meet with the Confidential Informant at 1700 hours. Approximately 1830 Agent Phillips decided to abandon the original buy / bust plan and instructed all agents and officer to converge on 209-c Cedar Street, unit 5 to execute the search. At 1835 hours all agents and officers made entry into the apartment and made arrest on three occupants...search warrant was not delivered on location during the course of events. Agent Phillips and Miller was notified of happening, and then excused the informant and traveled to the apartment. Agent Phillips and Miller upon arrival (time omitted), search warrant was first time served by Agent Phillips. The Magistrate Judge Annex order at pertinent part read, "...copy of this search warrant shall be delivered to the person in charge of the premises searched at the time of such if practicable..." The Fourth Amendment of the United States prohibits said conduct by government. Counsels fail to use reasonable sound professional judgment when they abandon substantive Fourth Amendment issues. Counsels fail to exercise customary skills and diligence that a reasonably competent attorney would perform under similar circumstances. Failure to raise substantial claims, furthered violated his rights guaranteed pursuant to the Fourth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

(c) Preliminary / Plea Counsels' was ineffective for failure to adequately investigate case; and Plea Counsel coerced Applicant to plead guilty, and fail to withdrawal plea when government breached negotiated plea; and plea was not knowingly or intelligently entered.

First, the Applicant submits that had Preliminary, or Plea Counsel(s) adequately investigated the facts and thoroughly reviewed Law Enforcement reports / records, it would have aided counsels, and would have realized other option than pleading guilty to drug trafficking existed. The purpose for a defensive investigation are to bring together certain facts of the case in logical sequence and to correlate them in a way that produces in the decision-maker's mind a conclusion favored to the defense. counsels fail to defend on assumption and facts taken for granted, and prejudged before examining the facts, disregarding duty and Applicant's legal rights. Since contraband was allegedly found on premise based on that information, or group of facts, Counsels fail to challenge the Fourth Amendment violation prohibiting unreasonable search and warrantless search void exigent circumstand, would overcome presumptive facts with other evidence and shifts the burden of proof, a legal assumption that a court is required to make if certain facts are established and no contradictory evidence is produced. Counsels fail to examine whether Rules and Regulations perfecting search warrant service was adhere to, and furthered fail to motion to suppress evidence derived from illegal search (fruit-of-the-poisonous-tree).

Second, the Applicant submits that he was coerce into plea under duress, and threaten imprisonment of an actual innocent (Juliana Lopez) person. As a pretext to motive his plea, (Trafficking Heroin §44-53-370(e)(3)(c); drug manufacture, possession of other substance in schedule I, II, III, etc. §44-53-370(b)(2)) charges that was fabricated against her. Mere presence / mere association with charged defendants for drug trafficking is insufficient to tie [her] to a scheme of drug activity without more. (State v. Thompson, 647 S.E.2d 702(2007). See investigation report, Agent Roberts and White...On November 6, 2013 alleges to have followed a suspect to the Cedar Cree condominium complex at 209 Cedar Street Myrtle Beach. On November 12, 2013 Agent Willard, Miller, and Roberts set-up surveillance at complex. However, Agents reports make no mention of (Juliana Lopez) her...or roll in drug scheme, aiding, abetting, or assisting in the commission through some overt act, yet arraign on extremely harsh charges. The Fourth Amendment strickly

forbid issuance of warrant without probable cause, and the Fifth Amendment forbid self-in-crimination under compulsion as was the case.

In addition, Applicant was advised by Plea Counsel that if he plead guilty Lopez's charges would be drop against her as part of the plea bargain. However, Applicant did not learn otherwise till after he entered plea that charges against her was not drop, which was the motive for him to enter a plea. The record demonstrate it was not Applicant's intention to accept May 8, 2014 plea offer that was withdrawn until August 25, 2014.

Moreover, Plea Counsel fail to withdraw his plea after the State refuse to honor components of plea bargain as the Applicant understood it to be. Thereby plea was not entered knowingly and plea should be rescind and made void and/or specific performance or specific relief granted.

Applicant further submits that counsel only met with him prior to plea on four occasion (approximately a total of one hour), and fail to devote full effort to the defendant...nor was Applicant advised on the maximum punishment or minimum sentence that he could receive for plea (§44-53-370(e)(3) first offense, thus plea was not intelligently entered. (Boykin v. Alabama, 395 U.S. 238). For said reasons Applicant's fundamental rights and constitutional rights was violated pursuant to the Fourth, Fifth, Eighth, and Fourteenth Amendments of the United States Constitution.

(d) Trial / Plea Counsel was ineffective for failing to object to gross disparity and disproportion in sentencing guide-lines, and weight category between schedule 1 drugs; and Racial Disparity in South Carolina Criminal Justice System that target Hispanic/Blacks.

The Applicant submits that the difference in sentences and weight category between Heroin (§44-53-370(e)(3), and Methaqualone (§44-53-370(e)(4) is irrational and imposes such vastly different penalties on two or more forms of schedule 1 drugs, producing same addictive euphoric effects. Where Methaqualone whether mixture or preparation contains the same following

substance including its Salts, Isomers, and Salts of Isomers. Whereby, fifteen grams or more of Methaqualone (trafficking in Methaqualone) "...upon conviction must be punished...if the quantity involved is fifteen grams but less than one hundred fifty grams, first offense not less than one year, nor more than ten years." However, Heroin first offense, "...four grams or more but less than fourteen grams, not less than seven years no more than twenty-five years." The grossly disparity in punishment sanction difference in quantity and statutory penalties between two or more schedule 1 drugs offenses, and grossly disproportionate in provisions in question, shocking to the moral sense of fairness or community constitute cruel and unusual punishment prohibited by the Eighth Amendments of the United States Constitution. As in instant case where punishment sanction loses its quality and degenerates into an arbitrary act of violence that produce nothing but bad social effects.

Applicant further submits that South Carolina drug laws together with Law Enforcement practices; South Carolina Criminal Justice System; and Sentencing Guidelines racially target and specifically discriminate directly toward particular class of (Blacks, Hispanic, and Minorities) drug offenders with bias and prejudice. The same analogy and fact finding results between cocaine and crack cocaine usage, disparity in sanction that resulted in harsher sentences Annex as punishment, between possession of powder cocaine and crack cocaine discriminated against class of people and drugs of common characteristics. Based on substantial evidence, observable facts, and significant facts [Blacks, Hispanics, and Minorities] as a class involved with schedule 1 drugs are most-likely to be involved with heroin or cocaine schedule 1 drugs than trafficking methaqualone schedule 1 drugs with grossly less harsher penalty, which cannot be explain by factor independent of race is unconstitutional and violate the Fourteenth Amendment Due Process and Equal Protect Clause. Comparable to the "old Jim Crow Laws [legal enforcement/sanctions] enacted purposely interpreted and intended to discriminate against, Blacks, Hispanic, and Minorities...now unconstitutional under the Fourteenth Amendment. However, a "revised Jim Crow practice that currently targets Blacks, Hispanic, and Minorities, its primary objectives are to discriminate; exclude said class with felony conviction / criminal history

from public housing programs; branded with disapproval severely; and restricted from employment in large number of professions job categories, etc., regardless of the nature of their conviction, legalize discrimination...an Invidious Discrimination that is offensive / objectionable because it involves prejudice and stereotyping and discriminate on race. This Court is not powerless to address forms of race discrimination. Furthered violated rights guaranteed him by Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

(e) Insufficient Assistance of Counsel(s) and Abandonment.

The Applicant submits ineffective assistance of counsel are not merely being incompetent or unprepared, but as in Applicant's case the inability to perform as an independent lawyer devoted to the defendant. First, the Court must be mindful there was not a real conflict of interest that existed in the matter of Attorney David J. Canty's representation...yet he was erroneously release by the Court for merely alleging prosecutor Donna Elder and himself "do not get along well"...and subsequently appointed an inferior (Dean Mureddu, Esq.) lawyer. Second, Attorney Mureddu over sighted viable standings / issues outlined in sections #10 and #11 of Post Conviction Relief Application. But for counsel's very serious errors that would likely have produced an entirely different outcome in his favor at trial, and that but for counsel(s) errors he would not have plead guilty, and would have insisted on going to trial. Where the Court erroneously relinquish representation by lawyer Canty, and appointed an inferior counsel, Applicant submits that he was without counsel and maliciously abandon, in violation of rights guaranteed to him by the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

STATE OF SOUTH CAROLINA)
)
County of Horry)

VERIFICATION
15

7903

I, HECTOR CASES CARRERAS 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 September
day of 17th, 2015.

[Signature]
Notary Public

My Commission Expires: 11-05-2019

NOTARY PUBLIC
HORRY COUNTY
20151017-14 PM 2:27

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

15

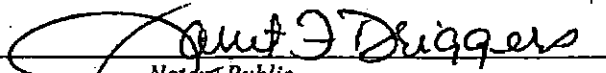
7903

I, Hector Cases Carreras 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
17th day of September, 2015.


Notary Public

My Commission Expires: 11-05-2019

CLERK OF COURT
2015 NOV -4 PM 2:21
CLERK OF COURT

ENCLOSED MY PCR AND A ENVELOPE, PLEASE
NOTIFY ME WHEN MY PCR APPLICATION HAS BEEN
RECEIVED, THIS IS A VERN IMPORTANT MATTER
THANK YOUR TIME AND ASISITANCE WITH
THIS MATTER

Respectfully Submitted

S. *[Signature]*

HECTOR CASES # 363117

LEE CI F4B 227

990 WISAKY HWY *[Signature]* Ashopville

SC 29010

CLERK OF COURT
2015 NOV -4 PM 2:27
HENRY COUNTY

00098
Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7566 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

September 12, 2017

Horry County Clerk of Court
Court of Common Pleas
1301 Second Avenue
Conway, SC 29526

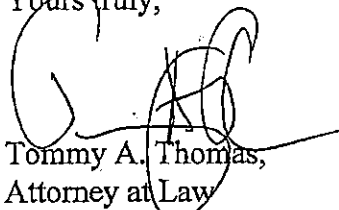
Re: Hector Cases-Carreras v. State of South Carolina
Docket No.: 2015-CP-26-7903

Dear Sir or Madam:

Enclosed please find an original and a copy of an Amendment to Application for Post-Conviction Relief, Coversheet and Certificate of Service to be filed in the above referenced matter.

Kindly return a clocked copy to me in the envelope provided. Should you have any additional questions, or need anything further, please contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem

cc: Johnny Ellis James, Jr., Esq.
Hector Cases-Carreras #363117

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2015-CP-26-7903

HECTOR CASES-CARRERAS,)
)
Applicant,)
 v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent,)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

The Applicant by and through his attorney, Tommy A. Thomas, would respectfully amend and supplement his original application for Post-Conviction Relief filed November 4, 2015, by adding the following:

1. That the Applicant specifically re-alleges his claim of ineffective assistance of counsel.
2. That Trial Counsel was ineffective for the following additional reasons:
 - a. Failure to object to and to investigate the discrepancy in the weight of the drugs in the Indictment for Trafficking Heroin, 28 grams or more. The Affidavit section, on the face of the Warrant and Indictment indicates 117.7 grams for Vasquez and 116.7-grams for the Applicant. Each of these weights are off by 200 grams. In addition, the search warrant is also wrong and should read 316.7 grams.
 - b. Failure to have an interpreter present at meetings with Counsel. The Applicant does not speak English. The Applicant had difficulty in

understanding the judicial process. Defense Counsel is ineffective for not explaining this process to the Applicant.

c. Failure to adequately investigate the case.

d. Failure to completely discuss the Discovery and State's evidence with the Applicant.

e. Failure to discuss with Applicant the ability to take this case to trial, rather than accepting the plea.

f. Failure to discuss with the Applicant the chain of custody, as well as the SLED reports regarding the drugs in question.

g. Failure to investigate and use the fact that the Applicant was living in

Florida and that all of the drugs were found in his Co-Defendant's

house. The Applicant alleges that none of these drugs belong to him.

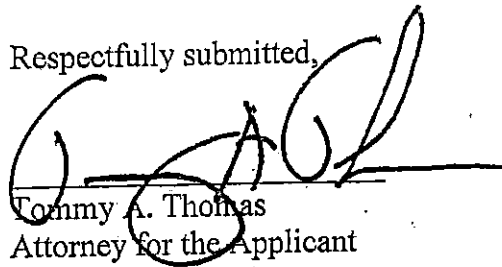
3. That the Applicant is informed and believes that his guilty plea was not freely, voluntarily, intelligently and knowingly given for the following reasons.

a. The Applicant does not speak English and had difficulty understanding the plea.

b. The Applicant was coerced into accepting the plea offer because of law enforcement's agreement that they were going to drop the charges against his daughter-in-law.

c. The Applicant was forced into taking the plea as a result of be scared into accepting the plea. He was told that he could receive over forty-five (45) years if he went to trial.

Respectfully submitted,



Tommy A. Thomas
Attorney for the Applicant
Post Office Box 88
Irmo, SC 29063
(803) 732-5507

September 12, 2017
Irmo, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS


DOCKET NO.: 2015-CP-26-7903

HECTOR CASES-CARRERAS,)
)
Applicant,)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent,)
_____)

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of an Amendment to Application for Post Conviction Relief, with postage prepaid and the return address clearly shown on said envelope to Johnny James, Esq. of the Attorney General's Office, at:

Johnny James, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
September 12, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Hector Cases-Carreras,)
 S.C.D.C. No. 363117,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-26-7903

RETURN

Respondent, making its Return to the application for post-conviction relief (PCR) filed November 4, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2014 term of the Horry County Grand Jury for Trafficking in Illegal Drugs (Heroin) 28 grams (2014-GS-26-2133). Applicant was represented by Dean N. Mureddu, Esquire. On February 23, 2015, Applicant pled guilty to the lesser included offense of Trafficking in Heroin 4-14 grams, first offense. The Honorable Michael G. Nettles sentenced Applicant to confinement for a period of eighteen (18) years. Applicant did not appeal his conviction or sentence.

II.

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

1. Ineffective Assistance of Plea Counsel
 - a. Failed to quash the indictment
 - b. Failed to challenge search and seizure
 - c. Failed to adequately investigate

d. Failure to object to sentencing guidelines

2. Involuntary Guilty Plea

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent asserts Applicant's allegation of ineffective assistance of plea counsel is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)),

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir.

1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

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

IV.

Respondent submits that Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz, 338 S.C. at 363-64, 527 S.E.2d at 747 (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State,

00106

278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112; 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant 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. at 56. "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its Return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

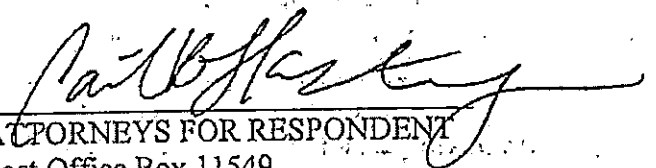
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

CAITLIN BAZAN HASTINGS
Assistant-Attorney-General

By:


ATTORNEYS FOR RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

October 24, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 HECTOR CASES-CARRERAS, #363117,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2015-CP-26-7903

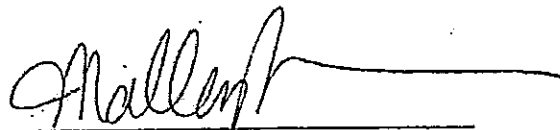
AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

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

James K. Falk, Esquire
 Falk Law Firm
 PO Box 1058
 Charleston, SC 29402

DATED this 24th day of October, 2016.



Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Hector Cases-Carreras,
S.C.D.C. No. 363117,

) Case No.: 2015-CP-26-07903

) Applicant,

) ORDER OF DISMISSAL

v.

) State of South Carolina,

) Respondent.

FILED
HORRY COUNTY
2017 DEC 20 PM 12:45
JENNIFER M. FLYNIS
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Hector Cases-Carreras ("Applicant") on November 4, 2015. Respondent made its return

on or about October 24, 2016. The Court convened an evidentiary hearing into the matter on Monday, September 18, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Tommy A. Thomas, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Dean N. Mureddu, Esq. ("Mureddu"), prior counsel, David J. Canty, Esq. ("Canty"), and David P. Caraker, Esq. ("Caraker"), also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2014

00110

term of the Horry County Grand Jury for trafficking in illegal drugs (heroin), 28 grams or more (2014-GS-26-02133). David J. Canty, Esq. represented Applicant through a preliminary hearing. Dean N. Murceddu, Esq. represented Applicant thereafter. David P. Caraker, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 23, 2015, Applicant pled guilty to the lesser-included offense of trafficking in heroin, between 4 and 14 grams, first offense. The Honorable Michael G. Nettles sentenced Applicant to imprisonment for a term of 18 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective assistance of counsel, in that:
 - a. Counsels failed to quash the indictment and challenge the subject-matter jurisdiction of the Court to accept the plea,
 - b. Counsels failed to obtain minutes of the grand jury,
 - c. Counsels misadvised Applicant regarding "mere presence,"
 - d. Counsels failed to move to "suppress fruits of unlawful warrantless search and seizure[.]"
 - e. Counsels failed to investigate Applicant's case;
 - f. Counsel failed "to object to gross disparity and disproportion in sentencing guide-lines, and weight category between schedule I drugs; and Racial Disparity in South Carolina Criminal Justice System that target Hispanic/Blacks."
 - g. Counsel Canty abandoned Applicant after the preliminary hearing.
2. Involuntary Guilty Plea, in that:
 - a. "Applicant submits that he was coerced into plea under duress, and threaten imprisonment of an actual innocent (Juliana Lopez) person."
 - b. "Applicant was advised by Plea Counsel that if he plead guilty Lopez's charges would be drop against her as part of the plea bargain. However, Applicant did not learn otherwise till after he entered plea that charges against her was not drop, which was the motive for him to enter a plea."
 - c. Counsel failed to withdraw Applicant's plea "after the State refuse to honor components of plea bargain as the Applicant understood it to be."
3. Prosecutorial misconduct, in that:

- a. "Applicant submits that bogus charges against Juliana Marie Santiago Lopez were the motivating factor to enter plea-bargain that bogus charges against her would be rescinded[.]"

By filing September 14, 2017, Applicant, by and through counsel, amended his application to supplement with the following additional allegations:

1. "That Trial Counsel was ineffective for the following additional reasons:"
 - a. "Failure to object to and to investigate the discrepancy in the weight of the drugs in the Indictment for Trafficking Heroin, 28 grams or more. The Affidavit section, on the face of the Warrant and Indictment indicates 117.7 grams for Vasquez and 116.7 grams for the Applicant. Each of these weights are off by 200 grams. In addition, the search warrant is also wrong and should read 316.7 grams."
 - b. "Failure to have an interpreter present at meetings with Counsel. The Applicant does not speak English. The Applicant had difficulty in understanding the judicial process. Defense Counsel is ineffective for not explaining this process to the Applicant."
 - c. "Failure to adequately investigate the case."
 - d. "Failure to completely discuss the Discovery and State's evidence with the Applicant."
 - e. "Failure to discuss with Applicant the ability to take this case to trial, rather than accepting the plea."
 - f. "Failure to discuss with the Applicant the chain of custody, as well as the SLED reports regarding the drugs in question."
 - g. "Failure to investigate and use the fact that the Applicant was living in Florida and that all of the drugs were found in his Co-Defendant's house. The Applicant alleges that none of these drugs belong to him."
2. "That the Applicant is informed and believes that his guilty plea was not freely, voluntarily, intelligently and knowingly given for the following reasons."
 - a. "The Applicant does not speak English and had difficulty understanding the plea."
 - b. "The Applicant was coerced into accepting the plea offer because of law enforcement's agreement that they were going to drop the charges against his daughter-in-law."
 - c. "The Applicant was forced into taking the plea as a result of [being] scared into accepting the plea. He was told that he could receive over forty-five (45) years if he went to trial."

Additionally, at the end of the evidentiary hearing, this Court raised *sua sponte* the question of whether the plea was rendered involuntary in light of the fact that the plea court failed to state on the record the full range of sentencing exposure faced by Applicant.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Counsel and Involuntary Guilty Plea

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

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a

defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v.

Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (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. See Crawford v. U.S., 519 F.2d 347, 350 (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 instead. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

The Court shall address each of Applicant's allegations in order, starting with those more clearly set forth in the amendment filed September 14, 2017.

77-00115

IAC Allegation #1 – Failure to Investigate and Challenge Discrepancy in Weight

Applicant alleges Canty and Mureddu were ineffective for failing to challenge the discrepancy in reports regarding the actual weight of the drugs recovered. Applicant was originally charged with violating S.C. Code Ann. § 44-53-370(e)(3)(c), which reads in sum total:

Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

(3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, . . . is guilty of a felony which is known as “trafficking in illegal drugs” and, upon conviction, must be punished as follows if the quantity involved is:

(c) twenty-eight grams or more, a mandatory term of imprisonment of not less than twenty-five years nor more than forty years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars[.].

“A search or seizure does not violate the Fourth Amendment if it is authorized by a warrant that is supported by probable cause.” State v. Kinloch, 410 S.C. 612, 616-17, 767 S.E.2d 153, 155 (2014) (citations omitted). “A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Id., 410 S.C. at 617, 767 S.E.2d at 155.

The affidavit in support of the arrest warrant initially charging Applicant indicates that he “was found to be in possession of approximately 116.7 grams of a light brown chunked substance” which field tested positive for heroin. See A/W 2013A2610203553 (Applicant’s Ex. 2).¹ The “Grand Jury Case Summary,” however, indicates that Applicant was instead found in possession of “approximately 316.7 grams of a light brown in color chunked substances, housed

¹ The warrant was also before the Court as part of materials provided in support of Respondent’s return.

in multiple plastic wrappers or sitting loosely on digital scales[,]” which field tested positive for heroin. Applicant’s Ex. 1 at 9. The Case Summary thereafter notes the “typographical error” on the face of the warrant and affirms that the total weight of the drugs to be charged to Applicant is 316.7 grams. *Id.* at 12. At the guilty plea proceeding, the State indicated that a drug report promulgated by the State Law Enforcement Division returned a weight of 298 grams of heroin. Tr. 7, ll. 5-14. Applicant agreed with that description at his plea proceeding. Tr. 7, ll. 15-20.

At the evidentiary hearing, Murredu testified that law enforcement discovered much more heroin than they originally anticipated. The residence in question was searched after a confidential informant alerted law enforcement that a target of an ongoing investigation was in the process of returning from Florida with what was suspected to be a fresh, bulk shipment of illegal narcotics. Murredu noted that all of the quantities noted in the warrant, grand jury report, and at the guilty plea were *well* in excess of the 28 gram threshold for statute charged. The search was conducted after multiple confidential buys and in reliance upon a CI whose reports were corroborated by the independent observations of surveilling law enforcement. Consequently, Murredu could conceive of no meritorious argument to quash the warrant and search.

Canty testified that he filed a motion to dismiss for want of probable cause, but the motion was denied by the Court. Canty wrote Applicant a letter at the close of his representation setting forth in detail the considerable strength of the State’s case against Applicant, and the weakness of Applicant’s defenses.

The Court finds no deficiency on the part of counsels, nor can it conceive of any prejudice. Each counsel was clearly aware of the issue. Each counsel used competent professional judgment in determining how to treat the matter. There is no argument set before

this Court adequate to quash the warrants against Applicant, nor can it independently conceive of one. There is no allegation of any deliberate falsehood or misrepresentation on the part of law enforcement. The exhibits and testimony together show that considerable probable cause existed to search the residence in question. Accordingly, Applicant's request for relief by way of this allegation is DENIED.

LAC Allegation #2 – Failure to Utilize an Interpreter

Applicant alleges that counsels were ineffective for failing to hire and utilize a professional interpreter in the course of their representation. At the guilty plea proceeding, Applicant indicated satisfaction with counsel and that he did not need any additional time with Mureddu. Tr. 9, ll. 3-11. Mureddu, in mitigation, told the Court "the language barrier in reviewing the evidence has not been impossible" but offered it as a reason for Applicant's delay at the eve of trial. Tr. 12, ll. 9-18.

At the evidentiary hearing, Applicant testified that he is originally from Puerto Rico and speaks Spanish. Applicant claimed he had difficulty understanding counsels and that his wife operated as a translator during meetings with Mureddu and Canty. Applicant testified that others attempted to translate on various occasions, including the interpreter at the plea proceeding and Canty himself, but their Spanish was not very good. This Court observed Applicant's testimony closely and, on multiple occasions, he indicated a complete understanding of questions offered in English before the interpreter could translate them, and frequently launched into answers in Spanish before the interpreter could begin translation. This Court, and the attorneys for each party, chided Applicant to permit the interpreter to translate before answering questions.

Mureddu testified he does not speak very good Spanish and that Applicant does not speak very good English. Mureddu testified that, as a consequence, he always had an interpreter save

in one instance, at which time Applicant's wife translated discussions. Murredu noted that materials provided in discovery indicated the confidential informant with whom Applicant repeatedly dealt only spoke English. Murredu was satisfied that Applicant understood everything they discussed, but admitted that phone conversations were challenging.

Canty testified he learned Spanish in the 1960's and speaks it fluently, as does every member of his office. Canty's written and oral communications to Applicant were entirely in English, as Canty was satisfied that Applicant was fluent in English.

The Court finds no deficiency on the part of counsels or prejudice therefrom. First and foremost, the Court concurs in Canty's judgment that Applicant has a complete understanding of the English language. As noted above, the Court closely observed Applicant's responses at the evidentiary hearing—the haste with which Applicant responded in numerous instances betrays his adequate command and understanding of English. Furthermore, the Court finds Applicant's testimony not credible—in particular his claim that Canty does not speak very good Spanish. Canty has more than 40 years of experience speaking Spanish and in excess of 30 years of experience practicing law. Applicant's claim that Canty's command of Spanish is poor is so facially absurd as to discredit the remainder of his testimony. Even if there were a modicum of truth to it, the Court is satisfied that Murredu utilized various interpreters in his meetings, including Applicant's wife, and his judgment that Applicant understood everything. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

IAC Allegation #3 – Failure to Adequately Investigate the Case, Review Discovery

Applicant alleges counsels were ineffective for failing to investigate the case against him or review with him any of the materials provided in discovery.² Where an Applicant alleges

² Due to the non-specific nature of Applicant's claim that counsel failed to investigate, the Court considers it alongside Applicant's allegation that counsel failed to review discovery with him.

counsel was ineffective due to deficient preparation or investigation, Applicant must show how the outcome would have been different had counsel spent more time preparing or investigating. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008); Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997).

At the evidentiary hearing, Applicant testified that Mureddu did nothing to prepare his case and did not review discovery with him. Applicant recalled that he saw Mureddu one time in his office and three times in court, with each meeting lasting between 5 and 15 minutes. Applicant testified that he did not know if the State had any evidence against him because Mureddu never reviewed the discovery with him. Applicant claimed that he saw a video one

~~hour before his trial and was simply told immediately before trial that he had no viable defense~~ and had no choice but to plead guilty. When asked on cross-examination why Applicant told the plea court he was satisfied with counsel, Applicant asserted that he lied to the plea court because Mureddu told him that he had to.

Mureddu testified that he was appointed to represent Applicant after Canty's representation terminated after the preliminary hearing. Mureddu met with Applicant on five or six occasions, with the longest meeting lasting around two hours. Mureddu acquired discovery materials from the State and reviewed them, both on his own and with Applicant. Mureddu searched for any issues with the search warrant, chain of custody, and any other defenses that might be available to Applicant. Mureddu explained Applicant was found fleeing from the bathroom of the residence in the immediate company of a quantity of heroin; the only remotely conceivable defense would be to blame Applicant's son, argue Applicant lived in Florida and not the residence in question, and argue "mere presence." Mureddu did not see any technical

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defenses available to Applicant, only a weak factual defense. Mureddu understood that Applicant would face a joint trial alongside his son and prepared a motion to sever, but felt the prospects of that motion being granted were poor. Mureddu discussed all of these matters with Applicant.

The Court finds no deficiency or prejudice therefrom. For the reasons set forth in Section II.A.2, above, as well as Applicant's self-serving declaration that he previously lied to the plea court, the Court finds Applicant's testimony generally not credible. Mureddu fully investigated the case against Applicant, prepared a competent defense, and explained the case to Applicant at length. Furthermore, Applicant has not shown what, if anything, would have been accomplished by further preparation or investigation on the part of counsel. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

MAC Allegation #4 - Failure to Explain Right to Jury Trial

Applicant alleges counsel was ineffective by failing to explain his right to a jury trial and by indicating that Applicant's only choice was to plead guilty. At the evidentiary hearing, Applicant testified Mureddu told him there was no way to win at trial. When questioned as to his statements of voluntariness at the guilt plea proceeding, Applicant testified he had no other option and that trial was only an option if his attorney did his job. Mureddu testified Applicant did not care to discuss trial strategy and was primarily focused on minimizing jail time. Nonetheless, as noted in Section II.A.3., above, Mureddu prepared a trial defense strategy, weak though it was.

The Court finds no deficiency of counsel or prejudice therefrom. For the reasons set forth in Section II.A.2., above, the Court finds Applicant's testimony entirely not credible. Taking Applicant's testimony at face value, his explanation that he could not proceed to trial

because he believed Mureddu was unprepared would demonstrate that he consciously and strategically opted against going to trial, as opposed to his professed lack of understanding of the right. Furthermore, the plea court clearly explained the right to a jury trial during the plea proceeding, at which time Applicant indicated that he understood the right. Tr. 8, ll. 2-15. Accordingly, Applicant's request for relief as to this allegation is DENIED.

IAC Allegation #5 – Failure to Discuss Chain of Custody

Applicant alleges counsel was ineffective by failing to discuss with him the chain of custody and SLED reports in his case. For the reasons set forth in the preceding sections, in particular Section II.A.3, the Court finds no deficiency on the part of counsels or prejudice therefrom and, accordingly, Applicant's request for relief by way of this allegation is DENIED.

~~*IAC Allegation #6 – Failure to Investigate “Mere Presence”*~~

Applicant alleges counsel was ineffective by failing to explore and utilize the “facts” that Applicant did not reside in the residence searched, but was from Florida, and that the drugs found were entirely those of his co-defendant-son. For the reasons set forth in the preceding sections, in particular Section II.A.3, the Court finds no deficiency on the part of counsels or prejudice therefrom and, accordingly, Applicant's request for relief by way of this allegation is DENIED.

IAC Allegation #7 – Misadvice as to Sentencing Exposure

Applicant alleges that he was affirmatively misadvised that he faced up to 45 years incarceration on the charges. At the evidentiary hearing, Applicant did not testify to this allegation. By his silence on this issue, Applicant has failed to demonstrate that his plea was affected by the alleged suggestion that he faced 45 years. See Roscoe v. State, 345 S.C. 16, 21, 546 S.E.2d 417, 419 (2001). Furthermore, the plea transcript reflects that the plea court advised

Applicant that, pursuant to terms negotiated between Applicant and the State, he would face between 18 and 20 years incarceration in exchange for his plea. Tr. 8, ll. 18-23. As such, this Court finds that Applicant was accurately apprised of his total sentencing exposure. Accordingly, Applicant has failed to meet his burden to show either deficiency or any prejudice therefrom and his request for relief by way of this allegation is DENIED.

IAC Allegation #8 – Indictment & Subject-Matter Jurisdiction

Applicant alleges counsel was ineffective for failing to challenge the subject-matter jurisdiction of the based on alleged deficiencies in the warrant and, consequently, the indictment. “[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject matter jurisdiction to try criminal matters.” *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). Applicant pled in circuit court and this allegation is patently without merit. Accordingly, Applicant’s request for relief by way of this allegation is DENIED.

IAC Allegation #9 – Failure to Argue Equal Protection

Applicant alleges counsel was deficient by failing to argue, as this Court interprets it, that his right to equal protection of the laws was violated by racial sentencing disparities. Nobody testified to this issue or otherwise argued it at the evidentiary hearing. Accordingly, the Court considers it abandoned and any relief demanded thereby is DENIED.

IAC Allegation #10 – Abandonment of Counsel

Applicant alleges that Canty was ineffective insofar as he abandoned representation of Applicant after the preliminary hearing. Applicant testified that Canty quit and refused to represent him after the preliminary hearing, citing a poor relationship with the solicitor then

assigned to the case. Canty testified that he did not quit, but that he was only ever retained to represent Applicant through the preliminary hearing. Canty did confirm his desire to not further represent Applicant due to a poor relationship with the solicitor then assigned to the case. This Court cannot find Canty, or any counsel for that matter, deficient for declining representation beyond the terms set forth and agreed to between an attorney and a client, nor can this Court conceive of what constitutional prejudice could result therefrom. Accordingly, Applicant cannot meet his burden by way of this allegation and his request for relief is DENIED.

B. Prosecutorial Misconduct & Involuntary Guilty Plea

Applicant alleges that he only pled guilty in order to secure a *quid pro quo* that in exchange for his own plea, bogus charges against another individual would be dismissed *nolle prosequi*. As previously noted, "[a]ll that is required to knowingly and voluntarily enter a plea of guilty is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Gustine v. State, 325 S.C. 123, 128, 480 S.E.2d 444, 446 (1997) (citing Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995)). Whether the demands of a solicitor are coercive when made as part of a plea offer is to be determined on a case-by-case basis. Id. (citing Wade v. State, 308 S.C. 552, 419 S.E.2d 781 (1992) (finding record reflected petitioner's knowing, intelligent, and voluntary entry of his plea of guilty, despite the fact that petitioner alleged that his guilty plea counsel had told him that if he did not plead guilty to the charges against him, his female family members, who had also been charged, would go to jail).

At the evidentiary hearing, Applicant testified that the final plea offer brought to him was, in effect, a group deal: 18 years for Applicant, 15 years for Applicant's co-defendant son, and no additional jail time for Applicant's daughter-in-law Santiago Lopez. Mureddu testified that he explicitly told Applicant that he did not care about Applicant's son or daughter-in-law

and that his obligations were to Applicant alone. Mureddu denied ever negotiating any kind of "package deal" plea and affirmed that, as a general matter, he did not negotiate in such a way. Mureddu believed Lopez did in fact "walk" after the guilty plea, but denied that there was any kind of *quid pro quo* connecting Applicant's plea and Lopez' resolution. Caraker testified that the daughter-in-law ultimately pled to possession with intent to distribute.

The Court finds there was no "package deal" or *quid pro quo* to connect Applicant's plea with that of any other defendant. As this Court has stated repeatedly for a variety of reasons, Applicant's testimony is utterly not credible and this Court can afford it no weight. The Court finds credible Mureddu's firm assertion that there was no group negotiation. Mureddu affirmatively rejected any suggestion to, in effect, represent both Applicant and his co-defendants. Accordingly, as this Court finds that the purportedly coercive demand was not made, Applicant's demand for relief by way of this allegation is DENIED.

C: Failure of Court to Advise as to Minimum and Maximum Sentencing

At the close of the evidentiary hearing, this Court observed *sua sponte* that the plea court failed to apprise Applicant regarding the minimum and maximum statutory sentencing range for the lesser-included offense to which he pled. Upon this Court's observation, Applicant's PCR counsel moved to amend the application to include an allegation that Applicant's plea was rendered involuntary by the Court's omission. Respondent objected, arguing that the record was closed, and that no testimony on the question had been taken so as to justify amendment pursuant to Rule 15(b), SCRCP.

The Court agrees with Respondent that Applicant did not raise this specific allegation in its application and no testimony was offered to address it; as a result, the issue is not properly before this Court for consideration. The Court finds no extraordinary reason exists for the Court

to excuse the typical pleading requirements as to this issue because: (1) the Court plainly stated the negotiated sentencing range (18 to 20 years) to Applicant; (2) the entirety of the negotiated range fell within the statutory sentencing range of the crime to which Applicant pled (7 to 25 years); and (3) Applicant was sentenced within the stated range (18 years). Applicant clearly knew the consequences of his plea and could not possibly be prejudiced by the plea court's omission. Accordingly, the Court declines to consider the issue.

III. CONCLUSION

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


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (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.

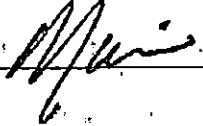
[Conclusion and signature on following page]

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 15 day of December, 2017.


 WILLIAM H. SEALS, JR.
 Presiding Judge
 Fifteenth Judicial Circuit

 South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post-Conviction Relief

William H. Seals, Jr., Circuit Court Judge

HORRY COUNTY
2018 FEB 15 AM 8:02
RENEE L. EAVIS
CLERK OF COURT
HORRY COUNTY, SC

Case No.: 2015-CP-26-7903

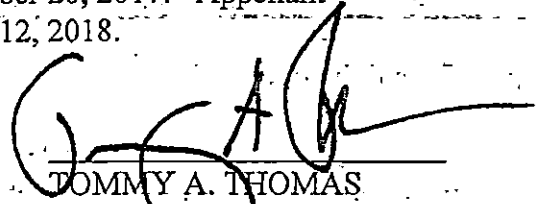
Hector Cases-Carreras #363117,..... Appellant,

vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

Hector Cases-Carreras #363117 appeals the Order of the Honorable William H. Seals, Jr., dated December 15, 2017 and filed on December 20, 2017. Appellant received written notice of entry of this order on January 12, 2018.



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Irmo, South Carolina
February 12, 2018

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post-Conviction Relief

William H. Seals, Jr., Circuit Court Judge

Case No.: 2015-CP-26-7903

HORRY COUNTY
2018 FEB 15 AM 8:02
RENEE M. ELYS
CLERK OF COURT
HORRY COUNTY, SC

Hector Cases-Carreras #363117,..... Appellant,

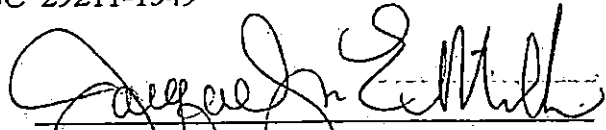
vs.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant,
hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal, with postage
prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General
Attention: Johnny Ellis Johnson, Esq.
P.O. Box 11549
Columbia, SC 29211-1549



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Irmo, South Carolina
February 12, 2018