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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

SAMUEL BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002208

APPENDIX

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Deputy Chief Appellate Defender

South Carolina Commission on Indigent
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Division of Appellate Defense
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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY COUNTY

COURT OF GENERAL SESSIONS

Samuel Brown,

PLAINTIFF,

v.

State of South Carolina,

DEFENDANT.

TRANSCRIPT OF PLEA
C/A No. 2013-GS-08-01334

Berkeley County Courthouse
May 20, 2014

BEFORE:

HONORABLE KRISTI L. HARRINGTON, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Michael Patterson
Attorney for State of South Carolina

Chad Shelton, Esquire
Attorney for Samuel Brown

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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Certificate of Service

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(There were no Exhibits marked during this Plea)

Samuel Brown vs. State of South Carolina

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1 The Court: Are you Samuel Brown, Jr.?

2 Mr. Brown: Yes ma'am.

3 The Court: Please swear the defendant.

4 Bailiff: Please raise your right hand, do you swear
5 to tell the truth, the whole truth and nothing but the
6 truth so help you God?

7 Mr. Brown: Yes, ma'am.

8 The Court: Mr. Brown, I'm going to need you to speak
9 loudly, can you do that for me?

10 Mr. Brown: Yes, I can.

11 The Court: How old are you?

12 Mr. Brown: Forty years old.

13 The Court: How far did you go in school?

14 Mr. Brown: I've got a bachelor's degree.

15 The Court: What type of work do you do?

16 Mr. Brown: Product manager with a construction
17 company.

18 The Court: How long have you been in custody?

19 Mr. Brown: Since June.

20 The Court: Of last year?

21 Mr. Brown: Yes, ma'am.

22 The Court: On a trafficking charge?

23 Mr. Brown: Yes, ma'am.

24 The Court: Tell me about the trafficking charge,
25 please.

Samuel Brown vs. State of South Carolina

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1 Mr. Shelton: It was a pending charge that was down
2 in Charleston and, you went to trial on that?

3 Mr. Brown: Yes.

4 Mr. Shelton: He was sentenced on that.

5 Mr. Brown: The charge was in 2010 and I went to
6 trial on this charge in September of last year.

7 The Court: Were you out on bond on that charge?

8 Mr. Brown: Yes, I've been out on bond three years
9 and got incarcerated on this charge and I went to trial
10 in September of last year.

11 The Court: What was your sentence?

12 Mr. Brown: They sentenced me to ten years.

13 The Court: This is negotiated that I would impose
14 three years to run concurrent?

15 Mr. Shelton: Yes, Your Honor.

16 The Court: Sir, you understand I can sentence you
17 up to five (5) years in the Department of Corrections for
18 this charge?

19 Mr. Brown: Yes, ma'am.

20 The Court: Knowing that do you still wish to go
21 forward with this plea?

22 Mr. Brown: Yes, ma'am.

23 The Court: There's a possibility that I may not
24 accept it. Do you understand that's the possible
25 punishment?

Samuel Brown vs. State of South Carolina

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1 Mr. Brown: Five (5) years?

2 The Court: Yes.

3 Mr. Brown: Yes, ma'am.

4 The Court: Your attorney and the State both of them
5 are in agreement that I impose upon you an active
6 sentence and run it concurrent to your trafficking
7 charge. Do you understand that?

8 Mr. Brown: Yes, ma'am.

9 The Court: If after hearing the facts I cannot
10 accept that I will allow you to withdraw this plea, do
11 you understand?

12 Mr. Brown: Yes, ma'am.

13 The Court: Knowing that, do you still wish to go
14 forward here today?

15 Mr. Brown: Yes, ma'am.

16 The Court: Do you understand all of the collateral
17 consequences of what will happen to you in the future?

18 Mr. Brown: Excuse me?

19 The Court: Do you understand all the collateral
20 consequences, not just the plea here today but what will
21 happen to you in the future?

22 Mr. Brown: Yes, ma'am.

23 The Court: Knowing all of those things, do you still
24 wish to plea guilty?

25 Mr. Brown: Yes, ma'am.

Samuel Brown vs. State of South Carolina

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1 The Court: Mr. Brown, when you plead guilty you
2 give up certain rights. Your right to a jury trial.
3 Your right to have a jury determine your guilt beyond a
4 reasonable doubt based upon the evidence the State
5 presents as well as any evidence you may introduce. Your
6 right against self incrimination. Your right to say
7 nothing at all. Your right to confront and be confronted
8 by the witnesses against you as well as the right to call
9 witnesses on your own behalf. By pleading guilty here
10 today you give up any defense you may have to this
11 charge. Do you understand these rights?

12 Mr. Brown: Yes, ma'am.

13 The Court: And do you waive these rights at this
14 time?

15 Mr. Brown: Yes, ma'am.

16 The Court: You understand the charges you are
17 facing, the possible punishment as well as the
18 consequences of this plea?

19 Mr. Brown: Yes, ma'am.

20 The Court: Understanding all that, how do you plea?

21 Mr. Brown: I plead guilty.

22 The Court: Are you pleading guilty because you in
23 fact are guilty?

24 Mr. Brown: Yes, ma'am.

25 The Court: Has anybody promised you anything,

Samuel Brown vs. State of South Carolina

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1 threatened you, forced you to plead guilty?

2 Mr. Brown: Just the negotiated plea?

3 The Court: Other than the negotiations, has anybody
4 promised you anything?

5 Mr. Brown: No, ma'am.

6 The Court: Have you been satisfied with the services
7 of your attorney?

8 Mr. Brown: Yes, ma'am.

9 The Court: Has he done everything you think he
10 should have done on this case? Now, is the time to tell.

11 Mr. Brown: No, ma'am. I'm ready.

12 The Court: You may be ready but I need to know that
13 Mr. Shelton helped you to be ready and that there wasn't
14 anything that he should have done or should not have done
15 to assist you?

16 Mr. Brown: No, he assisted me.

17 The Court: You have the right to appeal the sentence
18 that I do impose but you or your attorney must do so
19 within ten (10) days. Do you understand that?

20 Mr. Brown: Yes, ma'am.

21 The Court: Mr. Patterson.

22 Mr. Patterson: Thank you, Your Honor. If it please
23 the Court. On June 25, 2013, the defendant was stopped
24 at a public safety checkpoint in the Summerville area of
25 Berkeley County. Officer smelled marijuana coming from

Samuel Brown vs. State of South Carolina

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1 the vehicle and searched the car and located
2 approximately 560 grams of marijuana in the car. This is
3 a negotiated three years to run concurrent to the
4 sentence that he has already plead to and is serving.

5 The Court: Mr. Brown, is that what you did?

6 Mr. Brown: Yeah, I was at ... I was on College Park
7 Road. He asked me to pull over to the side and ...

8 The Court: Did you know it was in there?

9 Mr. Brown: Yes, ma'am. I did.

10 The Court: Did they find the marijuana in the front
11 seat of the car?

12 Mr. Brown: Yes, ma'am.

13 The Court: How much marijuana was it?

14 Mr. Brown: I'm not sure.

15 The Court: That's a lot of marijuana. What were you
16 doing with that?

17 Mr. Brown: They said it was distribution but it was
18 me and some guys got together at work and we buy it in
19 quantities.

20 The Court: I find there's a substantial factual
21 basis for your plea. Your decision to plea guilty has
22 been freely, voluntarily, knowingly and intelligently
23 made. You've indicated to the court that you've had the
24 advice of a competent attorney of whom you have told the
25 court you are satisfied. I hereby accept your plea of

Samuel Brown vs. State of South Carolina

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1 guilt. Mr. Shelton, you have cut an incredible good deal
2 for your client. I'll tell you that.

3 Mr. Shelton: Thank you, Your Honor, I appreciate it.
4 I did have a chance to go through the law as far as the
5 stop and traffic check points. So we were able to
6 determine that they set up a traffic checkpoint for
7 alcohol related offenses and they did stop some people
8 that were let go, percentage wise that the case says is
9 okay for alcohol related offense and there was a smell of
10 marijuana. So we went through, I went through the law
11 and gave Mr. Brown my opinion on the case through
12 letters. We discussed it through letters at the
13 Department of Corrections. It was his decision to go
14 forward. It was his decision to accept the plea and I
15 agree with that decision based on the case law and ask,
16 Your Honor, to go along with the negotiated sentence.

17 The Court: Mr. Brown, do you need any additional
18 time to meet with Mr. Shelton in person?

19 Mr. Brown: No, ma'am.

20 The Court: Are you prepared to go forward. Are you
21 satisfied with the advice he has given you today as well
22 as through letters?

23 Mr. Brown: Yes, ma'am.

24 The Court: It's the order of the Court that on 2013-
25 GS-08-1334 that you be committed to the State Department

Samuel Brown vs. State of South Carolina

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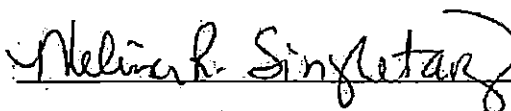
1 of Corrections for three years. That is to run
2 concurrent to 2012-GS-10-06790. Good luck to you, sir.

CERTIFICATE

This is to certify that the motion transcript in the matter of Samuel Brown vs. State of South Carolina, consisting of Ten (10) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 18th day of May, 2015.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley

FORM 5

FILED

IN THE COURT OF COMMON PLEAS

NOV 20 PM 4:30

Samuel Brown 254907 MARY D. BROWN
 Full name and prison number (if any) of Applicant. CLERK OF COURT
 BERKELEY COUNTY, SC

20 14 -CP-09-25260

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 McDougal Correctional Institute
2. Name and location of Court which imposed sentence Berkeley County Court of General Sessions
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) 2013 65 080 1334
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 05/14 ; 3 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. 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) Negligence of Attorney
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of Counsel
 (b) Rule 5 / Brady Violation
 (c) Due process of law

11. State concisely and in the same order the facts which support each of the grounds set out in (10): failure to pursue a trial, failure to show competent advice on a plea

- (a) failure to investigate, failure to suppress evidence, failure to advise defendant properly
 (b) failure to object and preserve Rule 5 / Brady violation
 (c) prejudice ~~was~~ to show illegal search and seizure ~~before~~

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. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
- i. Chad D Shelton (Pulaski County Public Defender's Office)
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. arraignment and plea
- ii. sentencing
- iii. _____

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

Vacate and remand conviction

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

Yes, a Charleston County case that I have filed a PCR in that matter.

STATE OF SOUTH CAROLINA

County of

VERIFICATION

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

Samuel Brown

SWORN to and subscribed before me this 10th
day of November, 2014.

[Signature] (L.S.)
NOTARY PUBLIC
SOUTH CAROLINA

My Commission Expires 4/2024

FILED
2014 NOV 20 PM 4:30
MARY F. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

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

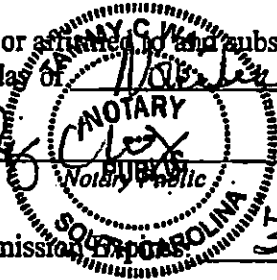
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Samuel Brown
Applicant

SWORN or affirmed to and subscribed before me this
18th day of November, 2014.

[Signature]
My Commission Expires 3/4/2024



134
 FILED
 2014 NOV 20 PM 4:30
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

11/8/14

Mary P. Brown
 Clerk of Court 1
 300 A California Ave
 Monks Corner S.C 29461

Mrs. Mary P. Brown,

I, Samuel Brown am writing you to seek your assistance. I have filled out a PCR application in which I would like to submit to the proper courts. I do not have the date of my conviction to fully fill out question (5). This is due to me not receiving a sentencing sheet after Court. Can you please submit my application. Can you also send me a sentencing sheet for my records. Thank You!

Sincerely,

Samuel Brown

Samuel Brown 254907
 NCI B2 C19B
 1516 Old Hilliard Rd
 Ridgerville, S.C 29472

P.S If I have to refill out my application, please send ~~it~~ a new one with the sentence sheet.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Samuel Brown, #254907,

2014-CP-08-2566

Applicant,

v.

RETURN

State of South Carolina,

Respondent..

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed November 20, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the September 2013 term of the Berkeley County Grand Jury for possession with intent to distribute (PWID) marijuana (2013-GS-08-1334). Chad Shelton, Esquire, represented the Applicant. On May 20, 2014, the Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced the Applicant to terms of confinement for three (3) years. The Applicant did not appeal his sentence or plea.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject conviction(s), the application, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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

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

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

IV.

The Applicant also alleges a Brady/ Rule 5 violation; however, the Applicant fails to state with any specificity the nature of the violation he claims. This claim is too vague for the

Respondent to respond and should be summarily dismissed. The Applicant is required to set forth with specificity the grounds upon which his application is based in accordance with S.C. Code Ann. '17-27-50. The Respondent moves for summary dismissal pursuant to South Carolina Code Ann. '17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

V.

Finally, the Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

VII.

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

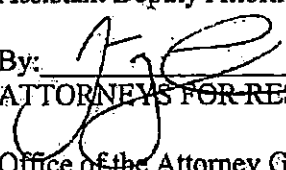
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

August 31, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

SAMUEL BROWN, #254907,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-08-2566

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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esq.
 Lowcountry Law Office
 4000 Faber Place Drive, Suite 300
 Charleston, SC 29405

DATED this 31st day of August, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Samuel Brown, Jr. , SCDC # 254907,	)	Case No. 2014-CP-08-2566
	)	
Applicant,	)	
	)	
v.	)	AMENDED RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The State of South Carolina (Respondent), making its amended return¹ to the application for post-conviction relief filed November 20, 2014, would respectfully show this Court:

I. Procedural History

Samuel Brown, Jr. (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court.²

During its September 2013 term, the Berkeley County Grand Jury indicted Applicant for Possession with Intent to Distribute Marijuana (2013-GS-08-1334). This charge stems from an incident on June 25, 2013, where law enforcement officers stopped Applicant's vehicle at a public safety checkpoint and after smelling marijuana coming from Applicant's car, recovered approximately 560 grams of marijuana from Applicant's car.

¹ Respondent originally served its return to this application on August 31, 2015. Following disposition of this case, the South Carolina Supreme Court remanded the matter back to the Berkeley County Court of Common Pleas for a new PCR hearing, and therefore, Respondent is making an amended return to the application in light of the remand.

² Applicant has already served the entire term of imprisonment from his Berkeley County conviction and is incarcerated solely on an unrelated Charleston County conviction for trafficking in cocaine (10- 28 grams) (1st offense) (2012-GS-10-6790), for which he received a ten year term of imprisonment, at the time of this filing.

Assistant Public Defender Chad Shelton of the Berkeley County Public Defender's Office represented Applicant. On May 20, 2014, Applicant appeared in the Berkeley County Court of General Sessions before the Honorable Kristi L. Harrington, circuit court judge, and pled guilty as indicted. Pursuant to negotiations between Applicant and the State, Judge Harrington sentenced Applicant to three years imprisonment to be served concurrently to an unrelated ten year sentence for trafficking in cocaine (10-28 grams) (1st offense) (2012-GS-10-6790) arising out of Charleston County. Applicant did not appeal his plea or sentence.

On November 20, 2014, Applicant filed an application for post-conviction relief, alleging he was being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Failure to persue [sic] a trial"
 - b. "Failure to show competent advice on a plea"
 - c. "Failure to investigate"
 - d. "Failure to suppress evidence"
 - e. "Failure to advise defendant"
2. "Rule 5/Brady Motion"
 - a. Failure to object and preserve Rule 5/Brady violation"
3. "Due Process of Law"
 - a. "Prejudice to show illegal search and seizure"

Respondent made its return to the application on August 31, 2015.

On September 16, 2016, a hearing on Applicant's application was held at the Berkeley County Courthouse before Honorable Jean H. Toal, acting circuit court judge and Former Chief Justice of the South Carolina Supreme Court. Rodney D. Davis, Esquire, represented Applicant. Christopher Harrison, a third-year law student at the Charleston School of Law, practicing pursuant to Rule 401, SCACR, and supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the start of the hearing, Respondent moved for summary judgment pursuant to Rule 56 (b) & (c) SCRCP, arguing dismissal was appropriate because Applicant had already served the entirety of his sentence³ for the conviction upon which he filed his application, and therefore, the action was moot. In response, Applicant argued the application should not be dismissed because collateral consequences of his conviction, such as “potential government moneys, whether it be subsidized housing or other issues like that . . . would persist, does persist over him today.” (App. 30). Additionally, he argued this conviction could be used to enhance future drug convictions, although he acknowledged that would only be applicable “if his case were the only case and he were on the street now.” (App. 29-20). Respondent replied Applicant was currently incarcerated on unrelated trafficking cocaine charges arising out of Charleston County and therefore, Applicant’s arguments related to enhancement of future drug convictions were without merit.⁴ After hearing arguments, the court granted Respondent’s motion and dismissed the application by oral pronouncement and form order stating “motion for summary judgment granted. Applicant has completed his sentence.” This form order was filed on September 19, 2016.

By written order of dismissal signed November 10, 2016, and filed November 25, 2016, the court dismissed the application, finding:

In this case, Applicant claims he is suffering the collateral consequences of his conviction despite having already served the full term. First, this claim was not specifically alleged in the Applicant’s PCR application. Second, this Court grants the State’s motion for Summary judgment because the Applicant failed to demonstrate any prejudicial effects resulting from the collateral consequences of his conviction. Applicant did not make these allegations in his original application for post-conviction relief filed on November 20, 2014, and did not file any

³ This sentence was satisfied in full not later than June 26, 2016.

⁴ A review of Applicant’s SCDC records reveal he served previous sentences for two prior drug convictions: for marijuana distribution and trafficking in cocaine (10-28 grams), as well as convictions for driving while under suspension, a moving traffic violation, and two counts of strong arm robbery. (App. 45).

subsequent amendments to his original application. The evidence before this Court clearly shows there is no genuine issue as to any material fact and the State, as the moving party is entitled to judgment as a matter of law.

(App. 37).

On December 8, 2016, Applicant filed a notice of appeal and was represented on Appeal by Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. Applicant filed his petition for a writ of certiorari on July 13, 2017. On certiorari, Applicant argued the PCR court err in summarily dismissing his application without an evidentiary hearing. Respondent filed its return to the petition on November 27, 2017. On May 9, 2018, the South Carolina Supreme Court granted Applicant's petition for a writ certiorari, dispensed with further briefing, reversed and remanded the matter back to the Berkeley County Court of Common Pleas for an evidentiary hearing on the merits of his post-conviction relief application, finding the lower court erred in summarily dismissing his application. The remittitur was issued on May 25, 2018.

The Berkeley County Clerk of Court re-opened this current action and appointed Lance S Boozer to represent Applicant.

II. Allegations and Relief Sought

In his *pro se* application for post-conviction relief filed November 20, 2014, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Failure to persue [sic] a trial"
 - b. "Failure to show competent advice on a plea"
 - c. "Failure to investigate"
 - d. "Failure to suppress evidence"
 - e. "Failure to advise defendant"

2. "Rule 5/Brady Violation"⁵
 - a. "Failure to object and preserve Rule 5/Brady violation"
3. "Due Process of Law"⁶
 - a. "Prejudice to show illegal search and seizure"

In his requested relief, Applicant states he is seeking for his conviction to be vacated.

As of the date of this amended return, Applicant has not filed an amended application or otherwise formally amended his application to include any additional grounds for relief.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and Applicant's appellate records. Respondent reserves the right to further amend this return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges his attorney was ineffective for failing to investigate his case, providing him erroneous advice, failing to suppress evidence, and failing to object to purported discovery violations.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

⁵ Respondent interprets this allegation as ineffective assistance of counsel for failing to object to a Brady violation based on the phrasing of this allegation.

⁶ Respondent interprets this allegation as ineffective assistance of counsel for failing to move to suppress the drug evidence based on an alleged Fourth Amendment violation based on the phrasing of this allegation and his prior allegation that counsel was ineffective for failing to suppress evidence.

application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

In the present case, Applicant agreed with the facts as presented by the State, freely admitted his guilt, and informed the court he wished to waive his constitutional rights to enter a

guilty plea. He never informed the court he had any witnesses or other evidence to present and never claimed he was not guilty. Applicant informed the plea court he understood the possible sentence he could receive and thereafter, knowingly, intelligently, and voluntarily entered his guilty plea. Respondent submits Applicant can satisfy neither requirement of the Strickland test. Furthermore, Applicant cannot establish he would not have pled guilty but for counsel's alleged deficiency, as he knowingly, intelligently, and voluntarily entered his guilty plea pursuant to negotiations with the State.

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

IV. Any Future Allegations

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

VI. Response to Any and All Other Allegations

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

VII. Request for an Evidentiary Hearing

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
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September 6, 2018

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

SAMUEL BROWN JR., #2549907

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

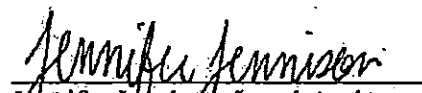
2014-CP-08-2566

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 **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 The Boozer Law Firm, LLC
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201

DATED this the 6th day of September, 2018.


 Jennifer Jennison, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	2014-CP-08-02566
SAMUEL BROWN,	)	
	)	
Applicant,	)	Transcript of Record
	)	Post-Conviction Relief
vs.	)	
	)	October 1, 2018
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

B E F O R E:

Honorable Michael G. Nettles
 Berkeley County Courthouse
 Monks Corner, South Carolina

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

Rodney D. Davis, 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

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1 OCTOBER 1, 2018 - 9:55 A.M.

2 BY THE COURT:

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

4 MR. JAMES: May it please the Court, Your Honor, this is
5 the matter of Samuel Brown v. State of South Carolina, docket
6 number 2014-CP-08-02566. Mr. Brown is present here in the
7 courtroom today and is represented by Mr. Rodney Davis,
8 Esquire. Mr. Brown filed his application for relief on
9 November 20 of 2014 challenging his September 2013 indictment
10 for possession with intent to distribute marijuana. Your
11 Honor he was represented on that charge by Mr. Chad Shelton,
12 Esquire. On May 20 of 2014, he appeared before the Honorable
13 Kristi Harrington at the Berkeley County Court of General
14 Sessions and pled guilty as indicted. Pursuant to
15 negotiations between the applicant and the state, Judge
16 Harrington sentenced him to three years imprisonment to be
17 served concurrently with an unrelated 10-year sentence for
18 trafficking in cocaine. He did not appeal his plea or
19 sentence.

20 On November 20 of 2014, he filed the application for
21 post-conviction relief alleging a number of grounds for
22 relief. And on September 16, 2016, an evidentiary hearing was
23 held before the Honorable Jean Toal, at which time, his
24 application for relief was dismissed because he had already
25 served the sum of the sentence. He thereafter appealed to the

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BY THE COURT

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1 Supreme Court of South Carolina, and the Supreme Court of
2 South Carolina reversed the dismissal of his application for
3 post-conviction relief finding that there was no in-custody
4 requirement or any requirement that the applicant show that he
5 had ongoing difficulties as a result of his conviction and
6 remanded it down to this Court to hold a full evidentiary
7 hearing that was never previously held. So, that's the
8 winding road as to how we got here today.

9 THE COURT: Summarize for me again why she dismissed the
10 PCR.

11 MR. JAMES: So, at the original evidentiary hearing, the
12 state was represented by a third-year law student out of the
13 Charleston School of Law with the assistance of Mr. Rutledge
14 Johnson, Esquire, who was either then or recently a former
15 Assistant Attorney General with our office. They made a
16 motion for summary judgment arguing that he had served the
17 full three years of his sentence, that the application for
18 post-conviction relief would serve no effect and that as a
19 consequence, there was no reason to go forward and that he
20 couldn't show any difficulties or prejudice to him from the
21 continuing existence of his conviction. That went up on
22 appeal and the Supreme Court of South Carolina found that he
23 had a statutory right to go ahead with his post-conviction
24 relief application and challenge his conviction regardless of
25 the fact that he had already served the complete duration of

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BY THE COURT

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1 the term of his sentence and sent it back down for us to have
2 a full evidentiary hearing on the three-year sentence already
3 served. He does remain incarcerated based on the 10-year
4 trafficking sentence but he's already served the full three
5 years on the PWID marijuana.

6 THE COURT: Okay. And the post-conviction relief is --
7 has been filed on the PWID of marijuana only?

8 MR. JAMES: That is correct, Your Honor.

9 THE COURT: Okay. Very good.

10 Yes, sir, you're recognized

11 MR. DAVIS: Judge, just a couple of things. All that is
12 accurate. He did file in a PCR for the Charleston charge as
13 well. It's my understanding it's already been held and he is
14 now in the process of the habeas action on that case, just to
15 view the full picture. And, Judge, if you'd be willing to, I
16 have certainly spoken with him before when we were
17 anticipating going forward on the full evidentiary hearing in
18 front of former Chief Justice Toal, but in an abundance of
19 caution, if you could put on the record or if I could put on
20 the record, if we could question him about the fact that
21 obviously, if we're successful, he would be given new -- the
22 state's position is this would be a possession with intent to
23 distribute marijuana third. There's some issue about -- there
24 was some issue about that then, there would be certainly be
25 now with the timeframe, but in an abundance of caution, I've

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SAMUEL BROWN - BY THE COURT

1 advised him that it's possible that if we are successful, he'd
2 be facing possession with intent to distribute marijuana
3 third, which is five to 20 and 85-percent. He indicates he
4 still wishes to go forward, but if we can just have that on
5 the record.

6 THE COURT: All right.

7 Mr. Brown, could you stand and raise your right as the
8 clerk administers the oath?

9 SAMUEL BROWN, HAVING BEEN DULY SWORN,

10 TESTIFIED AS FOLLOWS:

11 CLERK: Thank you. You may be seated. Please state your
12 full name for the record and spell your last name.

13 MR. BROWN: Samuel Brown.

14 BY THE COURT:

15 THE COURT: You can have a seat in the witness chair as
16 well. Come around and have a seat in the witness chair and
17 we're gonna ask if you could to pull up real close to the
18 microphone and speak loudly and clearly and slowly in order
19 that we can hear everything that you have to say.

20 First of all, Mr. Brown, you have talked with your lawyer
21 about the advisability of going forward with the post-
22 conviction relief. You have an absolute right to do that
23 that. The Supreme Court has indicated that you have that
24 right and we will indeed go forward. But you do understand
25 that there are some collateral consequences of that. If you

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SAMUEL BROWN - DIRECT BY DAVIS

7

1 were to prevail, it might adversely affect your custody status

2 ---

3 MR. BROWN: Yes.

4 THE COURT: --- and your sentence. You understand all
5 that, don't you?

6 MR. BROWN: Yes, sir.

7 THE COURT: Have you understood all your conversations
8 with your lawyer?

9 MR. BROWN: Yes, sir.

10 THE COURT: And it's your decision to go forward? Nobody
11 has put any pressure on you in any respect with regard to your
12 decision to go forward?

13 MR. BROWN: Yes, sir.

14 THE COURT: And that's what you wish to do?

15 MR. BROWN: Yes, sir.

16 THE COURT: Do you have any questions about that?

17 MR. BROWN: No.

18 THE COURT: Very good. Pay very close attention to your
19 lawyer as he asks you some questions.

20 MR. DAVIS: Thank you very much, Your Honor.

21 DIRECT EXAMINATION OF SAMUEL BROWN BY MR. DAVIS:

22 Q: Mr. Brown, could you give the Judge a little bit of
23 background on you? How old are you?

24 A: Forty-four years old.

25 Q: And for this Berkeley County charge, do you remember how

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SAMUEL BROWN - DIRECT BY DAVIS

8

1 old you were when you came to court for it?

2 A: I don't recall. It was 2013, so -- 2014, that's four
3 years ago. So, I was 40 years old.

4 THE COURT: All right. Mr. Davis, let me back up just a
5 minute.

6 MR. DAVIS: Yes, sir.

7 THE COURT: I want you, if you could to delineate the
8 allegations in sort of a concise fashion the allegations of
9 ineffective assistance or whatever your grounds are, I want
10 you to list that, what you're planning on going forward with
11 here today.

12 MR. DAVIS: Certainly, Judge.

13 Judge, the -- and forgive me if -- I kind of have the
14 questions rather than the main points, but it's generally
15 this, Judge. He did go to trial in Charleston on that charge,
16 so he understood his right to go to trial. Our argument here
17 would be that the factual nature and potentially -- some
18 potential legal arguments, suppression issues, were not fully
19 advised to him by his attorney here. So, it's kind of the
20 flip side of the same coin. On the one hand we're gonna argue
21 that he's -- I believe he's gonna testify that his confidence
22 level in his attorney in Berkeley as opposed to, and I'm not
23 comparing -- I'll not get into that in testimony -- but as
24 opposed to Charleston, his confidence level in his attorney
25 here was willing and prepared to go to trial had he chosen, he

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SAMUEL BROWN - DIRECT BY DAVIS

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1 was not confident in that and we're gonna delve into the
2 reason behind that. And then second of all, we're gonna focus
3 on the advice given leading up to the plea, of the
4 consequences, the effect of the plea was not fully discussed
5 with him. There was insufficient meetings, insufficient
6 discussions both about the facts at trial and how that
7 might've impounded. And then the flip side is that it was a
8 rush to plea without full information of the consequences of
9 it.

10 THE COURT: Very good. You may proceed.

11 MR. DAVIS: Thank you, Judge.

12 BY MR. DAVIS:

13 Q: And how far did you go in school?

14 A: Associates degree in engineering.

15 Q: And where was that?

16 A: I did it -- I did a basic instruction trade at Trident
17 Tech. And then I went on into -- at CPCC and then I went to
18 UNCC for a couple of semesters to try to obtain my bachelor's
19 degree but I got incarcerated before I was able to finish.

20 Q: Okay. And now, I mentioned to the Judge, you had been to
21 court for a criminal case in another jurisdiction; is that
22 correct?

23 A: Yes.

24 Q: Okay. Without getting too much into details of that,
25 though, was that a trial or a guilty plea in the other

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SAMUEL BROWN - DIRECT BY DAVIS

10

1 jurisdiction?

2 A: That was a trial.

3 Q: Okay. Did you have the same attorney there or a
4 different attorney?

5 A: No, I had a different attorney.

6 Q: Other than that instance and this guilty plea, do you
7 have any other familiarity with criminal court in South
8 Carolina, General Sessions Court?

9 A: Yes, yes.

10 Q: Now, as far as this charge, the marijuana charge here in
11 Berkeley County, who was your attorney?

12 A: Chad Shelton.

13 Q: Okay. Was he hired or was he appointed to you?

14 A: He was appointed to me.

15 Q: So, he was a public defender at the time?

16 A: Yes, sir.

17 Q: Okay. Would you have preferred to hire an attorney?

18 A: Yes. I was incarcerated at the time but I had paid
19 William Nixon to handle that case cause they didn't give me
20 enough -- my lawyer, my trial lawyer didn't file an appeal in
21 time. So, basically, I hired William Nixon and I was --
22 couldn't work or obtain any income, so I had to settle for a
23 public defender in Berkeley County.

24 Q: And just to be clear, I believe Mr. Nixon ended up
25 handling the PCR in Charleston; is that right?

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SAMUEL BROWN - DIRECT BY DAVIS

11

1 A: Yes, yes, yes.

2 Q: But he was not your attorney for the underlying charge in
3 Charleston and he's not involved in this case?

4 A: No, he's not.

5 Q: Okay.

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

7 Q: Did you have someone in mind for this case that you
8 wanted to hire?

9 MR. JAMES: Objection, relevance.

10 THE COURT: I'll allow him ask it. Go ahead.

11 A: Repeat the question.

12 BY MR. DAVIS:

13 Q: Did you have someone in mind that you wanted to hire in
14 this case?

15 A: Yes, William Nixon. I would've, you know ---

16 Q: And why were you not able to?

17 A: Because he already cont -- he already started on my case
18 in Charleston County and he as asking for additional money and
19 I couldn't afford it.

20 Q: On this charge, were you able to make bond or did you
21 stay in jail until it was resolved?

22 A: I made bond.

23 Q: But at the time that you pled guilty, were you in custody
24 for the other case?

25 A: Yes, I was out on bond. And at the time I was -- at the

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SAMUEL BROWN - DIRECT BY DAVIS

12

1 time of this case, I was, like I said, I was incarcerated for
2 -- at the trial and then this case came up.
3 Q: All right. Let's focus on Mr. Shelton.
4 A: Okay.
5 Q: The meetings you had with him. Can you tell Judge
6 Nettles how many times you met with Mr. Shelton?
7 A: First time I met with Mr. Shelton, it was right before he
8 asked me to plead guilty. I never met him before. I met him
9 in that holding cell right there. He didn't ---
10 Q: You're talking about the room right behind the courthouse
11 here; is that right?
12 A: Yes.
13 Q: Not the room but the actual cell?
14 A: Nah, the actual cell.
15 Q: Okay.
16 A: And he asked me -- he shook -- he shook my hand. Well,
17 he didn't even know who -- how I looked. He asked for Samuel
18 Brown, he came, shook my hand, and say can you plea to such-
19 and-such. I can't remember what exactly what the first plea
20 was. And I asked him, can you take me back to the institution
21 until we build a better relationship.
22 Q: How long would you say that meeting lasted?
23 A: Five minutes.
24 Q: Did you come in the courtroom that day to speak to a
25 judge or did you just talk to Mr. Shelton?

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SAMUEL BROWN - DIRECT BY DAVIS

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1 A: Actually, I didn't even know I was coming to court. They
2 got me out the camp early that morning and they -- I got --
3 transportation brought me up here and then I didn't even know
4 what was going on. I know it was -- you know, dealing with
5 Berkeley County, that's the only charge I had. I know I was
6 dealing with this charge, but I didn't have -- I didn't even
7 know I was coming to plea.
8 Q: Where were you coming from?
9 A: MacDougall Institution.
10 Q: And so then the follow-up is once you got here ---
11 A: Yes.
12 Q: --- you had the conversation with Mr. Shelton behind the
13 courtroom here at the lock up?
14 A: Right.
15 Q: Did you actually get brought in the courtroom or not?
16 A: No, no, no. Transportation -- after everybody went
17 through their hearings, transportation took me back to
18 MacDougall.
19 Q: When did you next meet with Mr. Shelton?
20 A: Oh, the next time I met with Mr. Shelton was here again.
21 He never came to see me. We corresponded through letters and
22 I basically saw that he wasn't interested in fighting on my
23 behalf, so it was just like, you know, not being able to
24 afford a lawyer, stressed out, a trial and trying to proceed
25 with my other case, I just went ahead and that's what

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SAMUEL BROWN - DIRECT BY DAVIS

14

1 happened.

2 Q: Did you remain at MacDougall between that first meeting
3 and the second meeting?

4 A: Yes, yes, yes.

5 Q: You corresponded by mail you've testified to, right?

6 A: Right.

7 Q: Letters back and forth?

8 A: Right. Like maybe two letters, uh-huh, (affirmative
9 response).

10 Q: Was there ever any in-person meeting? Did he ever come
11 to MacDougall to meet with you?

12 A: No.

13 Q: Did he ever set up a professional phone call at
14 MacDougall to talk to you?

15 A: No.

16 Q: So, the same type of meetings here at the courthouse,
17 what happened that time?

18 A: Basically, you know, due to corresponding in the letters,
19 I asked him can he basically suppress the evidence. And --
20 because I felt like it was a warrantless search of the vehicle
21 of the trunk. And so, when I got back here at that time, it
22 was basically, we just went through the procedure of what to
23 say in court, you know, the normal routine. And we went
24 through -- we came into court and I said -- the Judge asked me
25 questions and that was it, you know.

1 Q: So, the second meeting was the guilty plea?
2 A: Yeah, the second meeting was the guilty plea.
3 Q: Those are the only two times you met with Mr. Shelton?
4 A: Yes, sir.
5 Q: How long was that meeting before you came into court to
6 do the guilty plea?
7 A: Like five, 10 minutes.
8 Q: We're gonna circle back around to your conversation about
9 suppression a little bit. Okay?
10 A: All right.
11 Q: In any communication -- okay, for these next questions,
12 it's gonna be any communications, by letter or in person.
13 Okay?
14 A: Okay.
15 Q: Through any communication did he, Mr. Shelton, ever
16 review the elements of the offense with you?
17 A: Only thing he did review was the fact that the roadblock
18 ---
19 Q: Okay. Hold on just a second. Did he ever review the
20 elements of possession with intent to distribute marijuana to
21 you?
22 A: No, no, no.
23 Q: So, he never told you what the state would have to prove
24 at trial to convict you?
25 A: No.

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- 1 Q: This kind of goes along with that. Did he ever explain
2 to you the burden of proof, specifically what the state had to
3 prove to convict you, did he ever discuss that?
- 4 A: No.
- 5 Q: Now, in the lead up to the guilty plea, did he ever talk
6 to you about the range of sentence for what the state
7 originally charged you for, possession with intent to
8 distribute third, did he ever talk to you about the range of
9 sentence on that?
- 10 A: I can't recall.
- 11 Q: Okay.
- 12 A: It was awhile back.
- 13 Q: Fair enough. Did he ever review your prior record with
14 you to go over why the state was trying to suggest this was a
15 third offense?
- 16 A: I don't recall that conversation.
- 17 Q: Okay. Was there ever any discussion about the fact that
18 possession with intent to distribute marijuana third offense
19 is a no-parole offense? Do you remember that phrase being
20 used, no-parole offense?
- 21 A: No.
- 22 Q: What about 85 percent?
- 23 A: Not ever. He never mentioned anything.
- 24 Q: Okay. And again, any of these conversations would've
25 been personal or by a letter, did he ever discuss the term

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SAMUEL BROWN - DIRECT BY DAVIS

17

- 1 community supervision?
- 2 A: No.
- 3 Q: All right. Now, let's get into a little more detailed
- 4 specific complaints. Did he ever discuss going to trial?
- 5 A: No. His attitude was more of just, why don't you just
- 6 plead to this. You already doing time, they gonna give you
- 7 time-served, or you just gonna continue -- not time-served but
- 8 more of -- by the time you finish your other sentence, they
- 9 gonna run it concurrent and just get it out the way,
- 10 basically.
- 11 Q: Did he ever talk to you about any potential defenses?
- 12 A: No.
- 13 Q: Now, did he ever send to you or give to you in-person or
- 14 mail to you your discovery or your Rule 5, did you have that?
- 15 A: Yes, he did.
- 16 Q: But did you and he ever have a chance to go over that
- 17 together?
- 18 A: Not in person or not through a phone call, no.
- 19 Q: But you raised some issues to him through correspondence
- 20 from you to him, right?
- 21 A: Yes, yes.
- 22 Q: Okay. Now, one of the major issues you have deals with
- 23 the search of the vehicle.
- 24 A: Yes.
- 25 Q: This began as a roadblock, correct?

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18

1 A: Yes.

2 Q: Can you tell Judge Nettles what -- first of all, what
3 your concerns about that were and then we'll get into any
4 discussions you and Mr. Shelton had. But what were your
5 concerns about that issue?

6 A: Basically, I was driving down College Park Road around 12
7 o'clock at night. They had a roadblock set up. When the
8 police came to my vehicle, I rolled down the window, he asked
9 for license and registration. I gave him license and
10 registration. And then he asked me about the only person --
11 there was one other person who didn't have license, because we
12 talked later on, he asked ---

13 Q: Who is we?

14 A: Me and the officer.

15 Q: Okay.

16 A: I mean, I'm sorry, me and the person that got arrested
17 with me. There was one other person who got pulled over and
18 that's because he didn't have license. I didn't feel like it
19 was a reason for me to even be pulled over because it was
20 beyond the scope of the roadblock. He searched the vehicle.
21 I pulled over in the parking lot -- if you're familiar with
22 College Park Road, we was in the skating rink park parking
23 lot. I pulled over, he searched inside the vehicle, didn't
24 find any paraphernalia. He didn't find -- it was nothing
25 inside the car, it was a rental car. Then he asked me to step

1 out the vehicle -- I mean, yeah, I'm sorry, I'm already
2 outside the vehicle. And then he asked -- I mean, he really
3 didn't ask, he just went inside the trunk. And that's when he
4 started going through my personal possessions.

5 Q: Just pause right there; we'll come back to that.

6 A: All right.

7 Q: Just pause right there. About the actual roadblock and
8 the stop of you at the roadblock.

9 A: Right.

10 Q: What if any conversations about that issue, the
11 roadblock, did you have with Mr. Shelton?

12 A: Oh, yes. Mr. Shelton had stated that basically it was a
13 legitimate roadblock. It was set up for, I think, alcohol,
14 prohibiting people -- I mean, people just check -- it was just
15 a checkpoint for people who, you know, under alcohol
16 influences.

17 Q: And he provided you some documentation about that?

18 A: Oh, yes, yes, he did, yeah.

19 Q: Okay. And what was his -- what as his comments about
20 whether that's something you should fight at trial or not
21 fight and plead guilty to something?

22 A: He was basically just stating that -- we didn't -- we
23 never really mentioned trial. I mentioned trial but his --
24 like I said, his attitude wasn't about trial. It was more
25 about why don't you just plead to this and just get it over

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20

1 with.

2 Q: So, along those lines, he never really talked to you
3 about a strategy that he would put in play if you'd asked for
4 a trial?

5 A: No.

6 Q: Did you see any indication from him that he was preparing
7 in any way to go to trial?

8 A: No.

9 Q: So, let's pick up where you had left off factually, you
10 had a second issue, not just about the roadblock, the initial
11 stop.

12 A: Right.

13 Q: But you also had an issue about the search; is that
14 right?

15 A: Right.

16 Q: Can you tell Judge Nettles what your concern about that
17 was?

18 A: Well, he basically went in my trunk, went in a duffel
19 back and went inside the duffel back, the bottom of the duffel
20 bag was a -- I think a Rich's (spelled phonetically) bag that
21 he went into, it was shopping bag with clothes in it. And he
22 found the marijuana in a vacuum seal bag. And that -- the
23 issue I had was basically what was the purpose of him first
24 pulling me over, second going inside my trunk. And he didn't
25 treat anyone else in this manner. He treated me in this

1 manner.

2 Q: Was there anything you -- was there anything you recall
3 there at roadside when it happened or anything that you say in
4 discovery that the police tried to use as a reason why?

5 A: Yes. He stated that the vehicle smelled like marijuana.
6 But if it -- he would've found -- if it was -- if marijuana,
7 anybody -- if you know about vacuum seal, there's no way he
8 could've smelled marijuana in my vehicle. So, I mean, I think
9 he came up with that in a police report, after he found the
10 marijuana.

11 Q: Do you recall that ever being said on the roadside?

12 A: No.

13 Q: Now, on that issue, okay, the actual search and where the
14 officer searched and the reasons why or explanation why, can
15 you tell Judge Nettles what if any conversations you had with
16 Mr. Shelton about that issue?

17 A: He basically stated that well the police stated in a
18 police report that he smelled marijuana and that's probable
19 cause to go inside my trunk. That's what he told me.

20 Q: Did he ever have discussions with you about the fact that
21 smell of marijuana alone might not justify a search beyond
22 that?

23 A: No.

24 Q: Did he ever talk to you about any motions he might be
25 able to file at trial but motions to suppress or block that

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22

1 ---

2 A: No, I asked him in a letter to file a motion for
3 suppression of the evidence.

4 Q: And what reaction if any did you get?

5 A: All I got excuses.

6 Q: Like what? Can you tell the Judge what ---

7 A: Basically, again, why don't you go ahead and plea to this
8 and just get it over with. He don't see me winning in court,
9 in trial.

10 Q: And this maybe clear, the Judge has records of your case,
11 but let's just be clear ---.

12 THE COURT: And I don't have a copy of the plea
13 transcript.

14 MR. JAMES: Your Honor, because this has already been up
15 to the Supreme Court in lieu of including separate plea
16 transcripts and so on and so forth, we included a copy of the
17 appendix from the appeal and that appendix should include a
18 complete copy.

19 THE COURT: I think that's -- what I saw was a copy of
20 the hearing before Chief Justice Toal.

21 MR. DAVIS: Judge, I have my copy if we could -- if I
22 could get assistance.

23 MR. JAMES: Pages 3 through 10 of the appendix should be
24 the original plea transcript, or I suppose 1 through 10 using
25 the appendix pagination. And if that is not included there, I

1 have a copy in my hand, I'll happily hand it up to you.

2 THE COURT: All right. Yeah, I do have it. Very good.
3 Thank you.

4 MR. JAMES: There does appear to be a little bit of an
5 error in the copying of the caption up there at the top, but
6 that is -- that is the plea transcript.

7 THE COURT: All right. Go ahead.

8 BY MR. DAVIS:

9 Q: You and your attorney knew about Charleston but just so
10 that we can get it on the record so the Judge will know. You
11 had already been to trial in Charleston and convicted,
12 correct?

13 A: Yes.

14 Q: And you'd been sentenced from Charleston, correct?

15 A: Yes.

16 Q: Ten-year sentence?

17 A: Yes.

18 Q: But you were fighting that conviction at the time of
19 talking to Mr. Shelton; is that accurate?

20 A: Yes.

21 Q: Okay. So, when there is the conversation why you just
22 plea and it'll run with or -- about that 10-year sentence out
23 of Charleston?

24 A: Say that again?

25 Q: When there's discussion from your client about why don't

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24

1 you just plead, the sentence will run along with -- it's
2 talking about that case, right?

3 A: Yes, yes, yes.

4 Q: We need not go further than this, one other question on
5 that, you're still fighting that conviction; is that correct?

6 A: Yes, I'm on a habeas corpus.

7 Q: Okay. I'm gonna cut to a specific place in time. When
8 you came here on May 20th, 2014, the second meeting with Mr.
9 Shelton, okay?

10 A: Yes.

11 Q: Y'all met in the room that you and I met in a while ago,
12 the big jury room behind the courtroom here?

13 A: Yes.

14 Q: Okay. And you signed a sheet to come into court and
15 plead guilty; is that right?

16 A: Yes.

17 Q: How long would you say it took for him to go over the
18 sheet with you?

19 A: It -- the entire meeting with him was like five to 10
20 minutes, I would say.

21 Q: Do you recall anything specifically about that sheet
22 other than where you had to sign?

23 A: Just what I was pleading to.

24 Q: Because they reduced the charge down; is that right?
25 They reduced a level of it?

- 1 A: Yes.
- 2 Q: Okay. Other than the actual charge showing that you were
3 pleading to possession with intent to distribute marijuana
4 first offense and where you had to sign, was there anything
5 else you recall him pointing out?
- 6 A: We had a -- we talked about why was possession with
7 intent to distribute and not just a possession, and was
8 telling me because of the weight of the substance.
- 9 Q: Okay.
- 10 A: Uh-huh, (affirmative response).
- 11 Q: Mr. Brown, if you had gotten any indication from your
12 attorney that he was willing and prepared to go to trial,
13 would you have pled guilty or would you have gone to trial?
- 14 A: I would've went to trial if I had -- cause I had felt
15 like, like you said, if I had any indication that he was gonna
16 fight on my behalf.
- 17 Q: If you had had any meetings to discuss trial strategy or
18 suppression issues, would you have pled guilty or gone to
19 trial?
- 20 A: I would've went to trial.
- 21 Q: If an actual suppression motion had been filed with the
22 clerk of court intending to fight either the roadblock and/or
23 the search and seizure afterward, would you have pled guilty
24 or gone to trial?
- 25 A: I would've went to trial.

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1 Q: Now, I know there's some dispute about what level third
2 or second or first, but even if it'd been a third, five to 20,
3 85 percent, no parole, community supervision to follow -- if
4 that had been gone over with you and you had known that at the
5 time that you had a prepared trial attorney file a motion to
6 suppress, knowing that the risk was five to 20, would you have
7 still gone to trial or would you have pled guilty to this
8 reduced charge?

9 A: Well, the case I went to trial on, I was facing 30, so
10 yes.

11 MR. DAVIS: Your Honor, if I could have just one moment..

12 BY MR. DAVIS:

13 Q: Just a final -- knowing that filing the motion or even
14 having a hearing about suppressing evidence, that doesn't
15 guarantee that it would get suppressed, do you understand
16 that?

17 A: I understood.

18 Q: So, understanding that it's still a risk by rejecting an
19 offer of first offense, you could be facing more severe
20 punishment by going to trial and you wouldn't know the outcome
21 of the suppression until the trial started. You're telling
22 this Court you would've preferred to go to trial?

23 A: Yes.

24 Q: Thank you, Mr. Brown, no other questions.

25 A: Thank you.

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SAMUEL BROWN - CROSS BY JAMES

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1 MR. DAVIS: Thank you, Your Honor.

2 THE COURT: Cross examination.

3 CROSS EXAMINATION OF SAMUEL BROWN BY MR. JAMES:

4 Q: Mr. Brown ---

5 A: Yes, sir.

6 Q: Did you ever send any letters to your counsel asking him
7 to negotiate a plea on your behalf?

8 A: Yes, after I realized that he wasn't gonna fight on my
9 behalf, I sent a letter to him.

10 Q: Did you ever send any letters to the solicitor's office
11 asking for a plea offer?

12 A: Yes. After he -- I realized that he wasn't gonna fight
13 on my behalf, yes, I did. Actually, I sent the letter to the
14 solicitor's office first because I don't think I could -- me
15 and him corresponded, like he wouldn't answer my letter, the
16 first letter, so I just sent the letter to the solicitor. And
17 I think they contacted him and then he started back
18 corresponding.

19 Q: Do you know for sure that the solicitor's office reached
20 out to him about it or are you speculating a little bit?

21 A: I'm speculating because I just know he contacted me
22 after, afterwards, uh-huh, (affirmative response).

23 Q: How much marijuana was found in the trunk of that rental
24 car?

25 MR. DAVIS: It's in the record, Your Honor.

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1 THE COURT: You can ask the question, if he knows.

2 A: I believe it was like two ounce, two-and-half ounce,
3 something like that, or a pound and a half, I can't remember
4 -- I don't recall.

5 BY MR. JAMES:

6 Q: A little over ---

7 A: Actually, I do recall. No, I don't recall the exact
8 weight. I know the initial amount that they stated on a
9 police report was incorrect. And then they came back and I
10 think after they tested it, they had a different amount. But,
11 I don't know -- I don't recall the exact amount because it was
12 like -- that was 2008 -- 2013 when I was actually arrested.

13 Q: Does it sound about right that you were charged with
14 moving about a little over a half a kilo of marijuana ---

15 A: Half a kilo?

16 Q: --- 560 grams?

17 A: I guess so. I guess it was -- that's what's on the
18 report.

19 Q: Do you recall telling the plea court that you were
20 satisfied with your attorney?

21 A: We just talked about that, but we go through these
22 routines and they tell us to cooperate and just go along. So,
23 yes, I just cooperated, I just said what he asked me to do.

24 Q: You were already convicted on the Charleston charge at
25 the time you pled guilty; is that correct?

1 A: Yes.

2 Q: And you were continuing to challenge that conviction at
3 the time you pled guilty?

4 A: Yes.

5 Q: Were you familiar with post-conviction relief at the time
6 you pled guilty?

7 A: Yes.

8 Q: So, were you aware at the time you pled guilty that you
9 could've gone to trial and then challenged the performance of
10 your counsel?

11 A: Can you ask that ---

12 Q: I'll try and ask you that again.

13 A: Right, right.

14 Q: At the time you pled guilty ---

15 A: Okay.

16 Q: Did it cross your mind, were you aware that you could
17 refuse the plea offer, go to trial, and then if counsel was
18 deficit, as you allege, challenge his performance if you were
19 convicted?

20 A: There's no way I would've went to trial with Chad
21 Shelton, I can say that.

22 Q: Did you ever move for Mr. Shelton to be relieved as your
23 counsel?

24 A: No.

25 Q: Why didn't you ever tell the Court this guy is lousy,

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SAMUEL BROWN - BY THE COURT

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1 please give me another attorney?

2 A: I was going through a lot at the time.

3 Q: Would you like to expand on that?

4 A: Like I said, this was 2014, it was four years ago. I
5 can't recall the exact, you know, thoughts that was in my mind
6 at that time. So, I can't expand on that.

7 Q: I understand.

8 A: Okay.

9 MR. JAMES: I beg a moment of the Court's indulgence.

10 I have no further questions, Your Honor.

11 BY THE COURT:

12 THE COURT: Mr. Brown, you recall the guilty plea, don't
13 you?

14 A: Yes, sir.

15 THE COURT: And you were under oath when you -- when the
16 Court asked you questions about the plea, you remember that,
17 don't you?

18 A: Yes, sir

19 THE COURT: The clerk swore you in just like we did here
20 today?

21 A: Yes, sir.

22 THE COURT: And do you recall the Court specifically
23 saying that by pleading guilty you're giving up any defenses
24 that you might have, specifically any challenges to the
25 search?

1 A: Yes, sir.

2 THE COURT: And you indicated that you understood that
3 you had these rights, by entering the plea, you give up those
4 rights; you remember that, don't you?

5 A: Yes, sir.

6 THE COURT: All right. And there was some discussion
7 with the Court about the fact that that you understood the
8 possible punishments that you were facing and the consequences
9 of the plea and the collateral consequences of the plea; you
10 remember that, don't you?

11 A: Yes, sir.

12 THE COURT: And the Court specifically asked you about
13 the services rendered to you by Mr. Shelton. And the Court
14 asked you this question, Have you been satisfied with the
15 services of your lawyer? And your answer was what?

16 A: I believe it was yes.

17 THE COURT: You're correct. You said, Yes, ma'am.

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

19 THE COURT: Has he done everything you think he should
20 have done on this case? Now, is the time to tell. And your
21 response was, No, ma'am, I'm ready. And then the Court said,
22 You may be ready, but I need to know that Mr. Shelton helped
23 you get ready, that there wasn't anything that he should've
24 done or should not have done to assist you. And you said, He
25 assisted me. That's correct, isn't it?

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SAMUEL BROWN - REDIRECT BY DAVIS

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1 A: Yes, sir.

2 THE COURT: All right. And really, the essence of the
3 plea bargain was essentially fulfilled in that you did not get
4 the -- the entering of this plea did not adversely affect your
5 custody status; it ran concurrent.

6 A: Yes, sir.

7 THE COURT: And you also understand that if I were to
8 grant this post-conviction relief you could be convicted --
9 they could sentence you to 20 years, no parole, and you have
10 to serve 85 percent of it and it could run consecutive. Your
11 lawyer has talked to you about that; isn't that correct?

12 A: Yes, sir.

13 THE COURT: And you understand all that?

14 A: Yes, sir.

15 THE COURT: All right.

16 Anything further, any redirect?

17 MR. DAVIS: Just on one issue, if I may, Your Honor?

18 REDIRECT EXAMINATION OF SAMUEL BROWN BY MR. DAVIS:

19 Q: As to the answers, all the answers, at the guilty plea
20 including the ones that Judge Nettles went over, did Mr.
21 Shelton give you any advice about how to answer those
22 questions or not?

23 A: Yes. He told me to say yes and cooperate.

24 Q: Did he discuss to you if you didn't answer affirmatively
25 what would happen?

1 A: We didn't go that detailed in discussion. But, I've pled
2 before and like it's a routine. I understood that.

3 MR. DAVIS: Thank you, Your Honor. No other questions.

4 MR. JAMES: Nothing further from the state, Your Honor.

5 THE COURT: All right. You may step down. Thank you,
6 sir.

7 A: Thank you.

8 MR. DAVIS: May I have just a moment with my client, Your
9 Honor?

10 THE COURT: Yes.

11 (REPORTER'S NOTE: Mr. Davis confers with Applicant.)

12 MR. DAVIS: Thank you very much, Your Honor. That would
13 be our presentation.

14 THE COURT: Very good.

15 State, you're recognized.

16 MR. JAMES: The state would call Mr. Chad Shelton.

17 THE COURT: Mr. Shelton, please come forward. I'm gonna
18 ask if you could to place your left hand on the Bible and
19 raise your right hand as the clerk administers the oath. You
20 can put your paperwork down there. Watch your step.

21 CHAD DANIEL SHELTON, HAVING BEEN DULY
22 SWORN, TESTIFIED AS FOLLOWS:

23 CLERK: Thank you. Please be seated and state your full
24 name for the record.

25 THE COURT: Pull up real close to that microphone and

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1 speak loudly, clearly, and slowly in order that we can
2 everything that you have to say, and let's start with your
3 full name.

4 MR. SHELTON: Yes, Your Honor. Chad Daniel Shelton, S-H-
5 E-L-T-O-N.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION OF CHAD DANIEL SHELTON BY MR. JAMES:

8 Q: Good morning, Mr. Shelton, how are you doing today?

9 A: Good. How are you?

10 Q: I'm all right. You represented Mr. Brown on these
11 charges, correct?

12 A: Yes, sir.

13 Q: Were you appointed or retained?

14 A: I was appointed.

15 Q: Were you working with the public defender's office at the
16 time?

17 A: Yes.

18 Q: About how long have you been engaged in the practice of
19 law?

20 A: I graduated in May of 2007 from the Charleston School of
21 Law and passed the bar -- I got my bar results that November
22 of 2007.

23 Q: Have you been engaged in criminal practice for the entire
24 time of your licensure?

25 A: Yes. And I was in the public defender's office at the

1 time of passing the bar.

2 Q: So, you've been engaged in criminal practice even before
3 your licensure?

4 A: Right, yes.

5 Q: Do you recall about how many times you met with your
6 client?

7 A: I think two times as he testified earlier.

8 Q: Were both of those times here at the courthouse?

9 A: Yes, they would've been at the courthouse.

10 Q: Was there any particular reason why you didn't meet him
11 at his location of incarceration?

12 A: Yeah, so, this was -- I was assigned to this case by Cody
13 Groeber, he's the chief or head of our office, deputy public
14 defender in our office. And, we had gotten a letter that the
15 prosecutor had given to us dated November of -- dated November
16 of 2013 in which Samuel Brown wrote the prosecutor and had
17 asked for a plea deal, that he just received a sentence out of
18 Charleston and he had current charges in Berkeley County.
19 Before he got incarcerated, he applied for a public defender
20 and was denied. And he was asking for a public defender so I
21 can plead guilty to -- on the marijuana charge. He then went
22 on to explain as to how he picked up the charges and how he
23 came across the roadblock, but he indicated that he did not
24 want to fight these charges in Berkeley County and wanted a
25 plea -- wanted to plead guilty. That was before I represented

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1 him, before our office represented him, he had wrote the
2 solicitor's office. I was then appointed around the beginning
3 of December of 2013 by -- my indication of that is it was
4 probably the Rule 5 around December 2nd of 2013, Rule 5
5 motion. He was then brought to the holding cell here. I had
6 very little discovery at that point in time. However, the
7 prosecutor had transported him, had made a plea offer
8 beginning of December of 2013. And so, I essentially went
9 over the offer with him, asked him if he felt comfortable
10 enough to plea. He didn't at that point in time and I didn't
11 want to place any pressure on him so I indicated I would look
12 more into the case and investigate the case and get discovery
13 materials to him so that he could look it over also.

14 I then wrote him ---

15 Q: Hold on.

16 A: Okay. I didn't know how much more you ---

17 Q: I'm jotting down notes as fast as I can. Speedy
18 handwriting was never one of the gifts Lord endowed me with,
19 unfortunately.

20 So, this was very early on in the course of your
21 representation, correct?

22 A: Right, yes.

23 Q: And so you get this offer right out of the gate?

24 A: Right, before I even really had the discovery or
25 anything.

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1 Q: And so since he didn't have the discovery yet, your
2 client wasn't quite willing to plea yet?

3 A: Well, they brought him over, the solicitor's office
4 brought him over because he indicated he wanted to plea. So,
5 and that course, it's a case they can get moved. The
6 solicitor sent me a plea offer that showed that he was facing
7 a third offense and would be facing five to 20 years. And the
8 plea offer was to plead to zero to five year first offense to
9 PWID marijuana.

10 Q: Did you have any materials at that time to look into the
11 basis for a third -- the third offense classification?

12 A: The solicitor handed me his case file -- a copy of his
13 case file but not the official Rule 5. So, he did make a copy
14 of his discovery that he had. So, I briefly reviewed it and
15 it did have his rap sheet in there. So, it would've had his
16 rap sheet of 14 pages.

17 Q: And so upon your review of the rap sheet, the third
18 offense classification was appropriate and supported?

19 A: Yes.

20 Q: You did ultimately receive materials pursuant to those
21 motions, to Rule 5 and *Brady*?

22 A: Yes.

23 Q: And did you review those materials?

24 A: I did.

25 Q: Did you have an opportunity to review those materials

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1 with your client?

2 A: I did send him a copy of those materials. He wasn't at
3 Department of Corrections so it wasn't as easy to meet with
4 him face-to-face, but I sent him a copy of those on December
5 31st with my observations of the -- of the discovery and the
6 police reports.

7 Q: You said your observations. Did you have a letter that
8 you sent to him explaining what you saw in the discovery?

9 A: I did, yes. I indicated in there that he was facing a
10 third drug offense, facing five to 20 years, that the offer
11 was to zero to five years for a first offense. And that his
12 recitation to the solicitor as to why he was in the area where
13 the roadblock was didn't make sense, wasn't gonna make sense.
14 And then that the officer indicated he smelled marijuana and
15 Sam -- Samuel gave him permission to search. And that it was
16 my opinion the drugs would most likely be allowed in.
17 However, I don't know what a judge would decide and they may
18 feel the stop was unreasonable, and I don't know whether the
19 judge would allow them in, but we won't find that out until
20 after the offer expires and right prior to trial. I said, if
21 the drugs are allowed in, we can argue for simple possession.
22 However, it's my legal opinion that a jury would not likely
23 believe that based on the amount of drugs. I said, whether
24 you plea or go to trial is your decision. My opinion is
25 you're taking a substantial risk in going to trial, especially

1 with the possibility of being sentenced greater than the
2 sentence you're already serving. If you change your mind
3 about pleading and going to trial, please let me know prior to
4 expiration of the offer, which was the week of February 3rd.

5 Q: I see there you're holding a piece of paper in your hand.
6 Is that a copy of the letter that you sent to your client?

7 A: Yes, it is.

8 Q: And you just read the substance of it into the record?

9 A: Yes.

10 Q: And so though you didn't meet with him many times and
11 didn't necessarily have an occasion to discuss the discovery
12 with him it indicates it explained to him the substance of
13 that in that letter?

14 A: Yes, I did.

15 Q: Did you conduct any sort of independent investigation
16 into the facts of this case?

17 A: Yes, I did. So, he had sent me a couple of letters -- he
18 sent me a letter after that from January of 2014 and indicated
19 that he felt the stop was, was -- the roadblock was
20 unreasonable and some issues with the search. And, so I
21 inquired with the solicitor's office about getting some more
22 Rule 5 material and the -- specifically on -- and I also did a
23 subpoena to -- I'm sorry, that was for -- I didn't do a
24 subpoena, I'm sorry -- I got the Rule 5 materials prior to
25 needing to do a subpoena for the roadblock reasons. And the

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CHAD DANIEL SHELTON - DIRECT BY JAMES

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1 solicitor's office provided those in supplemental Rule 5
2 materials.

3 Q: So, you were provided documentation to support and
4 justify the setting up of the roadblock?

5 A: Yes.

6 Q: And that was a DUI checkpoint?

7 A: Yes.

8 Q: Do you have a copy of that justification on your person?

9 A: I do.

10 MR. JAMES: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 BY MR. JAMES:

13 Q: All right. And this document that you handed me titled
14 South Carolina Highway Patrol Traffic Safety Checkpoint, June
15 26, 2013, is this the materials that the state provided to you
16 in your discovery?

17 A: Yes.

18 Q: And did you rely upon this document in your counseling of
19 your client?

20 A: Yes.

21 Q: And did you rely upon this document in determining that
22 the roadblock was well justified by law enforcement?

23 A: Yes.

24 MR. JAMES: Your Honor, the state would respectfully
25 submit this as State's Exhibit Number 1.

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CHAD DANIEL SHELTON - DIRECT BY JAMES

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1 THE COURT: Any objection from that?

2 MR. DAVIS: No, Your Honor.

3 THE COURT: It's into evidence.

4 STATE'S EXHIBIT NUMBER 1

5 ADMITTED INTO EVIDENCE

6 BY MR. JAMES:

7 Q: Did you see any weaknesses or lines of defense whatsoever
8 that you could've raised at trial after reviewing the
9 materials justifying the roadblock?

10 A: The only possibility was they gave me some statistics
11 also, and I can't find those right off. I might can find it
12 if I look through my files. But, the only thing that was not
13 in that report was, I think that was prong -- the second prong
14 of the roadblocks, which is that that area specifically had a
15 lot of DUI incidents. But it was a very highly traveled area
16 but they didn't provide any of that. So, there would be a
17 possibility but I -- not in my legal opinion, I don't think
18 that that was going to work.

19 MR. JAMES: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 MR. JAMES: I beg a moment of your indulgence, Your
22 Honor.

23 BY MR. JAMES:

24 Q: Sir, I'm gonna hand you a copy of document entitled South
25 Carolina Highway Patrol Driver Vehicle Inspection Report. A

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CHAD DANIEL SHELTON - DIRECT BY JAMES

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1 moment ago you described receiving a document that indicated
2 statistics as a result of the roadblock. Does this document
3 that I'm handing you match the description of the document
4 that you recall?

5 A: Yes, it is.

6 Q: And did you rely upon this document in determining the
7 justification for the roadblock was appropriate?

8 A: Yes.

9 Q: Did you rely upon this document in the course of your
10 counsel to your client?

11 A: Yes.

12 MR. JAMES: Your Honor, the state would respectfully
13 submit this as State's Exhibit Number 2.

14 MR. DAVIS: No objection.

15 THE COURT: It's into evidence.

16 STATE'S EXHIBIT NUMBER 2

17 ADMITTED INTO EVIDENCE

18 BY MR. JAMES:

19 Q: In addition to reviewing the materials, did you perform
20 any legal research to find lines of this attack on this
21 roadblock?

22 A: Yes. I had the -- I know I have the *State v. Vickery*
23 case in my file. And he -- Samuel also provided me a couple
24 different cases that he thought were relevant. And so I did
25 legal research on that. In my letter dated April 16th, he

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CHAD DANIEL SHELTON - DIRECT BY JAMES

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1 asked me -- he had asked me about a *State v. Jihad* and a *State*
2 *v. Tindall*. And, I mentioned to him that those, the *Jihad*
3 case had been directly reversed by the Supreme Court. They
4 found it was a good stop by the police. And I told him in
5 *State v. Tindall*, there was no reasonable suspicion of crime.
6 And in his case, he had the marijuana smell and then the
7 consent to search.

8 Q: And that's an important detail. Your client consented to
9 search, according to law enforcement, correct?

10 A: According to law enforcement, Sam did, in his letters,
11 indicate that he didn't give full permission, that he only
12 gave permission for certain things, not the trunk of his
13 vehicle.

14 Q: So, your client's version of events was that he gave
15 partial consent to search his vehicle?

16 A: Right. And in that same letter I did also say that we
17 can argue the search was unreasonable and see what the Judge
18 decides, so -- and I said that we can -- this was before they
19 had some the roadblock, I said if the roadblock was
20 unreasonable, then the stop was unlawful which then the drugs
21 found would be fruit of the poisonous tree. So, -- and so I
22 did indicate to him that we could still challenge everything.

23 Q: But ultimately there was an expiration date on the plea
24 offer, correct?

25 A: Correct.

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CHAD DANIEL SHELTON - DIRECT BY JAMES

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1 Q: And in your judgment, it would've expired before you
2 could've resolved the challenges available to your client?

3 A: Correct.

4 Q: Did you discuss with Mr. Brown the elements of the
5 charges against him?

6 A: As far as possession? I don't recall offhand. I know I
7 do talk about that. I know he also has the record, but it
8 would be common practice for me to explain to him possession,
9 actual constructive possession and those elements and the
10 weight.

11 Q: So, you don't recall the specific conversation, but it's
12 part of your regular practice?

13 A: Yes.

14 Q: And you explained to him the weaknesses and longshot
15 character of the defenses available to him?

16 A: Correct, yes.

17 Q: Were there really any leads or witnesses to follow up on
18 other than the law enforcement at the checkpoint?

19 A: No.

20 Q: And the letters and discussions that you had with your
21 client, did he indicate what sort of plea terms would be
22 amenable to him?

23 A: Yes. Actually, he wrote the solicitor again, a second
24 time in December of 2013, which I didn't receive until
25 February of 2014, that he would take a three-year plea deal.

1 And so he keeps -- kept indicating in his letters to me that
2 he would take three years. I was able to get that negotiated
3 with the prosecutor and the prosecutor made that plea offer.
4 We waited till we received the roadblock information just out
5 of an abundance of caution with everything before we
6 proceeded. The solicitor kept that offer open till we
7 received that roadblock information.

8 Q: So, he asked for three years and he got three years?

9 A: Yes.

10 Q: And just to be safe, you waited for all the discovery to
11 come in anyway?

12 A: Yes.

13 Q: And once receiving that, you felt that that was -- that
14 pleading guilty was the appropriate course of action for your
15 client?

16 A: Definitely.

17 Q: And did you advise him to do so?

18 A: Yes.

19 Q: Did you discuss with your client his right to ignore the
20 plea offer and go to trial?

21 A: Yes.

22 Q: Did you discuss with him his right to remain silent?

23 A: Yes.

24 Q: Did you discuss with him his right to confront witnesses
25 against him?

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CHAD DANIEL SHELTON - DIRECT BY JAMES

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- 1 A: Yes.
- 2 Q: Did you ever tell your client that he couldn't go to
3 trial?
- 4 A: No.
- 5 Q: If your client had insisted on taking this to trial,
6 could you have been prepared to proceed to trial?
- 7 A: Yes, absolutely.
- 8 Q: Earlier we discussed that the ball got rolling on plea
9 negotiations right out of the gate. Would you have spent more
10 time preparing for trial had he indicated to you that he did
11 not wish to plead guilty but wished to proceed to trial?
- 12 A: Yes.
- 13 Q: Was that time available to you?
- 14 A: Yes.
- 15 Q: Was this on the trial docket or ---
- 16 A: No, it was not on the trial docket but the solicitor was
17 indicating he would put it on the trial docket in May/June
18 timeframe.
- 19 Q: And that would've afforded you adequate time to prepare?
- 20 A: Yes. The May/June was prior to the roadblock, trying to
21 get the roadblock info.
- 22 Q: Did you indicate to your client that you could spend more
23 time on this case if he wanted to take it to trial?
- 24 A: Yes.
- 25 Q: Ultimately, whose decision was it to plead guilty to

1 these charges?

2 A: Samuel's.

3 MR. JAMES: Just one moment, Your Honor.

4 BY MR. JAMES:

5 Q: Were there any materials that you expected to receive in
6 your Rule 5 and Brady packet that you did not receive?

7 A: No.

8 Q: To your knowledge, did the materials that you received
9 complete all the discovery that was available to you and your
10 client?

11 A: Yes.

12 Q: And in addition to that, early on the process, you had
13 the opportunity to review the state's file?

14 A: Yes.

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

16 THE COURT: Yes, sir, Mr. Davis?

17 MR. DAVIS: Thank you.

18 CROSS EXAMINATION OF CHAD DANIEL SHELTON BY MR. DAVIS:

19 Q: Mr. Shelton, it's unusual for a case to come to you in
20 the posture this one did where there had already been a
21 request for an offer, right?

22 A: That's correct.

23 Q: But now once you made contact or the first contact you
24 received from Mr. Brown, he's already showing he has concerns
25 about the stop, the search and seizure, right?

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CHAD DANIEL SHELTON - CROSS BY DAVIS

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1 A: He had some concerns, yes, definitely.

2 Q: There's been talk about a couple of times -- if you
3 could, for the record and for Judge Nettles, you -- do you
4 have a copy still of his prior record?

5 A: Yes.

6 Q: Could you, and take your time, could you indicate to
7 Judge Nettles what prior convictions you relied on to indicate
8 that this would've been a possession with intent to distribute
9 marijuana third offense -- third or subsequent?

10 THE COURT: I was looking for that. What do you think
11 the record says?

12 MR. DAVIS: Your Honor, I'm not sure that I have that. I
13 have some documents from Mr. Shelton's file.

14 THE COURT: Oh, okay. I thought you ---

15 MR. DAVIS: No, I apologize. I'll check again.

16 No, sir. I reviewed his file and I have some documents
17 including some of the letters that were mentioned earlier and
18 the two exhibits but, I apologize, I do not have that.

19 A: Looks like a 2004 PWID marijuana, 2005 he was convicted,
20 he got four years.

21 THE COURT: And probably the trafficking that he was
22 already convicted of?

23 A: I believe that was cocaine, so it was not marijuana. The
24 solicitor indicates there was a prior simple possession, so
25 that would be a question as to whether that would be used for

1 enhancement of marijuana. And that was -- it looks like that
2 was also -- there's one 2004 of possession. Looks like he had
3 one in 2001 also that he got five years on, but that would be
4 beyond the 10 years. So, it's a question. It could've been a
5 second or a third.

6 BY MR. DAVIS:

7 Q: Do you have notes indicating that you reviewed his record
8 with him just like we've done now?

9 A: I don't have notes on that. I mean, it's standard what I
10 would've done prior to any plea going over the discovery with
11 him and answer any questions that he has.

12 Q: Now, you've summarized pretty thoroughly the exhibits and
13 -- I'm sorry -- the exhibits and some letters. Do you recall
14 any discussions by correspondence or otherwise about that
15 issue whether this really was a third or not?

16 THE COURT: Am I mistaken in that when for enhancement
17 purposes, all drug offenses, even simple possession of
18 marijuana can enhance a cocaine offense? Is that correct or
19 not?

20 MR. DAVIS: Marijuana to marijuana; everything else to
21 everything else.

22 A: Yes.

23 THE COURT: Say that again?

24 MR. DAVIS: Marijuana to marijuana; everything else to
25 everything else. So, ecstasy to cocaine to crack, all that

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CHAD DANIEL SHELTON - CROSS BY DAVIS

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1 would count towards each other, but marijuana is strictly
2 marijuana.

3 THE COURT: Oh, okay. Very good.

4 Is that correct?

5 MR. JAMES: That is consistent with my understanding;
6 however, I don't have the statute in front of me at this time.

7 THE COURT: Okay.

8 A: I'm trying to look to see his letters to see if he wrote
9 anything asking about that. I don't see him asking about that
10 or challenging that in his letters to me. I did write in my
11 letter that the solicitor believes it to be his third offense.

12 BY MR. DAVIS:

13 Q: And certainly the offer was to a first, right?

14 A: Correct.

15 Q: Okay. But let's -- let me stay on that track for a
16 second. Assuming the state presumed it was a third -- and
17 this is gonna be a complex question, but I think you can
18 handle it. As to the next three issues, do you recall
19 specifically discussing it or do you have notes that you did
20 about the fact that a third is both no-parole -- or not both,
21 but is no-parole, 85 percent, and requires communicate
22 supervision? Do you recall any discussion with your client
23 about the initial charge bearing those consequences?

24 A: I don't recall anything -- I do know in his letters he
25 indicated that he's doing an 85 percent case right now and he

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CHAD DANIEL SHELTON - CROSS BY DAVIS

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1 wanted to stay away from that. So, but I don't recall
2 specifically talking about that.

3 Q: So, you don't recall before Judge Harrington mentioning
4 it on the record at the plea, you don't remember having
5 discussions with him, correct?

6 A: No.

7 Q: You were notified that if it didn't work out as a plea,
8 that the state intended to put it on the summer docket for
9 2014?

10 A: That's correct.

11 Q: Do you ever recall discussing it or do you have notes
12 that you passed that information along to Mr. Brown?

13 THE COURT: While he's looking for that, the penalty for
14 possession with intent to distribute second offense is what?

15 A: Zero to 10.

16 THE COURT: Zero to 10, okay.

17 MR. DAVIS: Yes, Your Honor. So, zero to five on the
18 first; zero to 10 on the second; five to 20 on a third.

19 THE COURT: Let me ask y'all one point of clarification.
20 Isn't it true that trafficking of any drug counts to enhance a
21 marijuana offense?

22 MR. DAVIS: That's not my understanding, Judge. They --
23 it's a separate -- if they are different substance, a
24 different ---

25 THE COURT: I think you might be mistaken on that.

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CHAD DANIEL SHELTON - CROSS BY DAVIS

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1 MR. DAVIS: I will both stand and sit corrected if I am
2 wrong. Subsequent to this plea is the Charleston conviction -
3 --

4 THE COURT: Subsequent or previous.

5 MR. DAVIS: Previous to this plea, I apologize. Previous
6 to this plea is the Charleston conviction for a non-marijuana
7 drug conviction. Yes, Your Honor.

8 THE COURT: The trafficking?

9 MR. DAVIS: Yes, Your Honor.

10 THE COURT: Okay. Very good.

11 A: I did not indicate anywhere that it would've been up for
12 a summer trial.

13 BY MR. DAVIS:

14 Q: We talked about the road -- you testified about the
15 roadblock pretty clearly. I want to talk about the subsequent
16 search and whether that was allowed under Mr. Brown's consent
17 or not.

18 THE COURT: Let me -- as far as the -- what we were
19 talking about, subsection (b) says, and correct me if I'm
20 wrong, in addition to the above provisions, a conviction of
21 trafficking in marijuana or trafficking any other controlled
22 substance in violation of this article or of another state or
23 federal statute relating to trafficking a controlled substance
24 must be considered a prior offense for the purpose of any
25 prosecution pursuant to this article.

1 MR. DAVIS: And, Judge, what's the date of that? Because
2 I know they went back in and changed both the 85 percent on
3 some PWIDs, do we have a date on that, Judge? And I -- again,
4 I did not intent to mislead the Court.

5 THE COURT: I don't have the date of it. At least at one
6 point in time, that was the law.

7 MR. DAVIS: Because this -- the plea was May 2014. Thank
8 you, Judge.

9 BY MR. DAVIS:

10 Q: First of all, you've already testified that Mr. Brown
11 disputed whether he gave full consent to a search of the
12 entirety of his car, correct?

13 A: Correct.

14 Q: You're also aware that -- so first of all, you're aware
15 that that's something you could've argued about at trial if it
16 was going to trial, right?

17 A: Yes.

18 Q: Secondly, even if valid consent is given, you're aware
19 that the -- the delayed detention, if there were a delayed
20 detention for improper reasons, that could overwhelm consent.
21 That's another issue you could've raised to suppress the
22 evidence if this were going trial; is that right?

23 A: That's correct, and I mentioned that in my letter.

24 MR. DAVIS: If you'll give me just one moment.

25 Thank you, Your Honor. Thank you Mr. Shelton. No other

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CHAD DANIEL SHELTON - REDIRECT BY JAMES

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1 questions.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION OF CHAD DANIEL SHELTON BY MR. JAMES:

4 Q: Did your client ever tell you why he was pleading guilty?

5 A: He didn't want to -- he didn't want to go to trial. He
6 didn't want to go through all that.

7 MR. JAMES: No further question.

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

9 MR. SHELTON: Thank you.

10 THE COURT: Any further witnesses? Any witnesses in
11 reply, Mr. Davis?

12 MR. DAVIS: No, Your Honor.

13 THE COURT: Anything further from the state?

14 MR. JAMES: No, Your Honor.

15 Your Honor, that is the only case for which we have
16 subpoenaed Mr. Shelton for today. May he be excused?

17 THE COURT: He may.

18 RULING OF THE COURT:

19 THE COURT: Mr. James, I'm gonna ask that you prepare an
20 order consistent with my ruling here today.

21 I think one of the things that is very important is that
22 Mr. Brown, from the very outset, requested that he enter a
23 plea. He was able to successfully negotiate a three-year
24 sentence which would run concurrent which does not adversely
25 affect his ultimate period of incarceration. I do acknowledge

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RULING OF THE COURT

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1 and everybody is in agreement, there were only two meetings in
2 person with the application. However, I find that under these
3 circumstances it was adequate. He was able to get all of the
4 Rule 5 discovery and he also did some additional investigation
5 to determine whether or not the roadblock was proper. And we
6 all know that in order for the roadblock to be proper, the
7 state has to establish that the DUI situation is such that
8 ordinary patrolling of the roads is ineffective. And they
9 were able to provide the necessary information. They also had
10 a supervising agent there. So, the roadblock based on what's
11 been presented here today was indeed proper. The search, the
12 testimony was presented that there was a smell of and an odor
13 of marijuana, which would rise to probable cause which would
14 justify the search. But moreover, he consented to the search
15 regardless of that. So, with regard to those issues, I don't
16 -- those issues are without merit. But, more importantly, the
17 plea transcript is dispositive because even if there was some
18 merit to challenging the validity of the roadblock or the
19 probable cause for the search, he specifically on the record,
20 under oath, waived his -- any defenses that he might have.
21 The question was asked on redirect why did he plead guilty,
22 and the defendant specifically said on the record in the plea
23 transcript he was pleading guilty because he was guilty. And,
24 the plea transcript is dispositive of all of these issues. He
25 understood the charges. He waived any defenses that he might

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RULING OF THE COURT

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1 have. He was satisfied with his lawyer. He had adequate time
2 to discuss the matter with his lawyer. There were no
3 complaints and the sentencing judge specifically asked if
4 there was a complaint now was the time for him to voice those
5 concerns. I specifically find that based on the plea
6 transcript, the decision to enter a plea was free and
7 voluntary. And of course, this is -- has nothing to do with
8 whether or not the relief should be granted, but I think it is
9 important to note the effect of this plea did not adversely
10 affect his period of incarceration, which was consistent with
11 what he originally wanted to do and I think reasonable on
12 behalf of his trial attorney to accomplish that effect.

13 So, I'm gonna ask that you prepare an order consistent
14 with that and send a copy of it to Mr. Davis to ensure that
15 what you've written down in the order is consistent with my
16 ruling here today.

17 And, Mr. Brown, I wish you the best of luck. Good luck
18 to you.

19 MR. BROWN: Thank you, sir.

20 MR. JAMES: Thank you, Your Honor. I would respectfully
21 request 30 days to prepare that order and submit it to Mr.
22 Davis.

23 THE COURT: Pardon? Yes.

24 MR. JAMES: I would respectfully request 30 days to
25 prepare the proposed order.

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RULING OF THE COURT

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1 THE COURT: Just one moment. Mr. Davis, you are correct,
2 that amendment that allows for the enhancement for a
3 trafficking was passed in 2016. This was in 2014. But the
4 point of thing is that is that had he gone to trial, he could
5 have indeed gotten 10 years which could've run consecutive.
6 And that's the whole idea behind the logic of the plea was to
7 avoid him spending any more time in jail. So, the issue with
8 regard to five to 20 does not apply. However, he could've
9 indeed gotten 10 years to run consecutive and it would've been
10 unreasonable for him or his trial lawyer to allow that to
11 happen. So ---

12 MR. DAVIS: Thank you.

13 THE COURT: Very good. Thank you.

14 ADJOURNED - 11:22 A.M.

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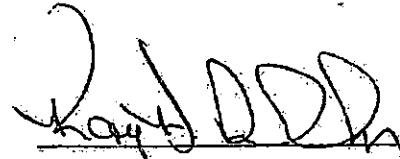
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CERTIFICATE OF COURT REPORTER

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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 PCR hearing held in the case of Samuel Brown v. State of South Carolina, held in the Court of Common Pleas for Berkeley County, Berkeley County Courthouse, Monks Corner, South Carolina, on October 1, 2018.

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



Kay H. Richardson

Official Court Reporter

March 8, 2019.

VCD

South Carolina Highway Patrol Traffic Safety Checkpoint June 26, 2013

College Park Road @ ATP Gunshop Operations Plan

In accordance with the South Carolina Department of Public Safety and Highway Patrol Policies and Procedures Manual Policy 300.03, the South Carolina Highway Patrol will utilize traffic checkpoints as a means to promote highway safety and to enforce laws to curb violations of driving under the influence and other traffic offenses. Other violations include possible immigration laws, vehicle insurance violations, and in response to citizen-related complaints. Berkeley County has been identified by the Office of Highway Safety as a focus county to reduce alcohol-related collisions and deaths. Latest data indicates that there were 189 collisions in 2012 involving impaired drivers. The Highway Patrol has partnered with other agencies in this region to conduct checkpoints as a sustained effort to reduce impaired driving and to promote highway safety initiatives. All checkpoints will be established in a manner that is safe for law enforcement and the general public, utilizing best available practices for visibility and traffic control. All checkpoints will have signage posted prior to the checkpoint advising the general public of its presence.

II. ENFORCEMENT ACTIVITY

Enforcement Activity will take place in Berkeley County between the hours of 2330 and 0200. Optimal enforcement activity may be utilized for campaigns and may include saturation stops, standing sobriety checkpoints and sustained enforcement operations during dark and low-visibility conditions.

III. OFFICER RESPONSIBILITIES

Officers will be trained and authorized to further expand plan of action to include a normal traffic stop, vehicle safety inspection, on-highway stops to see if there are any weapons, plain view consent and probable cause searches, random drug testing, property seizure, fugitive arrests, roving pursuit vehicles, transports.

An after action debriefing will be conducted where supervisors will be responsible for recording the approximate number of vehicles checked, all activity performed at the checkpoint, and any incidents resulting from the enforcement initiative/checkpoint.

IV. AGENCY PARTICIPATION SCHP, BCSO

ON-SITE SUPERVISOR: Cpl. C. Pearson

APR 17 2014



SOUTH CAROLINA HIGHWAY PATROL

DRIVER/VEHICLE INSPECTION REPORT

Date: 6-28-13 S M W Th F S County: Berkeley Troop/Post: 6/A

This is report # _____ for Berkeley County for the month.

Driver's License Violations	0	College Park Road @ ATP Gunshop
Driving Under Suspension	1	Site Location
Driving Under The Influence	1	StartTime: 2345 Finish: 0045
Alcohol Cases	1	CAD #13CH055678
Child Restraint Cases	0	List All Officers Present by Agency
Safety Belt Violations	0	SCHP Cpl. Pearson
Equipment Violations	0	SCHP TFC. Southerland
Unlawful Weapons Cases	0	SCHP TRP. Woovis
Vehicle License Violations	1	SCHP L/Cpl. Reader
Illegal Drug Cases		PFC Nick Johnson
Type Marijuana Amt. 2&1/2 lbs.	1	PFC Jenkins
Type Amt.		BCSO Sgt. Ham
Type Amt.		BCSO PFC Riley
Other Violations	1	BCSO PFC Morton
Type No Proof of Ins.	1	# Vehicles Checked
Type Emer. Scene Manag		73
Incidents (explain): BCSO made a PWID Marijuana charge with approximately 2 & 1/2 pounds of marijuana seized.		
		
Total Warnings	7	
	Total Cases	Total Man-Hours Involved
	6	9

Reviewing Supervisor

Date

SCHP-000
12/2004

(04/28/14) SUPP R5: 00044

Respondent.

ORDER OF DISMISSAL

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I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted at the September 2013 term of the Berkeley County Grand Jury for possession with intent to distribute marijuana (2014-CF-08-02566). Chad D. Shelton, Esq. represented Applicant, and Mike Patterson, Esq., of the Ninth Circuit Solicitor's Office, prosecuted the case. On May 20, 2014, Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced Applicant to imprisonment for a term of three years. Applicant did not appeal his plea or sentence.

Applicant filed his application for post-conviction relief on November 20, 2014. An evidentiary hearing into the matter was first convened on September 16, 2016, before the Honorable Jean H. Toal. Applicant was present at the hearing and represented by Rodney D. Davis, Esq. Christopher Harrison, a third-year law student at the Charleston School of Law, practicing pursuant to Rule 401, SCACR, and supervised by J. Rutledge Johnson, Esq., of the South Carolina Attorney General's Office, represented Respondent. At the outset of the hearing, Respondent moved to dismiss the application as moot, noting Applicant had already served the sentence to completion, and had other drug convictions such that the subject conviction had no enhancement value. By written order dated November 10, 2016, and filed November 25, 2016, Judge Toal dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was filed by Laura R. Baer, Esq. on Applicant's behalf, who raised the following issue:

Whether the PCR court erred in granting the state's motion for summary judgment and dismissing Petitioner's application for post-conviction relief where (a) the PCR court erroneously ruled that an applicant who is in custody at the time of the filing of his PCR application can no longer pursue PCR if he completes the service of his sentence prior to the PCR hearing; and (b) the PCR court erroneously ruled that Petitioner was required to allege that "the results of his

prior conviction still persist" in his original PCR application, filed while he was still in custody on the contested conviction, or in an amended application?

Respondent filed its Return on November 6, 2017. On May 9, 2018, the Supreme Court of South Carolina granted the petition for writ of certiorari, dispensed with briefing, reversed, and remanded to the PCR court for a hearing on the merits. Brown v. State, 423 S.C. 56, 814 S.E.2d 146 (2018). The Remittitur was issued on May 25, 2018. Pursuant to the Supreme Court's order, this Court convened an evidentiary hearing on the merits on Monday, October 1, 2018.

Present Application

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

1. "Ineffective Assistance of Counsel"
 - a. "Failure to [pursue] a trial"
 - b. "Failure to show competent advice on a plea"
 - c. "Failure to investigate"
 - d. "Failure to suppress evidence"
 - e. "Failure to advise defendant"
2. "Rule 5/Brady Violation"
 - a. "Failure to object and preserve Rule 5/Brady violation"
3. "Due Process of Law"
 - a. "Prejudice to show illegal search and seizure"

At the evidentiary hearing, Applicant clarified the allegations to mean that Counsel was ineffective in failing to properly investigate and communicate certain legal arguments to Applicant, namely regarding the validity of the checkpoint at which Applicant was stopped; in failing to meet with Applicant an adequate number of times; and in generally rushing Applicant to plead guilty.

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

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

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

ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

1. Failure to Investigate Validity of Checkpoint

Applicant alleges Counsel was ineffective in failing to adequately investigate, factually and legally, the validity of the checkpoint at which he was stopped, searched, and arrested. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses

stopping drunk drivers. Nonetheless, Applicant felt the search of the trunk of his rental car was beyond the scope of what was justifiable. Applicant recalled law enforcement searched his duffel bag in the trunk and found the marijuana in a vacuum sealed container. Applicant questioned how law enforcement could have smelled the marijuana despite the vacuum seal, and asserted the officer never mentioned smelling anything during the stop. Applicant asked Counsel by letter to file a motion to suppress. Applicant testified he would have gone to trial had there been any indication on the part of Counsel of his willingness to fight the case.

On cross-examination as to why he pled guilty feeling as he did about his case, Applicant broadly referred to the "routines of cooperating" in facing criminal charges. Applicant asserted there was no way he would have gone to trial with Counsel. Asked why he did not move to relieve Counsel if he was displeased with his performance, Applicant answered that there was "a lot going on at the time" and that he could not recall why he did not move to relieve counsel.

Upon brief questioning by this Court, Applicant affirmed that he understood he was giving up his rights during the plea proceeding, and that he had said Counsel assisted him. On redirect, Applicant testified Counsel told him what to say. Applicant noted he had pled guilty before and was familiar with the routine.

Counsel testified he met with Applicant twice, both times at the courthouse. Counsel noted that the case was assigned to him after Applicant wrote a letter to the solicitor asking for a plea deal. Applicant specifically requested a public defender in order to facilitate a plea deal. Counsel recalled that during the first meeting, Applicant was not yet ready to plead because he had not yet received his discovery. Counsel testified he filed motions pursuant to Rule 5, SCCrimP, and Brady, and sent Applicant a copy of his discovery along with a letter explaining Counsel's thoughts and analysis of the contents. Applicant replied with a letter expressing his

applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing 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)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

The Fourth Amendment of the United States Constitution protects against unreasonable search and seizure. "A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing." City of Indianapolis v. Edmond, 531 U.S. 32, 37 (2000) (citing Chandler v. Miller, 520 U.S. 305, 308 (1997)). A vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment, but such brief, suspicionless seizures of motorists have been upheld for various particular purposes. Id. at 37-40, 44 (checkpoints valid to "thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route."); Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990) (approving of drunk driver checkpoints); Delaware v. Prouse, 440 U.S. 648, 663 (1979) (suggesting roadblock-type stops as a valid alternative to spot-checks for the purpose of checking licenses and registrations); U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976) (approving of checkpoints for catching illegal aliens). Checkpoints, however, cannot be established for the primary purpose of detecting ordinary criminal wrongdoing. Edmond, 531 U.S. at 41.

The constitutionality of a traffic checkpoint is adjudged by way of a three-part test balancing the following factors:

- (1) The gravity of the public interest served by the seizure;
- (2) The degree to which the seizure serves the public interest; and
- (3) The severity of the interference with individual liberty.

State v. Vickery, 399 S.C. 507, 517, 732 S.E.2d 218, 223 (Ct. App. 2012) (quoting State v. Groome, 378 S.C. 615, 619, 664 S.E.2d 460, 462 (2008)). With particular attention to the second factor, the State must be able to articulate and establish some basis for the location of a checkpoint. Id., 399 S.C. at 520, 732 S.E.2d at 224. However, the State is not required "to present pre-existing empirical data to justify setting up the checkpoint." Id.

At the plea proceeding, Judge Harrington explained to Applicant that he could be sentenced to up to five years on the charge. (Tr. 4-5). The plea judge asked if Applicant understood the collateral consequences of his plea, which Applicant affirmed. (Tr. 5, ll. 16-22). The plea judge explained to Applicant his right to a jury trial, his right against self-incrimination, and his right to confront the witnesses against him. (Tr. 6, ll. 1-12). Applicant waived those rights. (Tr. 6, ll. 13-15). Applicant affirmed he was satisfied with the services of Counsel and demurred when offered the opportunity to speak to Counsel's performance. (Tr. 7, ll. 6-11). The plea court pressed further on the subject, to which Applicant in no uncertain terms confirmed Counsel assisted him. (Tr. 7, ll. 12-16).

The underlying facts of Applicant's arrest were provided during the plea proceeding and agreed to by Applicant. (Tr. 7-8). Applicant was stopped at a "public safety checkpoint" near Summerville, South Carolina on or about June 26, 2013. (Tr. 7, ll. 23-25; Indictment). An officer at the checkpoint smelled marijuana and initiated a search of the vehicle, which revealed the presence of 560 grams of marijuana. (Tr. 7-8). Applicant explained that he "and some guys

got together at work and we buy it in quantities." (Tr. 8, ll. 17-19). After Applicant's plea was accepted, Counsel explained the process of reaching the plea and his investigation of the case:

I did have a chance to go through the law as far as the stop and traffic check points. So we were able to determine that they set up a traffic checkpoint for alcohol related offenses and they did stop some people that were let go, percentage wise that the case says is okay for alcohol related offense and there was a smell of marijuana. So we went through, I went through the law and gave [Applicant] my opinion on the case through letters. We discussed it through letters at the Department of Corrections. It was his decision to go forward. It was his decision to accept the plea and I agree with that decision based on the case law and ask, Your Honor, to go along with the negotiated sentence.

(Tr. 9, ll. 4-16). Judge Harrington then accepted the negotiated terms and sentenced Applicant to three years. (Tr. 9-10).

At the evidentiary hearing,¹ Applicant testified his initial meeting with Counsel lasted about five minutes and that Counsel wasted no time advising him to plead guilty. Applicant determined from letter correspondence with Counsel that he was not particularly interested in defending the case. Applicant testified Counsel never met with him at the jail, but only met with him at court and otherwise communicated by letters and a phone call. Applicant claimed Counsel did not review and discuss with him the elements of the offense charged, what the State had to prove, what the sentencing range was, what constituted the basis for the "third offense" classification, or any collateral consequences. Applicant felt Counsel's only concern was that Applicant would get less time pleading guilty than he was already sentenced to serve.² Applicant testified Counsel never mentioned any defenses or anything about trial.

However, Applicant did admit that Counsel discussed the validity of the roadblock. Applicant recalled Counsel advised the roadblock was legitimately set up for the purpose of

¹ Any such reference herein refers to the hearing of October 1, 2018. Though a transcript of the prior hearing is before the Court, it is of no value in light of the Supreme Court's ruling and remand.

² Applicant is serving a concurrent sentence of 10 years on an unrelated cocaine trafficking conviction.

opinion that the roadblock was unreasonable. Counsel filed a supplemental Rule 5 motion and received documentation to justify the roadblock. That documentation, introduced as a State's exhibit, declared plans by the South Carolina Highway Patrol and the Berkeley County Sheriff's Office to establish a sobriety checkpoint at College Park Road on the date in question due to a substantial number of DUI collisions in the area in the previous year. Corporal "C. Pearson" was identified as the on-site supervisor of the planned checkpoint, and a report was produced of the checkpoint's impact: 73 vehicles were stopped resulting in one DUI and one "alcohol case" among six total cases for seven citations. Despite the justification for the roadblock, Counsel recalled researching to try and find other means of suppressing the search and seizure, and specifically cited to State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010) and State v. Jihad, 347 S.C. 12, 553 S.E.2d 249 (2001). Counsel recalled telling Applicant he could attempt to challenge the search, but the plea offer would have expired in the process. Counsel also recalled getting a second letter from Applicant in which he specifically asked for a three year deal. Counsel firmly reported Applicant did not wish to go to trial. Counsel affirmed he explained the elements of the charge against his client, and explained to Applicant all of his constitutional rights.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. First, and most simply, the Court finds Applicant never wanted to go to trial, but only wished to secure a favorable plea deal, as evidenced by the multiple letters he wrote to the solicitor's office and to Counsel. Applicant got the exact deal he requested—an exceedingly generous three year sentence, given the quantity of marijuana at issue and the strength of the case against him. Additionally, Applicant himself testified he never would have gone to trial with Counsel, despite the thorough efforts of research and preparation demonstrated by Counsel at the evidentiary

hearing. Applicant made note of his unfortunate breadth of experience as a criminal defendant and still could not offer a reason why he did not seek Counsel's removal if he were so displeased with his performance. As such, the Court finds little credible in Applicant's varied allegations of failures on Counsel's part. Counsel regularly communicated with Applicant, demonstrated familiarity with the facts of the case, researched the relevant caselaw, and provided and explained discovery. The Court sees no reason to permit Applicant to deviate from his testimony during the plea proceeding, and finds Applicant was fully aware of the elements of the offense charged, his sentencing exposure, the collateral consequences of his plea, and his constitutional rights including, but not limited to, his right to a jury trial, his right to remain silent, and his right to confront the witnesses against him.

Second, the Court finds Counsel fully investigated the issues raised by Applicant to the PCR court. The Court finds Counsel reported his analysis of the search and seizure to Applicant and Applicant wisely chose to plead guilty. Based on the testimony at the evidentiary hearing and the exhibits entered indicating law enforcement's planning, justification, and impact of the checkpoint, the Court agrees with Counsel's judgment that the sobriety checkpoint was validly established and operated, such that an attempt to challenge the validity of the checkpoint would not have been successful. The Court also observes no basis for arguing the stop was unduly extended—unlike in Tindall, it does not appear Applicant was strung along by an endless parade of questions, but was undone by the odor of marijuana. Applicant offered that the officer couldn't have smelled the trafficked package, but that argument doesn't pass the smell test—there's nothing in the law to say the odor of marijuana must be connected to the quantity trafficked to justify law enforcement's suspicions, nor anything in the record to suggest the cloying sent of marijuana did not emanate from Applicant himself. Put simply—Counsel

investigated what there was to investigate, and properly advised Applicant in accord with his accurate analysis.

For all of these reasons, Applicant has failed to meet his burden of showing either prong of Strickland by way of this allegation, and his request for relief is **DENIED**.

2. Failure to Adequately Meet with Applicant

Applicant alleges Counsel was ineffective in briefly meeting with him only twice. "The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation. Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). As noted in the previous section, Applicant must offer evidence to show how additional preparation or communication would have resulted in a different outcome. Id. (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. As noted in the review of the evidence in the previous section, Applicant denied during the plea colloquy that he needed any additional time with Counsel or that there was anything else Counsel could have or should have done. Though both Applicant and Counsel testified that they only physically met twice, both times at the courthouse, this fact alone is inadequate to support a finding of ineffectiveness. The Court finds Counsel adequately communicated with Applicant by other means, including by written letters and phone communications. Under the circumstances, meeting twice was adequate. Finally, as with the prior allegation, the Court finds Applicant did not wish to proceed to trial and would not have proceeded to trial given more time in consultation with Counsel—Applicant only ever wished to plead in exchange for a favorable

III. CONCLUSION

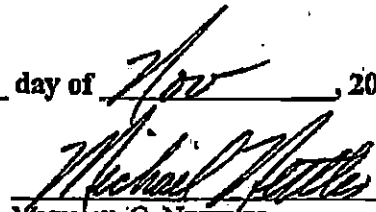
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 9 day of Nov, 2018.

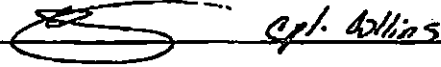

 MICHAEL G. NETTLES
 Presiding Judge
 Ninth Judicial Circuit

Doune, South Carolina

VCD2013-06-01634

WITNESSES

Berkeley County Sheriff's Office

 Cpl. Collins

AGENCY CASE NUMBER

201306028166

ARREST WARRANT NUMBER

2013A0810400957

DATE OF ARREST

June 26, 2013

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 09.25.13

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS0801334

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

Vs

SAMUEL BROWN JR
DOB: 1974-
B/M

Indictment for

Possession with Intent to Distribute
Marijuana13 SEP 25 PM 12:23
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on September 25, 2013 the Grand Jurors of Berkeley County present upon their oath:

Possession with Intent to Distribute Marijuana

That Samuel Brown Jr did in Berkeley County, South Carolina, on or about June 26, 2013, manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: marijuana; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended

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


MICHAEL E. PATTERSON JR.
ASSISTANT SOLICITOR