

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable William P. Keesley, Circuit Court Judge

WADE ROUSE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001780

APPENDIX

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1 State of South Carolina Court of General Sessions
2 County of Edgefield

3

4

5 State)
6)
7 v.)
8 Wade Valdaise Rouse)
9 Defendant.)

Transcript of Record
13-GS-19-142

10

11

August 13, 2013
Edgefield, South Carolina

12

13

B E F O R E:

14

The Honorable Thomas A. Russo, Sr., Judge.

15

16

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

17

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Attorney for the State

18

19

W. Greg Seigler, Assist. Public Defender
Attorney for the Defendant

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23

24

Stacy L. Sheppard, RPR
Circuit Court Reporter

25

1

I N D E X

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WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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E X H I B I T S

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NO.DESCRIPTIONID. EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on
2 August 13, 2013.)

3 **THE COURT:** Solicitor, what you got?

4 **MR. YOUNG:** Thank you, Your Honor. We're here
5 on the matter of Wade Valdaise Rouse. He's known on
6 the street as Cane. He is pleading guilty today to
7 a single indictment of distribution of crack
8 cocaine, this being a third offense, Your Honor.
9 However, he is pleading to a second offense with an
10 understanding that the cap of ten years is going to
11 be imposed as a recommendation for the Court to
12 consider.

13 Your Honor, this case is a matter of one that
14 we'd been in a long period of debate and
15 consultation and negotiation with. This resolution
16 has been reached after a very lengthy period of
17 time. It was scheduled for trial. It is going
18 forward now as a plea in this particular case with
19 this cap. The courtroom, Your Honor, is occupied
20 with the officers involved in this particular matter
21 and they're here to back me up on the facts if I
22 step across the line or say anything I shouldn't.

23 So, Your Honor, the cases that will be
24 dismissed, I'd like to read into the record and
25 ensure there's no confusion. The nol prossed cases

1 are distribution of Schedule III drug, which is a
2 July 10th case, Hydrocodone being the pill in that
3 particular situation. That's indictment number
4 2013-GS-19-144.

5 We're dismissing distribution of marijuana
6 arising on June 13th, 2012, that's indictment number
7 2013-GS-19-141. That arose under the circumstances
8 of the crack cocaine case that he's pleading to.

9 We're pleading -- he's -- nol proding
10 distribution of a Schedule II drug, that being
11 oxycodone, arising July 10th, 2012, under indictment
12 2013-GS-19-143; and a City of Edgefield case for
13 burglary in the third degree, that involving the
14 building of Brenden Yeldel {phonetic} Gordon on
15 September 20th, 2012, under indictment number
16 2013-GS-19-145.

17 Those are the matters that are being nol
18 prodded. And I hand up the indictment in this case,
19 Your Honor.

20 WADE VALDAISE ROUSE,
21 having been duly sworn, testified as follows:

22 THE COURT: Sir, you are Wade -- is it Valdaise
23 Rouse?

24 DEFENDANT: Yes, sir.

25 THE COURT: Mr. Rouse, indictment

1 2013-GS-19-142 is a true-billed indictment for
2 distribution of crack cocaine, that being a third
3 offense. However, sir, it's my understanding that
4 you're before the Court on the lesser charge and
5 that being distribution of crack cocaine second
6 offense. That charge, the second offense charge,
7 carries a penalty of not less than 5 years up to 30
8 years. Do you understand that, sir?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Now, I understand that there is a
11 recommendation in this case, but just for the
12 record, you understand that with no recommendation,
13 this case carries 5 to 30?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Okay. Understanding the nature of
16 the charge against you and the possible punishment
17 that is associated with that charge, how do you
18 plead to that charge, sir, guilty or not guilty?

19 **DEFENDANT:** I plead guilty, sir.

20 **THE COURT:** Thank you, sir.

21 And, Mr. Seigler, you represent Mr. Rouse?

22 **MR. SEIGLER:** I do, Your Honor.

23 **THE COURT:** Have you discussed with him the
24 charge he's before the Court on and his
25 constitutional rights to a trial, sir?

1 MR. SEIGLER: Many times, sir.

2 THE COURT: All right. Mr. Rouse, am I
3 correct, sir, are you 31 years of age?

4 DEFENDANT: Thirty-two, sir.

5 THE COURT: Thirty-two, okay. And before you
6 got arrested on this charge, did you work anywhere?

7 DEFENDANT: Sir, I was doing yard work for an
8 officer over there sitting down. I had a job at the
9 Huddle House, but it went out of business.

10 THE COURT: Right. All right. Are you married
11 or single, sir?

12 DEFENDANT: I was engaged to be married, sir.

13 THE COURT: Do you have any children?

14 DEFENDANT: Three.

15 THE COURT: And, Mr. Rouse, how long have you
16 been in jail on this charge, sir?

17 DEFENDANT: I've been in jail since November
18 the 8th.

19 THE COURT: November the 8th?

20 DEFENDANT: Yes, sir.

21 THE COURT: Of 2012?

22 DEFENDANT: Yes, sir.

23 THE COURT: Okay. That's 278 days.

24 Mr. Rouse, any time anyone comes before the
25 Court and enters a guilty plea, they give up certain

1 constitutional rights. And I know you've talked
2 with Mr. Seigler about those rights, but I'm going
3 to review those with you. If you have any questions
4 about anything that I go over and you need to talk
5 with Mr. Seigler, just let me know. I'll stop.
6 I'll give you whatever time you need to talk to your
7 lawyer, okay?

8 DEFENDANT: Yes, sir.

9 THE COURT: You have the right to remain silent
10 and you have the right to a jury trial, but when you
11 enter a plea of guilty, then for purposes of your
12 plea, you give up both of those important
13 constitutional rights. And when you give up your
14 right to a jury trial, you give up all the rights
15 that are connected to it.

16 For example, if you had a jury trial, you would
17 be presumed innocent of this charge and that places
18 the burden of proof on the State to prove guilt.
19 The way they would try to do that is during that
20 trial, they would call witnesses to the witness
21 stand and those witnesses more than likely would
22 testify against your best interest.

23 The Constitution of the United States says that
24 any person that's charged with a criminal offense
25 has the right to confront or to face their accusers.

1 And what that means is is that if you had a jury
2 trial, then during that trial, you would have the
3 right to question the State's witnesses about their
4 testimony. That's your right of confrontation under
5 the constitution. Do you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: Now, when you -- when a person
8 pleads guilty, they give up the presumption of
9 innocence and they give up the right to confront the
10 State's witnesses.

11 Now, the State's not the only one that could
12 call witnesses. If you had a jury trial, you could
13 call witnesses if you decided to or you, yourself,
14 could take the stand and testify, but you're not
15 required to do those things. You certainly do have
16 that right, but you're not required to do anything
17 because in this country, no person charged with a
18 criminal offense ever has to prove themselves
19 innocent. The burden of proof is always going to be
20 on the State.

21 So if you wanted to, you could exercise your
22 right to remain silent and not testify at all. And
23 if you did that, I would tell the members of the
24 jury that they could not hold that against you in
25 any way. As a matter of fact, I would tell them

1 that the fact that you chose to exercise your right
2 to remain silent could not even be considered by
3 them on -- in their deliberations on your guilt or
4 innocence. And I would take it even a step further
5 and tell them that the fact that you chose to remain
6 silent could not even be discussed in the jury room
7 at all. You understand, sir?

8 **DEFENDANT:** Yes, sir, I do.

9 **THE COURT:** Now, as I said earlier, the State
10 has the burden of proof and they have to prove guilt
11 beyond a reasonable doubt and to a unanimous
12 decision. In other words, all 12 members of the
13 jury would have to agree that you were guilty or
14 they could not convict you. But if they did --
15 excuse me -- if you did have a jury trial and if you
16 were convicted, you could appeal that conviction to
17 a higher court if you felt that was appropriate.
18 You understand, sir?

19 **DEFENDANT:** I do understand, sir.

20 **THE COURT:** And with regards to this hearing
21 today, Mr. Rouse, you also have an appellate right
22 with this proceeding. In other words, if, at the
23 conclusion of this hearing, you wish to appeal my
24 decision in this case, you may do that, but you must
25 file a notice of intent to appeal within ten days of

1 today's date. Do you understand that, sir?

2 **DEFENDANT:** Yes, sir, I do.

3 **THE COURT:** Understanding that you have these
4 rights, but that you waive or you give them up, do
5 you still wish to go forward with your plea?

6 **DEFENDANT:** Yes, sir, I do.

7 **THE COURT:** Now, you understand, Mr. Rouse,
8 that this case is classified under South Carolina
9 law as a serious offense. And the reason that that
10 has some significance is this:

11 I don't know anything about your prior record
12 or even if you -- well, you have somewhat of a prior
13 record because this is a second offense, but I don't
14 know anything about your prior record. But in South
15 Carolina, you may be aware that we have what is
16 called a three strike -- well, we generally call it
17 a three strike rule. And essentially what that says
18 is is that if a person gets convicted of three
19 serious offenses, that on that third offense, if the
20 State chooses to, they can seek life without parole.
21 This case that you're before the Court on today, the
22 distribution of crack cocaine second offense, that
23 is classified as a serious offense. You understand
24 that?

25 **DEFENDANT:** Yes, sir, I do.

1 THE COURT: So that would reflect as one strike
2 on your record.

3 DEFENDANT: I do understand, sir.

4 THE COURT: Okay. Now, the State -- as I told
5 you earlier, this charge carries not less than 5 up
6 to 30 years. The State has asked the Court to
7 consider that whatever sentence the Court imposes,
8 that I not impose anything over ten years. So if I
9 were to follow their recommendation, you'd be
10 looking at somewhere between 5 and 30 years. Do you
11 understand that?

12 DEFENDANT: Yes, sir, I do understand.

13 THE COURT: And they dismissed those other
14 charges he spoke about. Other than the
15 recommendation and the dismissal of those charges,
16 other than that, has anybody promised you anything,
17 held out any hope of reward or threatened you in any
18 way to get you to enter this plea?

19 DEFENDANT: No, sir.

20 THE COURT: Are you satisfied with the
21 representation and the advice that Mr. Seigler has
22 provided?

23 DEFENDANT: Very thankful, sir.

24 THE COURT: All right. Mr. Rouse, today as you
25 stand before the Court, are you under the influence

1 of any substance that would affect your ability to
2 understand what you're doing?

3 DEFENDANT: No, sir.

4 THE COURT: Are you pleading guilty on this
5 charge of your own free will, sir?

6 DEFENDANT: I am.

7 THE COURT: And are you guilty of this charge?

8 DEFENDANT: I am guilty, sir.

9 THE COURT: All right. I'm going to get the
10 Solicitor to give me some of the facts. If you'd
11 please listen carefully, I'll get back with you.

12 Solicitor.

13 MR. YOUNG: Your Honor, this case had been
14 called to trial, and as I indicated, it was on the
15 trial list for this term. The State would have
16 presented a video of a drug transaction conducted
17 using a confidential informant that had been wired
18 both for sound and video and went to, initially, the
19 residence of this gentleman's father on Jeter
20 Street, if I recall correctly, here in the city of
21 Edgefield, in the county of Edgefield. There are
22 still captures off that video of Mr. Rouse's father.

23 And during the course of that, a discussion
24 ensued between the CI and Mr. Rouse about the
25 purchase of some marijuana and also about some hard,

1 crack cocaine. There are still shots of where, on
2 the porch of his father's residence, he began to
3 take a quantity of marijuana out of a jar and
4 transferred that into a bag. The transaction had
5 not been completed at that point in exchange of
6 money, but that began the process. They then got
7 into the CI's truck and drove to a location where he
8 resides on Addison Street here, again, in the city
9 of Edgefield, in the county of Edgefield.

10 At that time, the discussion had gone from the
11 quality and quantity of what you could get on the
12 street of buying a 50, which was something you can
13 use to actually make some money off of more than
14 just an ordinary amount of crack, essentially a lot
15 of discussion back and forth between him and the CI
16 and how far they had to drive and even the matter of
17 gas money. The transaction and negotiations for
18 price and everything else went back and forth at his
19 residence, during a part of which you can see him go
20 over to a bag, tear it open with his teeth and then
21 transfer a quantity of that to another bag, which
22 was handed over at some point to the CI. Eighty
23 dollars was transferred and I think he got \$10 -- I
24 think he charged him ten bucks for the gas to take
25 him to and from his father's house, the transaction

1 concluded.

2 Both before and after, the vehicle and the CI
3 were thoroughly searched. There was no crack on him
4 until he returned. And when he came back, he came
5 back with point seven grams of crack and some
6 marijuana, both of which tested positive. That's
7 one of the charges being nol prossed here.

8 Your Honor, this is a situation in which this
9 gentleman's, let's just say, his involvement with
10 the law at the magistrate level began at about the
11 age of 18. He had some -- and most of it was the
12 city -- assault and disorderly conduct. He had some
13 petit larceny and shoplifting. All of this occurred
14 between about May of '99 until April of 2001.

15 But in August of 2000, he had his first real
16 serious run-in at the age of 19. He threatened a
17 public official, probably a police officer, I'm not
18 sure about the facts, and a trespassing followed
19 that, but he got his first real dose of probation
20 back then. He got five years suspended to time
21 served and five years of probation based on that
22 threat.

23 By the age of 23, he had already had probation
24 revoked once and that had occurred in June of 2003.
25 And he subsequently actually served a year on a

1 burglary second in 2004. He was still at the age of
2 23 in February of 2004. He got 15 years suspended
3 on service of one year and five years probation for
4 that burglary second. His first drug involvement
5 that's documented at the age of 24, he had a PWID
6 marijuana and crack. He pled to the marijuana,
7 PWID, in June of 2005. He also pled --

8 MR. SEIGLER: Judge, that's actually, if I
9 could correct, that's a distribution of marijuana, a
10 combination offense, not a PWID. I've got the
11 sentencing sheet. I want it to be accurate on the
12 record.

13 MR. YOUNG: All right. That's fine.

14 He had a -- at the age of 24, he had a PWID
15 crack proximity and possession of crack in March of
16 2006, for which he received 15 years suspended on
17 seven years and three years of probation. That was
18 his first run-in, if I recall correctly, with the
19 Edgefield County Sheriff's Office.

20 Since that time, he's had, in July of 2011, an
21 Edgefield Police Department offense, again, of
22 possession of crack, three years suspended to time
23 served and three years probation. He's currently on
24 probation for that particular offense. His plea
25 today will violate that probationary sentence.

1 Your Honor, this man, from the State's
2 perspective, is a true three-time person for
3 distribution. And we are, at this point in time,
4 seeking the maximum that the Court can give him
5 under the cap. He deserves a third offense. He's
6 getting a second. He's got that benefit. He
7 deserves a sentence for a third offense. And we're
8 asking for the minimum under that third offense of
9 ten years.

10 THE COURT: Second offense.

11 MR. YOUNG: Yes, sir. Under the third offense,
12 it will be ten -- for the cap, under the cap, it's
13 ten.

14 THE COURT: Now, let me ask you something
15 because I didn't -- there's a probation case that is
16 affected by this?

17 MR. SEIGLER: Judge, I was going to explain
18 that to you. When I was here, I represented Wade
19 when he pled to the possession of crack in front of
20 Judge Keesley. He had significant time served then.
21 And Judge Keesley had already made the decision that
22 he was giving him time served --

23 DEFENDANT: Judge Cottingham.

24 MR. SEIGLER: Cottingham -- excuse me --
25 Cottingham. Keesley had the probation violation.

1 Cottingham was going to give him time served and
2 Wade said that he needed some help with his
3 addiction and they put him on probation instead.
4 Otherwise, he wouldn't be on probation. Just to
5 inform the Court.

6 **THE COURT:** And that's fine. Is the probation
7 department ready to take up that?

8 **PROBATION AGENT:** Yes, sir.

9 **THE COURT:** How much time is hanging over his
10 head on the probation case?

11 **MR. YOUNG:** Three years, I believe. However
12 much credit he's due, I'm not sure.

13 (Pause.)

14 **THE COURT:** Let me, before we get -- let me
15 refocus then, Mr. Rouse, you heard the facts that
16 the Solicitor gave and I know there was some
17 question about the record. I'm not talking about
18 your record, but I'm talking about the facts
19 surrounding the distribution/sell. Are those facts
20 correct, sir?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** All right. I find that the State
23 has provided a substantial, factual basis to support
24 the charge that Mr. Rouse has pled guilty to and
25 that his decision to enter this plea, I believe, has

1 been done freely, voluntarily and intelligently.
2 He's had the advice and counsel of an outstanding
3 lawyer in Mr. Seigler. Mr. Rouse has indicated he
4 is satisfied with that representation and advice and
5 I'm going to accept his plea.

6 Let me, Mr. Seigler, if I may, hear from
7 probation and I'll let you take care of it all at
8 one time.

9 MR. SEIGLER: Certainly.

10 THE COURT: Yes, ma'am.

11 PROBATION AGENT: May it please the Court, Your
12 Honor. Wade Rouse was originally sentenced on July
13 12th, 2011, by Judge Cottingham for the offense of
14 possession of crack first. He received a sentence
15 of three years suspended to time served and three
16 years probation.

17 He has one prior violation, Your Honor, which
18 was heard by Judge Keesley on April 5th, 2013.
19 Those violations included he changes his residence,
20 failing to report, being convicted in magistrate
21 court of assault and battery third and received a
22 sentence of 30 days, and monetary arrears. Judge
23 Keesley continued the case, extended it one year and
24 provided that he remain in jail until a bed was
25 available for inpatient treatment not to exceed 90

1 days and to restructure his fine.

2 Mr. Rouse had these pending charges at the time
3 that his case was continued and he's not been able
4 to go to any treatment as a result of the charges.

5 THE COURT: Mr. Seigler.

6 MR. SEIGLER: Your Honor, I've known Wade now
7 for many years. As I indicated earlier, I
8 represented him on this possession of crack first
9 offense that Ms. Phillips just referenced. And,
10 again, Judge Cottingham had already said that he was
11 just going to give him time served.

12 Despite my advice, Wade asked the judge to put
13 him on probation because he needed help with his
14 addiction and he was man enough to admit that and
15 actually received a worse sentence than he would
16 have in order to try to receive treatment or some
17 type of counseling. He did violate. I represented
18 him in front of Judge Keesley who ordered that he
19 receive inpatient treatment for his addiction.

20 Judge, Wade's problem, quite frankly, and
21 through his own admission, is his own addiction. He
22 is not a big time dealer. He did commit the crime
23 that he's pleading to today on the particular date
24 and time indicated on the indictment. However, he
25 was doing so to support his own habit. I'm not

1 saying that that's a defense or it justifies it, but
2 it is simply the truth.

3 And Wade has stumbled many times over the years
4 with drugs as you can see from his record. He's
5 been addicted to pain pills various forms,
6 oxycodone, Hydrocodone, powder cocaine. And he,
7 again, admits that that's his problem.

8 He's not out here selling a pound of marijuana
9 or anything of that weight. He's doing little
10 penny-ante deals in order to support his own habit.
11 And again, Judge, I'm not justifying his conduct.
12 I'm just simply explaining to you what the actual
13 facts surrounding Wade's life is. He's been
14 addicted to cocaine since he was a teenager.

15 He has three sons, ages 13, 12 and 7, who
16 showed up here at the courthouse with his mother to
17 talk to me in support of Wade. And he also has two
18 stepdaughters.

19 Judge, this incident happened on June the 13th,
20 2012. He wasn't picked up until June the 8th. He
21 tells me that soon after, I don't know the exact
22 date and time, but soon after that in this
23 timeframe, in the incident timeframe, that he was
24 able to clean himself up, accept Jesus in his life.
25 Now, in the past, Wade's told me before that he was

1 clean and he, quite frankly, was not. But I will
2 say this, he seems to be genuine this time and a
3 different person.

4 He has accepted responsibility each and every
5 time I've represented him for every crime that he's
6 committed if he did. He's pled guilty to the
7 charges that Mr. Young indicated and I represented
8 him on the majority of them. Mr. Sturkey
9 represented him on the proximity case many years
10 ago. But, Judge, he's here to clean the slate in
11 Edgefield.

12 I believe it would be appropriate just to
13 terminate his probation. Quite frankly, if it
14 wasn't for him talking after the plea, he wouldn't
15 have been on probation anyway. We'd ask that you
16 just terminate that case.

17 And as the Court knows, on the distribution
18 second, the minimum is suspendable. I'm not
19 advising the Court to do anything. We're just
20 simply asking the Court to consider all of the
21 facts. At least that's my understanding in reading
22 the statute.

23 Now, a third is not unless the two priors are
24 possessions. Unfortunately, his prior is a
25 distribution, proximity and a possession. And if it

1 was a third, it would be not suspendable because he
2 does have a prior distribution. And I've explained
3 to him that carries a minimum of 10 up to 30.

4 Again, Judge, you know, he's made mistakes, but
5 he's here to take responsibility for it. We ask the
6 Court to consider giving him some type of suspended
7 sentence or a minimum amount of time, and I
8 genuinely think that Wade has turned his life
9 around, and terminate his current case with
10 Ms. Phillips.

11 THE COURT: All right.

12 MR. SEIGLER: And, of course, as I told the
13 Court earlier and as the Court calculated, give him
14 credit for the 278 days he's already served.

15 THE COURT: Sure. Absolutely.

16 All right. Anything further, Mr. Rouse?

17 DEFENDANT: Sir, I apologize, first of all, to
18 my community, and I really apologize on behalf of my
19 actions because I was a addict. I was an addict, a
20 true addict. I was a true addict. I had a problem.
21 I've been battling drugs since I was 13. I been
22 smoking weed when I was 13. When I was 15, I was on
23 cocaine and hiding it. Eighteen years of my life.
24 I did an inventory on my life.

25 I've been to ATU. They couldn't help me. They

1 told me all the good things I needed to know, but it
2 didn't help me. I didn't have Jesus in my life. I
3 never had Jesus in my life till recently.

4 When I got these charges, when I got these
5 charges of distribution, and I apologize to
6 Mr. Frank Young because I had a problem with taking
7 his plea at first because the informant got high
8 with me. He got high with me, but it's all in a
9 part of being what he was doing. I accept it. I
10 felt like I was taken advantage of by the informant,
11 but I was taking advantage of myself, you know what
12 I'm saying. I was under the influence of drugs and
13 I wasn't thinking.

14 Prior to this incident, sir, back in -- back in
15 last August, I went before the church on 403 Mims
16 Street. I gave a testimony of me being addicted to
17 drugs. The hardest thing I ever did in my life is
18 stood up in front of a whole congregation of saints,
19 who were probably sinners in their own way, but to
20 stand up in front of a church and admit that I got
21 an addiction and I wanted help, help that I couldn't
22 get and help that somehow the devil kept blocking
23 out from me, okay, I attended church from then, not
24 every Sunday, but almost every Sunday, almost. And
25 when I asked Jesus to take drugs out of my life, I

1 didn't know I had these drug charges. I didn't
2 know.

3 I just thank the officers today. I never said
4 nothing to them to this day. I thank them. I thank
5 them because I feel like they really saved my life.
6 I was on cocaine. There's no telling what I would
7 have did. But I didn't get off drugs because of my
8 sentence, I didn't get off of drugs because of the
9 programs, I got off drugs because of this right
10 here, sir {indicating}. I got this in my life. And
11 I'm asking and I'm pleading that if there's any way
12 that y'all give me a chance to prove myself, I maybe
13 don't deserve it by the paperwork, but I know you
14 can't lie to God, you can lie to man, but you can't
15 lie to God, and God knows what's in my heart, sir.
16 I have no further comments.

17 **THE COURT:** You know, Mr. Rouse, and I see it a
18 lot, this isn't just for your case, but so many
19 people they know that -- I mean, they have an
20 addiction and they focus on that and what they can
21 do to either keep that going or whatever and so they
22 distribute this drug that I think you would admit
23 destroys your life. And yet you don't think about
24 what you're doing by giving it to other folks,
25 because essentially you're destroying their lives.

1 I mean, don't get me wrong, they're coming to
2 you wanting to buy it, so, I mean, they're not
3 innocent. But, you know, think about this, years
4 ago when you were young, if you wanted to buy crack
5 or cocaine, what if you couldn't find anybody that
6 would sell it to you? Your whole life would have
7 been different.

8 **DEFENDANT:** I know.

9 **THE COURT:** So I appreciate what you're sharing
10 with me, but you need to understand the destruction
11 that goes on because there are other people such as
12 yourself, or at least a former self, who are always
13 willing to make it available and that's -- it's such
14 a serious problem.

15 I've been a Christian most of my life and so I
16 appreciate what you shared with me regarding that.
17 I hope that's sincere and real because if it is,
18 you're absolutely right, that's going to save your
19 life. Christ is going to be --

20 **DEFENDANT:** I already know, sir.

21 **THE COURT:** -- that is where your salvation is.
22 And you mentioned something earlier that I
23 appreciate and that is, you know, people can lie to
24 me, to Mr. Seigler, to Mr. Young, but you can't lie
25 to the Lord. The Lord knows our heart. And I hope

1 that the faith that you have is real. And if it is,
2 no matter what happens here today, you're going to
3 be fine.

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** But if it's not, you know, then
6 I'll continue to pray for you and pray that it is,
7 and I hope it is.

8 I've got to take into consideration everything
9 that I've seen and heard here today and I have an
10 obligation and a responsibility. On indictment
11 2013-GS-19-142, sentence of the Court -- I think the
12 State has been gracious in their recommendation --
13 the sentence of the Court is that you be committed
14 to the State Department of Corrections for a period
15 of ten years. You're to be given credit for the 278
16 days that you have served.

17 The probation case, I'm just going to revoke it
18 in full and run it concurrent with this and
19 terminate anything else involving this case so that
20 all of it is wrapped up at one time. Good luck to
21 you, sir.

22 **DEFENDANT:** Thank you, sir.

23

24

END OF PROCEEDINGS

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Edgefield County, South Carolina, on the 13th of August, 2013.

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

August 30, 2014

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of

Edgefield

Full name and prison number (if any) of Applicant

Wade House v.
#300130
State of South Carolina

IN THE COURT OF COMMON PLEAS

2014-CP-19-196

2014 JUN 20 AM 9:54

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBYAPPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Trenton Correctional Institution
84 Greenhouse -rd Trenton "SC" 29847
2. Name and location of Court which imposed sentence General Sessions
Edgefield County "SC" 29824 (P.O. Box 34)
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013 GS 1900142 Distribution Crack Cocaine 2nd
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) 08-13-2013 Sentenced 10 yrs Violent.
 (b) A.T.U order
 (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?
Yes
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. Appellant Court "Columbia" South Carolina 29211-1589
 ii. Case No. 2013-001811
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. dismissed in effect
 ii. To Rule 203(d)(1)(B)(iv) stating defendant
 iii. failed to provide sufficient explanation in appeal application.
 (c) the date of each such result:
 i. 10-30-2013 October 30, 2013
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Unknown
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____
 (b) _____

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

(a) In effective assistance of counsel, Coercion

(b) Fraud upon the Court, Perjury, Entrapment

(c) _____

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

(a) See attachments

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? YES

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES

(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. Appeal Court of South Carolina

ii. Post Conviction Relief Petition Under 28 USC § 2254

iii. Remittitur to General Sessions Edgefield County

iv. _____

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

i. Appeal Court South Carolina Columbia "SC"

ii. Post Conviction Relief United States District Court Columbia "SC"

iii. Remittitur General Sessions Edgefield "SC" 29824

iv. _____

(c) the disposition thereof:

- i. Remittitur judgement from Appeal Court
- ii. Waiting for response to petition
- iii. Waiting for response to Remittitur General Session
- iv.

(d) the date of each such disposition:

- i. November 15, 2013
- ii. N.A
- iii. N.A
- iv.

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

- i.
 - ii.
 - iii.
 - iv.
- ~~Unknown~~

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? YES, ineffective counsel assistance, fraud upon the court subject matter of jurisdiction, due process.

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

(a) which grounds have been presented:

- i. ineffective assistance counsel
- ii. fraud upon the court
- iii. due process violation

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

- i. Appeal Court, Remittitur, Petition "P.C.R."
- 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) broad terms 10616 used until petitioner
 (b) learn to use other and direct laws and States.
 (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? Public Defender made a dismissive effort. NO!
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
See attached documents.. "Appeal"

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. Greg W. Seigler (P.O. Box 1852) McCormick "SC"
29835 Cell # (864-852-9555) Fax # 864-852-9554

ii. _____

 iii. _____

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

i. Preliminary Hearing 12-19-2012
General Sessions 08-13-2013

ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:
Sentence reconsideration / reduction and reconstruction
of the sentence imposed / proper construction of legal
records that were illegally sanctioned after first being dismissed.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of Edgefield)

VERIFICATION

I, Wade V. House #300130, 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.

Wade V. House 300130

SWORN to and subscribed before me this 18th
day of June, 2014.

Elaine M. Freeman (L.S.)
Notary Public

My Commission Expires: June 22, 2021

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

I, Wade V. Rouse #300130, 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.

Wade V. Rouse #300130
Applicant

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

Elaine M. Greeman
Notary Public

My Commission Expires: June 22, 2021

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

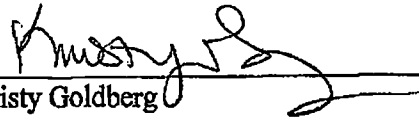
STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)
IN THE COURT OF COMMON PLEAS
2014-CP-19-196
NOV 26 AM 10:43

WADE ROUSE)
SCDC # 300130,)
Applicant,)
vs.)
AMENDED APPLICATION
FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,)
Defendant.)

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- (a) Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges.
- (b) Ineffective assistance of trial counsel –Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.



Kristy Goldberg
Attorney for Applicant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 25th day of November, 2014

36

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD)
2014 NOV 26 AM 10:43 2014-CP-19-196

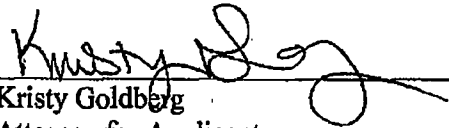
WADE ROUSE
SCDC # 300130,

Applicant,

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,
Defendant.

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.



Kristy Goldberg
Attorney for Applicant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 25th day of November, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Wade Rouse,	)	C.A. No. 2014-CP-19-0196
S.C.D.C. No. 300130	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed June 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 Edgefield County Clerk of Court. The Applicant was indicted at the January 2013 term of the Edgefield County Grand Jury for distribution of crack cocaine (2013-GS-19-0142). The Applicant was represented by W. Greg Seigler, Esquire. On August 13, 2013, the Applicant pled guilty as indicted. The Honorable Thomas A. Russo sentenced the Applicant to ten (10) years imprisonment. The sentences were set to run concurrently with a probation revocation.

A timely notice of appeal was filed on the Applicant's behalf. In an order filed October 30, 2013, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). The Remittitur was returned on November 15, 2013.

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

II.

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

1. Ineffective assistance of counsel;
2. Coercion;
3. Fraud upon the court;
4. Perjury;
5. Entrapment

III.

Applicant subsequently filed an Amended Application through counsel, dated November 25, 2014 in which he raised the following grounds:

1. Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges;
2. Ineffective assistance of trial counsel – Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.

IV.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground

for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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. 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 (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 cannot be conclusively refuted by the record. 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).

V.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A

criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

VI.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issues of ineffective assistance of counsel and involuntary guilty plea. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. 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 those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCF 71.1. All claims should be made well in advance of the PCR hearing. Only Applicant's attorney, and not the inmate, is authorized to

file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

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

IX.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 15th, 2015

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

WADE ROUSE, #300130

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

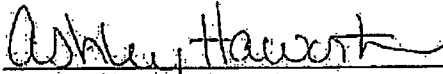
2014-CP-19-0196

AFFIDAVIT OF SERVICE BY MAIL

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

Mrs. Kristy Grafton Goldberg, Esquire
 Law Office of Kristy Goldberg, LLC
 1720 Main Street, Suite 303
 Columbia, SC 29201

DATED this 18th day of May, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS
 2014-CP-19-196

WADE ROUSE)
 SCDC # 300130,)

Applicant,)

vs.)

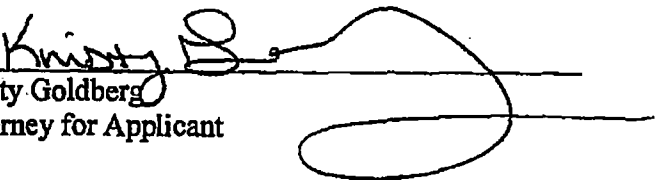
SECOND AMENDED APPLICATION
FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA,)
Defendant.)

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- (a) Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges, specifically including but not limited to the alleged video of the drug transaction, and therefore client make an uninformed decision in waiving his right to trial.
- (b) Ineffective assistance of trial counsel –Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.
- (c) Ineffective assistance of trial counsel – Counsel failed to sufficiently advise the Applicant regarding the procedure and substantive information that would be presented to the Court during the guilty plea and incorrectly informed Applicant regarding what sentence he would receive.


 Kristy Goldberg
 Attorney for Applicant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-667-6633

803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 14th day of June, 2016

STATE OF SOUTH CAROLINA)
 COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS
 2014-CP-19-196

WADE ROUSE)
 SCDC # 300130,)
 Applicant,)
)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
 Defendant.)

I certify that on this date I served the Second Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Applicant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-667-6633
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 14th day of June, 2016

1 State of South Carolina Court of Common Pleas
2 County of Edgefield

3
4
5 Wade Rouse)
6 Applicant,) Transcript of Record
7 v.) 2014-CP-19-00196
8 State of South Carolina)
9 Respondent.)

10 July 6, 2016
11 Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable William P. Keesley, Jr., Judge.

15
16 A P P E A R A N C E S:

17 Kristy Goldberg, Esquire
18 Attorney for the Applicant

19 Johanna Valenzuela, Esquire
20 Attorney for the Respondent

21

22

23

24

25

Bethanie K. Creppon
Circuit Court Reporter

1		I N D E X	
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7	BY MS. VALENZUELA		
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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

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(No Exhibits.)

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1 P R O C E E D I N G S

2 * * *

3 THE COURT: This is in the matter of Wade Rouse
4 vs. The State. It's an Edgefield County case,
5 2014-CP-19-00196. It's being heard today in
6 Lexington by consent. All right. Are there any
7 openings that need to be made or any amendments that
8 need to be discussed?

9 MS. GOLDBERG: Your Honor, there have been two
10 amended applications filed. The most recent one
11 that we're going forward today on was filed June
12 17th, 2016, entitled Second Amended Application.
13 That was about two weeks ago, so if it didn't make
14 it into the file, I can hand you my copy.

15 THE COURT: It's in the file in the packet I
16 have.

17 MS. GOLDBERG: We're ready to go forward.

18 THE COURT: All right. Call your witness.

19 MS. GOLDBERG: At this time the Applicant would
20 call Wade Rouse.

21 THE COURT: Mr. Rouse, come around here,
22 please.

23 WADE ROUSE

24 being first duly sworn, testified as follows:

25 THE APPLICANT: Yes, sir, I swear.

1 THE COURT: Have a seat up here.

2 Okay. Ms. Goldberg?

3 MS. GOLDBERG: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MS. GOLDBERG:

6 Q. All right. Sir, please state your name for the
7 record.

8 A. Wade Rouse.

9 Q. Can you spell your last name, please.

10 A. R-O-U-S-E.

11 Q. What charges are you currently -- what
12 conviction and charge are you currently incarcerated
13 on?

14 A. Crack cocaine distribution second offense.

15 Q. What sentence did you receive for that?

16 A. Ten years.

17 Q. Is that currently being calculated as a violent
18 or nonviolent sentence?

19 A. It changed to a nonviolent sentence.

20 Q. Do you recall when you were arrested?

21 A. Not approximately, but around the dates of
22 the -- between the 2nd and 4th of November.

23 Q. So in November. Of what year?

24 A. 2012.

25 Q. After you were arrested, did you stay in jail

1 or bond out?

2 A. Stayed in jail.

3 Q. Who was your attorney?

4 A. Mr. Greg Siegler.

5 Q. He was appointed?

6 A. Yes, ma'am.

7 Q. When you were arrested in November of 2012, was
8 it only for the charge that you ended up being
9 convicted of or were there other charges as well?

10 A. I was actually arrested on a CDV charge that I
11 was -- dismissed in a jury trial.

12 Q. Misdemeanor level?

13 A. I'm not -- I'm not sure. I'm not sure how the
14 charges -- it never processed. It went to the
15 municipal, I asked for a jury trial, and they
16 dismissed it.

17 Q. Oh, they dismissed it before a jury trial?

18 A. Yes.

19 Q. Okay. Did Mr. Siegler come to the jail to meet
20 with you?

21 A. Yes, he had.

22 Q. Did he review your discovery with you?

23 A. We looked at some pictures. I asked -- I
24 requested specifically for a video evidence to be
25 presented to me, but I never got it.

1 Q. What would the video -- and I'm not asking for
2 details. Generally speaking, what video are you
3 talking about? What was it of?

4 A. They was telling me it was a video of me
5 selling crack cocaine.

6 Q. So the distribution video?

7 A. Yes, ma'am.

8 Q. You specifically asked to see that?

9 A. I got it in writing. I actually wrote
10 Ms. Newby at the Clerk of Court and she forwarded it
11 to Mr. Siegler and the solicitor.

12 Q. Did you ever see the video?

13 A. No, ma'am.

14 Q. Do you know why or did he tell you why?

15 A. Told me that it's a deal with the State -- with
16 the Prosecution and the State to protect the
17 informant.

18 Q. Did he tell you if you would ever be allowed to
19 see the video?

20 A. Yes, ma'am.

21 Q. What did he tell you?

22 A. Well, we went back and forth about it because I
23 wrote -- when I wrote the letter, then maybe six
24 days before I actually took the plea -- it's on file
25 for, I think, August the 6th or 7th, but I took the

1 plea on the 13th. But before I took the plea, I
2 told him I wanted to see the video and he came to me
3 and was like you can't watch it unless you go to
4 trial and, basically, telling me the only way I
5 could see it was to go forward with the trial,
6 basically.

7 And he was telling me that if I took the plea,
8 upon me taking the plea, once all this was out the
9 way, that he would give me a copy of the video or he
10 would come to the prison and actually sit down and
11 watch it with me.

12 Q. So either way, whether you chose trial or plea,
13 you would be able to see the video at some point?

14 A. He said it would become part of my client file
15 and I could have access to it whenever the process
16 was done.

17 Q. Did you say that he showed you some
18 photographs?

19 A. Yes, ma'am.

20 Q. What were those of?

21 A. A picture of my father, a picture of me.

22 Q. Doing what?

23 A. Doing nothing; just a picture of me with a
24 plastic bag in my mouth, a picture of my father just
25 doing nothing, just sitting around, I guess.

1 Q. Where are those photographs supposedly from or
2 taken from?

3 A. He said they came from a video. He said they
4 were still shots taken from a video.

5 Q. Okay. Despite seeing those photographs, you
6 still asked to see the actual video?

7 A. Yeah. I wrote the letter -- even after I seen
8 them, I wrote the letter and requested it because,
9 as far as I'm aware, it's my right to be able to see
10 the evidence.

11 Q. That's why you believe you should have been
12 able to see it?

13 A. Before I made a decision to plead.

14 Q. How do you think watching the video would have
15 affected your decision?

16 THE APPLICANT: May I address the Court, Your
17 Honor?

18 THE COURT: You can talk to her, but the only
19 person --

20 THE APPLICANT: Okay. I want to ask you a
21 question.

22 BY MS. GOLDBERG:

23 Q. Well, answer my question the best you can and
24 I'll follow up with that.

25 A. Without me seeing it, I mean, I don't -- I

1 can't -- I can't give you a direct answer as to what
2 the outcome would have been.

3 Q. As of today, have you still ever seen the
4 video?

5 A. Never seen it.

6 Q. Did you want a plea offer or a plea deal in
7 this case or did you want to go to trial or did you
8 know?

9 A. Before I made the decision to plead, I wanted
10 to go -- I wanted to go to trial.

11 Q. Why did you change your mind and decide to
12 plead?

13 A. Because they started telling me that my family
14 members would be arrested, that my father would be
15 arrested if I went through with the trial
16 proceeding. He'd be arrested for conspiracy to
17 crack cocaine, distribution, when in all actuality,
18 I questioned my lawyer, like how would my father be
19 arrested when all the paperwork from the Rule 5 said
20 the crime never happened around my father and there
21 was no discussion about drugs around my father.

22 Q. Who told you that your father and your family
23 would be arrested if you went to trial?

24 A. My public defender relayed the message to me
25 that he said came from Solicitor Frank Young. He

1 said that the solicitor would have my father
2 arrested -- he would have the investigators do the
3 warrants or whatever and they would have my father
4 arrested if I proceeded to the trial.

5 Q. Do you have any -- what is your opinion on
6 whether your father could have been arrested or not?
7 I mean, did you think that that was a real threat or
8 did you think that it was impossible?

9 A. I called my father from the county jail maybe a
10 week. He said that Mr. Siegler came to see him and
11 told him that that was just hot -- that the
12 solicitor was just blowing hot air or it wasn't a
13 serious matter. But he never relayed that to me
14 because I wouldn't have took the plea.

15 Q. You believed it was a serious matter?

16 A. Yes, ma'am.

17 Q. You believed your father was at risk for being,
18 arrested --

19 A. Yes, ma'am.

20 Q. -- based on what Siegler told you?

21 A. Yes, ma'am.

22 Q. On the day that you pled guilty, were you
23 scheduled to go to trial that day?

24 A. I'm not sure. They just got me up there and --
25 I'm not sure. It just happened so fast. I'm not

1 sure.

2 Q. On the day you pled guilty, you still had not
3 seen the video yet; is that correct?

4 A. Correct.

5 Q. Do you believe that your lawyer said or did --
6 basically said anything inappropriate in inducing
7 you to plead guilty?

8 A. As far as like just -- he asked me was I
9 bipolar because I didn't want to take the plea. I
10 don't think that was appropriate. I think it
11 doesn't make me crazy not to want to take -- doesn't
12 make me crazy to want to see the evidence against me
13 before I make a decision.

14 MS. VALENZUELA: Your Honor, at this point I
15 would object and move to strike if that's to be
16 interpreted as an allegation because all the
17 allegations should have been made by this point.
18 And so if we could clarify if that's supposed to be
19 an amendment, then I would move to strike; if it's
20 not, then I have no objection if it's not going to
21 be considered an allegation.

22 MS. GOLDBERG: It's not an amendment.

23 THE COURT: All right. Thank you.

24 BY MS. GOLDBERG:

25 Q. Mr. Rouse, did you understand that the State

1 was offering a cap of ten years and recommending a
2 sentence of ten years when you pled guilty? Did you
3 understand that?

4 A. No, ma'am.

5 Q. What did you think the State was offering?

6 A. What I was -- what I was relayed was a plea of
7 five to ten cap. It was no recommendation about the
8 ten years, it was only a five to ten. It was a
9 chance I could get five, a chance I could get ten,
10 in which I was told -- I was advised that most
11 likely I would not get ten years.

12 Q. Who advised you you most likely would not get
13 ten years?

14 A. My public defender told me that we was in a
15 good situation, it was in front of a good judge,
16 Mr. Russo, one of the best judges in South Carolina,
17 and that for the drug charges, he didn't see me
18 getting ten years and it was highly unlikely that I
19 would get ten years.

20 Q. Was anything said or did anything happen during
21 the plea that you didn't expect and didn't know was
22 going to be said?

23 A. Yes.

24 Q. What?

25 A. The solicitor actually showed the judge some

1 still pictures and he told the judge that that was
2 me with crack cocaine in my mouth in which, as far
3 as I know of, Mr. Siegler had relayed to me
4 beforehand that there's never any visual of crack
5 cocaine in the video.

6 Q. Was that photograph shown to the judge the same
7 photograph you'd seen already?

8 A. Yes, ma'am.

9 Q. With Mr. Siegler?

10 A. Yes, ma'am.

11 Q. Was there anything else said that you didn't
12 know was going to be said?

13 A. It brought up a charge from my record, which I
14 understand that they do read off the charges. They
15 brought up a charge on my record of threatening the
16 life of a public official, a charge that actually
17 happened when I was a juvenile. I was 17, about to
18 turn 18, and the public official was a police
19 officer and later on he killed somebody. But they
20 brought that up in my hearing and I couldn't defend
21 myself.

22 Q. Do you believe Siegler should have warned you
23 that that would be mentioned?

24 A. Yes. Yes, I do. And I have no recollection
25 that the solicitor would get up there and show the

1 judge these pictures and say that that's me with
2 crack cocaine or tell the judge that I'm threatening
3 the life of a public official when they didn't --
4 when none of the facts surrounding these issues came
5 up, because Siegler told me himself that you could
6 never see any crack cocaine in any of the pictures
7 or the video.

8 Q. Do you believe your lawyer sufficiently
9 prepared you for the guilty plea?

10 A. No, ma'am.

11 Q. Is that for the same reasons you just discussed
12 or was there something else he didn't help to
13 prepare you with?

14 A. For the reasons I just discussed. Basically, I
15 went in blind not knowing that the solicitor was
16 going to get up there with these pictures and try to
17 make me look just terrible. I wouldn't have took
18 the plea.

19 Q. Do you believe your plea was involuntary?

20 A. Yes, ma'am.

21 Q. Why?

22 A. Because I never got to see all the evidence
23 that I requested to see that I was entitled to.

24 Q. What do you want this Court to do?

25 A. I would like a sentence reconstruction, but I'm

1 being told that that's not possible. I have three
2 kids. I would actually like to -- I would actually
3 like to get this video so I could really determine
4 if I made the right decision. The informant is not
5 in the video.

6 Q. So you would like the conviction overturned so
7 that you can see the video before making a decision?

8 A. Yes, ma'am.

9 Q. Is that a fair way to describe --

10 A. Yes. Yes, ma'am.

11 Q. And you said today that you can't exactly
12 describe what difference watching the video would
13 have made. Is that what you said?

14 A. No. If -- if I could have seen it, I could
15 have made an intelligent decision based on whether I
16 wanted to go to trial or take the plea. But being
17 that it was withheld from me, it impaired my
18 rights -- it impaired my rights to a fair decision.

19 Q. Do you want this Court to watch and consider
20 the video?

21 A. I would. I would.

22 Q. To see if it would have made a difference in
23 your case?

24 A. Yes, ma'am.

25 MS. GOLDBERG: All right. No further

1 questions.

2 THE COURT: Cross-examination?

3 MS. VALENZUELA: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. VALENZUELA:

6 Q. Mr. Rouse, how are you?

7 A. All right.

8 Q. Okay. Mr. Rouse, you remember being in front
9 of Judge Russo when you entered your guilty plea?

10 A. Yes, ma'am.

11 Q. Do you remember being sworn to tell the truth
12 and indicating to the Court that you would tell the
13 truth?

14 A. Yes, ma'am.

15 Q. Do you recall that the recommendation of a cap
16 of ten years was put on the record at the beginning
17 of your plea by the State?

18 A. No, ma'am.

19 Q. Okay.

20 MS. VALENZUELA: So that's on page 3 for the
21 Court to take notice of.

22 BY MS. VALENZUELA:

23 Q. After -- do you remember the judge advising you
24 that your charge could go anywhere from five to 30
25 years based on the fact that you were pleading to

1 distribution of crack second offense?

2 A. No, ma'am.

3 Q. Okay.

4 MS. VALENZUELA: And that's on pages 5 and 11,
5 Your Honor, for the transcript, which I know
6 Applicant's counsel also has.

7 BY MS. VALENZUELA:

8 Q. Do you remember being asked if you had been
9 made any promises or threats?

10 A. Yes, ma'am.

11 Q. And you indicated that you had not been made
12 any promises or threats; correct?

13 A. Yes, ma'am.

14 Q. Do you remember being asked if you were taking
15 the plea freely and voluntarily and you indicated to
16 the Court, after being sworn, that you were in fact
17 taking the plea freely and voluntarily?

18 A. Yes, ma'am.

19 Q. And you were asked if you were under the
20 influence of any medication, and you indicated that
21 you were not; correct?

22 A. Correct.

23 Q. Do you remember being asked if you were
24 satisfied with your attorney by the plea judge?

25 A. Yes.

1 Q. And do you remember telling the judge that you
2 were satisfied; in fact, you were, quote, very
3 thankful for your attorney?

4 A. Yes, ma'am.

5 Q. Do you remember that Judge Russo went over the
6 rights that you had that you were waiving by
7 pleading guilty?

8 A. Yes, ma'am.

9 Q. And do you remember that the State -- that
10 Judge Russo indicated that you would have the right
11 to confront the State's witnesses, if you chose, at
12 trial?

13 A. Yes, ma'am.

14 Q. And that you were waiving that right?

15 A. Yes, ma'am.

16 Q. And that you were -- that the State had the
17 burden of proving you guilty of this charge if you
18 were to go to trial?

19 A. Yes, ma'am.

20 Q. And that you were waiving that right?

21 A. Yes, ma'am.

22 Q. That you had a complete right to a jury trial
23 and that the jury would have to come to a unanimous
24 verdict in order to find you guilty and that you
25 were waiving those rights?

1 A. Yes, ma'am.

2 Q. That the State would have to prove you guilty
3 beyond a reasonable doubt and that you were waiving
4 that right by pleading guilty?

5 A. Yes, ma'am.

6 Q. And that you had a presumption of innocence
7 that you were waiving by pleading guilty that day?

8 A. May I speak?

9 Q. Please answer my question and then your
10 attorney will have an opportunity --

11 A. Yes. Yes, ma'am.

12 Q. Okay. And do you remember being told that you
13 could -- that you had a right to remain silent, that
14 you were waiving that as well by pleading that day?

15 A. Yes, ma'am.

16 Q. Okay. And after being advised of those rights,
17 you still entered a guilty plea by the judge;
18 correct?

19 A. Yes, ma'am.

20 Q. Okay. Now, do you remember that the solicitor
21 put the facts on the record -- the facts of what the
22 State was alleging you had done on the record for
23 Judge Russo?

24 A. When you say facts --

25 Q. Yes?

1 A. -- you mean by him saying that that was me with
2 crack in that bag on the record?

3 Q. Yes. Do you remember the solicitor saying that
4 in front of you to the judge?

5 A. I remember him saying that, but that's not a
6 fact.

7 Q. And do you remember the judge asking you if the
8 recitation of facts was correct on page 17 of the
9 transcript?

10 A. If I -- if I answer yes?

11 Q. Yes.

12 A. Yes. I mean, just out of general -- out of the
13 generality that if you go to a plea to plead, once
14 you're up there in front of the judge and your
15 lawyer done explained these rights to you, you're up
16 there to plead, so anything he's saying leading up
17 to the plea, I'm just going to go along with him.
18 That's what he told me to do.

19 He told me get up there, tell the judge you did
20 it, he's not going to give you ten years, you just
21 get up there and you tell him you did it, and I'm
22 going to work everything else out. I got up there,
23 told the judge I did it, and I got ten years.

24 Q. Okay. And so -- but the judge did ask you if
25 you agreed with the recitation of facts and you

1 indicated at the time that you did agree?

2 A. Yes.

3 Q. Yes. Okay. And this would have been the time
4 that you claim photographs were handed up, and these
5 were the same photographs that you would have been
6 shown by your counsel; correct?

7 A. Correct.

8 Q. And you did not indicate to the Court at that
9 time that there was any dispute with what was in
10 your hands in that photo?

11 A. If -- if --

12 Q. Did you indicate to the Court that there was
13 anything --

14 A. If you look at the record, there's a blank
15 where I was cut off from talking in the record. You
16 got the transcript. It's a blank where I was cut
17 off from talking where me and him was actually
18 having a discussion because two things arised; one
19 was they accused me of a crack sale that I didn't
20 have that was an accommodation sale, and two was the
21 fact that they were sitting there telling the judge
22 that that's me with crack cocaine when you can never
23 see any crack cocaine in none of the video or the
24 pictures.

25 Q. Okay. So let's take those both one at a time.

1 You said there were two different instances where
2 you talked to your attorney about something you
3 disagreed with. So one of them was a -- one of your
4 prior record -- convictions, correct, that you just
5 referenced that you thought was stated incorrectly?

6 A. Yes.

7 Q. Okay. And, in fact, your counsel corrected
8 that --

9 A. Correct --

10 Q. -- on the record?

11 A. Corrected it.

12 Q. Right. So where in the record do we have any
13 sort of indication or correction as to the crack
14 cocaine that was in your mouth in that still photo?

15 A. He shushed me and told me to be quiet because
16 while the solicitor was up there handing the judge
17 the pictures, it was they time. So he shushed me.
18 It's on the record where --

19 Q. Okay. But you did not indicate to the Court
20 that there was ever a problem with that photograph?

21 A. Ignorance of the law.

22 Q. Okay. Okay. Earlier you were talking about
23 how you're concerned with the still photograph that
24 was passed up, was that the solicitor said that that
25 was crack in that bag, and you said Siegler said

1 that there was no crack in the video; right?

2 A. He told me there was no --

3 Q. Okay. So your counsel at the time, your
4 attorney, did watch the video?

5 A. Yes.

6 Q. And not only did he watch the video, he
7 discussed with you what he had seen in that video?

8 A. He told me there was no crack in the video.

9 Q. So he discussed with you prior to your plea
10 what he saw in the video and what he did not see in
11 the video?

12 A. To an extent, I guess.

13 Q. Okay. Well, the important part of it is the
14 actual crack cocaine that you pleaded to. He had a
15 discussion with you on what he had seen in that
16 video and what he had not and indicated to you that
17 he had not seen the actual crack in the video and he
18 told you that before you entered your plea of guilt?

19 A. He also told me --

20 Q. Sir, can you please answer my question?

21 A. Yes, ma'am.

22 Q. Your attorney -- yes.

23 Your attorney talked to you before you entered
24 your plea of guilt. And y'all talked about the
25 video at length before you entered your plea of

1 guilty?

2 A. Nah.

3 Q. You requested the video, you said, in a letter
4 to the Clerk of Court; correct?

5 A. Yes, ma'am.

6 Q. Okay. And you knew before you entered that
7 guilty plea in front of Judge Russo that you did
8 not, in fact, have that video in your possession?

9 A. Six days before I took the plea.

10 Q. I need you to answer my question, Mr. Rouse.

11 A. Yes, ma'am.

12 Q. Okay. Did you -- when you pled in front of
13 Judge Russo, you knew that not only had you asked
14 for the video, you had not gotten it, and you had
15 not viewed it; correct?

16 A. Correct.

17 Q. Okay. And where in the transcript did you tell
18 Judge Russo that you had a concern that you had not
19 been able to see that video before entering your
20 guilty plea?

21 A. Ignorance of the law. I didn't speak to him
22 about it.

23 Q. So you did not? You never brought it up?

24 A. I did not. It doesn't make it right.

25 Q. Now, the charge that you were referencing in

1 terms of threatening the life of a public official,
2 that was a conviction that you had -- that you still
3 have?

4 A. Yes, ma'am.

5 Q. That's part of the criminal history that was
6 stated during the plea?

7 A. Yes, ma'am.

8 Q. Okay. Now, do you remember that your attorney,
9 while in front of Judge Russo, explained that you
10 had an addiction and that you had also found Jesus
11 recently?

12 A. I remember that.

13 Q. I'm sorry?

14 A. I remember that.

15 Q. You do remember that.

16 And that your attorney asked that the Court
17 terminate probation, said that the minimum was
18 suspendable, and asked that the judge give you a
19 suspended sentence for a minimum amount of time?

20 A. Yes. He asked that the judge terminate the
21 probation and explained to the judge that I asked
22 for the probation when I went to court to get help
23 and explaining that I had a 90-day treatment that I
24 was sentenced to by Mr. Keesley that I never even
25 got to take advantage of. I never got the 90-day

1 treatment at all.

2 Q. You were able to address your addiction issues
3 to Judge Russo though before the sentencing?

4 A. I mean, to an extent, I guess.

5 Q. Okay. Now, you indicated that Mr. Siegler,
6 your attorney at the time, told you that the
7 agreement with the video was that the State wanted
8 to protect the informant, so you could see the video
9 if you decided to go to trial?

10 A. Yes.

11 Q. Okay. And you indicated earlier that you did
12 in fact want to go to trial, so what was the
13 problem?

14 A. The threats kept coming up about my father. My
15 father is handicapped, sick, doing bad, so at the
16 time, I wasn't willing to risk my father's freedom
17 for my own.

18 Q. Okay. So it was your -- your concern for your
19 father. And then earlier you said that you actually
20 called your father before the plea and spoke to your
21 father on the phone; right?

22 A. Yes, ma'am.

23 Q. So you had the opportunity to speak with your
24 father and to find out from your father the strength
25 of this threat that you claim was being made and

1 that your father said to you that your father had
2 met with your attorney and been reassured that this
3 was just the solicitor blowing smoke and that there
4 was nothing to fear here?

5 A. Still doesn't make it correct.

6 Q. But that was the discussion you had with your
7 father?

8 A. Yes, ma'am.

9 Q. And after having that discussion with your
10 father, you still decided to proceed forward with
11 your guilty plea?

12 A. I mean, yes, I did.

13 Q. Now, you have a conviction for petit larceny
14 and shoplifting. And was that a plea or a trial?

15 A. One, I can't remember, but I can tell you this:
16 I didn't steal nothing.

17 Q. Okay.

18 A. I got arrested and convicted and I didn't steal
19 nothing.

20 Q. Okay. And then threatening a public official,
21 was that plea or a trial?

22 A. That was a plea.

23 Q. Okay. And then trespassing, was that a plea or
24 a trial?

25 A. That was a plea.

1 Q. And then burglary second in 2004, plea or a
2 trial?

3 A. That was a plea.

4 Q. Possession with intent to distribute marijuana
5 and crack, which was corrected by your counsel to
6 say that it was actually just distribution of
7 marijuana, was that a plea or trial?

8 A. That was a plea.

9 Q. Okay. And then in 2006, another PWID in
10 proximity charge, plea or trial?

11 A. That was a plea.

12 Q. Okay. And then in 2011, possession of crack,
13 plea or a trial?

14 A. That was a plea.

15 Q. Okay. So prior to this guilty plea, you had
16 had one, two, three, four, five, six different times
17 where you had gone in front of a Court and entered a
18 guilty plea to charges; correct?

19 A. Correct.

20 Q. Okay. So six different times that you had the
21 judge explain the rights that you were waiving, six
22 different times where you had had a State present
23 the summary of the facts, and six different times
24 where you were asked whether you wanted to plead
25 guilty or not prior to the present case?

1 A. Six different times.

2 Q. Okay.

3 MS. VALENZUELA: Your Honor, may I have one
4 moment?

5 THE COURT: Yes, ma'am.

6 MS. VALENZUELA: Nothing further, Your Honor.

7 THE COURT: Any redirect?

8 MS. GOLDBERG: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. GOLDBERG:

11 Q. Mr. Rouse, during cross-exam you were talking
12 and you said that Siegler had watched the video and
13 told you that there was no crack that could be seen
14 in the video.

15 A. Yes, ma'am.

16 Q. And I believe you began to say "he also told
17 me," but you were cut off. What were you going to
18 say, if you remember?

19 A. There's no crack in the video. And he also
20 told me that if I went to trial, that the only thing
21 I -- that was shown in the video was marijuana. But
22 he told me that ten -- I don't want to sound racist,
23 I'm just stating the facts. He told me that ten
24 white people and two black people probably from the
25 suburbs that never seen crack, never seen drugs,

1 would find me guilty based on the fact that in the
2 video I sold a confidential informant some
3 marijuana.

4 Q. Okay. Now, the conversations that we've talked
5 about regarding the possibility of having your
6 father arrested, explain again, because I don't know
7 if it came across clear during cross or direct what
8 he was going to be arrested for.

9 A. Conspiracy to distribute crack cocaine.

10 Q. And the evidence for that charge would have
11 been what?

12 A. None. I never seen it.

13 Q. How -- why did the State think?

14 A. They just had a picture of my father. I don't
15 know.

16 Q. From the video?

17 A. Yes, ma'am. I guess.

18 Q. So any evidence that possibly could have led to
19 your father's arrest would have been in the video?

20 A. Yes, ma'am.

21 Q. The video you haven't seen?

22 A. Yes, ma'am.

23 MS. GOLDBERG: All right. No further
24 questions.

25 THE COURT: Recross?

1 MS. VALENZUELA: No, Your Honor.

2 THE COURT: Thank you, sir. You may step down.

3 Any other witnesses for the Applicant?

4 MS. GOLDBERG: No other witnesses. I would
5 like to briefly address the Court. We can talk
6 about this more at the end if you'd like, but just
7 because this is the Applicant's portion of the case,
8 I just wanted to bring it to the Court's attention.

9 THE COURT: What?

10 MS. GOLDBERG: The State -- obviously Mr. Rouse
11 has talked an extensive amount about a confidential
12 informant's audio-video that the State was in
13 possession of that Siegler was able to view. Rouse
14 has not seen it to date. He testified he has not
15 seen it. He can't testify regarding what it would
16 show. He does have a duty and a responsibility in
17 his case in chief to prove prejudice.

18 The attorney general was gracious enough to
19 obtain this video. She was not given permission by
20 the Solicitor's Office to hand it over to me at any
21 point in time, so I don't have it. I don't
22 necessarily have it in my possession to hand up as
23 evidence, but I would ask that it be presented as a
24 Court exhibit or as evidence, however Your Honor is
25 inclined, because I don't think it's possible for

1 him to prove prejudice without the Court, in
2 chambers or however you want to -- everyone wants to
3 arrange it, viewing to see what it would have shown.

4 We -- like I said, we can talk about it more at
5 the end, but since this is the Applicant's portion
6 of the case, I thought it necessary to bring that
7 up, procedurally.

8 THE COURT: Well, how am I going to know -- you
9 have the video?

10 MS. VALENZUELA: I have the video. I also do
11 object to this. So I -- but I --

12 THE COURT: How long is it?

13 MS. VALENZUELA: Thirty minutes.

14 THE COURT: And your objection is what?

15 MS. VALENZUELA: My objection is that, one, the
16 Applicant has presented his case and has already
17 stated to the Court under oath that his attorney had
18 watched the video and told him what was on the
19 video; that the two things that seem to be at issue
20 are that whether there was crack seen on the video
21 or not and that was -- to his knowledge, there was
22 no crack seen on the video and still elected to
23 enter a plea of guilt, and then some indication of
24 his father.

25 And there really does not seem to be a reason

1 to retry the facts of a guilty plea where there has
2 not been any sort of reason established to do that.
3 The testimony, I think, is going to cover that. But
4 if the Court were to do it, we would ask that it be
5 done in chambers and it still not be shown to the
6 Applicant for the same concerns that the State had
7 during the prosecution, which is the safety of the
8 confidential informant.

9 THE COURT: I'm a little bit confused by this.

10 MS. GOLDBERG: Yes, sir.

11 THE COURT: Hold on a second. Let me see if I
12 can find it in the transcript. Page 23, this is the
13 Applicant talking to Judge Russo, first full
14 paragraph: "When I got these charges -- when I got
15 these charges of distribution -- and I apologize to
16 Mr. Frank Young because I had a problem with taking
17 his plea at first because the informant got high
18 with me. He got high with me, but it's all in a
19 part of being what he was doing. I accepted. I
20 felt like I was taken advantage of by the informant,
21 but I was taking advantage of myself, you know what
22 I'm saying. I was under the influence of drugs and
23 I wasn't thinking."

24 Is that from prior arrests or is that from the
25 conviction to which he's pleading?

1 MS. GOLDBERG: Your Honor, I'm trying to figure
2 out the --

3 THE COURT: I mean, he's talking in here like
4 he knows who the informant is.

5 MS. GOLDBERG: I'm trying -- I will tell you
6 that Mr. Rouse believes he knows who the informant
7 is and has, since day one, believed he knew who the
8 informant was. And so the identity of the informant
9 is not at risk because it's already known, according
10 to Mr. Rouse.

11 As an officer of the Court, I guess the fairest
12 thing I can say is that I have watched the video.
13 What happens in the video does not necessarily
14 reflect what's described there. So --

15 THE COURT: Described where?

16 MS. GOLDBERG: In what you just read.

17 THE COURT: Okay.

18 MS. GOLDBERG: That at least what is described
19 is not shown. Now, whether that happened earlier,
20 whether it's edited, I don't know, and Mr. Rouse
21 can't provide any additional detail because he
22 hasn't seen it. He has no idea what's on the video.

23 My point in all of this is that it's impossible
24 for him to describe if what's on the video would
25 have changed his decision to plead or go to trial

1 without having seen it. Given the State's request
2 that it still not be shown to him, I think the best
3 I can do, assuming Your Honor agrees with that, is
4 to ask the Court to review the video and to make a
5 determination whether there's a substantial
6 likelihood if he had seen the video he would have
7 thought trial was his best option because these
8 things are not actually shown as he's saying.

9 THE COURT: Well --

10 MS. GOLDBERG: I don't know how else to prove
11 prejudice.

12 THE COURT: -- if there's evidence that exists
13 and the objection raised by the State, in any case,
14 not just this one, is that we cannot reveal the
15 identity of the informant because of danger to the
16 informant, I have to have some evidence that there
17 is a danger to the informant, or that if it goes to
18 jeopardizing ongoing prosecutions, some compelling
19 reason.

20 I haven't researched this. I did a hearing in
21 a criminal trial years ago where it was held and
22 disputed and we went through a full day of testimony
23 about that. So unless you have some evidence to
24 indicate that this puts this informant in jeopardy
25 in some way -- in that case there was information

1 that the guy's house had been burned down.

2 Unless you have some evidence that it puts the
3 informant in jeopardy or that it undermines some
4 ongoing prosecution or something of that nature,
5 it's evidence and the State has to give it and let
6 the defendant see it -- the Applicant see it.

7 MS. VALENZUELA: We do have a discovery order
8 in this case that both sides, you know, presented to
9 the Court, that the Court has signed, that limits
10 this video being shown to Applicant's counsel in the
11 AG's office. And so I don't think that the issue
12 before the Court should be whether the Applicant can
13 get to see the video, first of all, but second of
14 all, I'm not prepared to address that because I
15 don't work for the Solicitor's Office, this is not
16 technically my -- I'm being given the right to hold
17 this video with the constraints of the discovery
18 order that is in place which limits it to being
19 shown to Applicant's counsel and not being shown to
20 the Applicant.

21 And so, you know, I don't know if the CI is
22 still working the streets, and so whether this would
23 put him at risk -- because I'm not handling the
24 prosecutions for the State, that's why this is not
25 the appropriate time to raise, I think, the issue --

1 the issue of the video, if he had an issue, was
2 raised prior to his guilty plea or at his guilty
3 plea. That's when he needed to raise it. He does
4 not raise it at his guilty plea, and now years later
5 he wants to be able to see the video.

6 And so I don't know what the answer is to
7 whether the CI is still working, I don't know the
8 danger that's going to be presented to the CI.
9 Although I would think that the Court -- that it
10 would be not a stretch to acknowledge that the
11 reason why solicitor's offices across the state have
12 a standard agreement not to release CI videos prior
13 to a trial is because there have been so many
14 instances of a CI's identity being revealed and that
15 CI's life being threatened or taken as a result of
16 trying to prevent that CI from testifying at trial.

17 Without knowing if this CI is still working for
18 the State, I don't know what to tell the Court in
19 terms of danger. So I can try to get that, but I
20 think we're litigating an issue that is certainly a
21 far reach from what PCR is supposed to be about.
22 And I don't think we even reach that when we look at
23 ineffective assistance of counsel and whether there
24 was prejudice here.

25 If we were to reach past that or if this were a

1 different type of hearing, I think we would reach
2 the video. But I don't think we've reached that
3 here, which, of course, the Court can disagree with
4 me.

5 MS. GOLDBERG: Your Honor, if I can respond.

6 THE COURT: Yes, ma'am.

7 MS. GOLDBERG: Procedurally, the history here
8 is that there was a motion filed by the Applicant in
9 this PCR to obtain the video. We reached out to the
10 Solicitor's Office originally and said -- let me go
11 back farther than that.

12 I reached out to Tri-County Public Defender's
13 Office originally, got a copy of their file, the
14 video is not in it. I know he hasn't testified yet,
15 but I'm assuming -- I know he watched it, it just
16 wasn't in the file. I asked the Solicitor's Office
17 for a copy, they said no, so a motion was filed. A
18 judge, I don't remember which one offhand, granted
19 the motion to provide me a copy of the file on the
20 condition that I didn't show it to the Applicant at
21 the request at the State.

22 Thereafter, the Solicitor's Office refused to
23 give it to the attorney general while the -- even
24 though a court order had been signed. They wanted a
25 consent order redone saying that I could not even

1 possess it, they would possess it and just show it
2 to me. In order to actually move this case forward
3 and see the video, I said fine, I'll sign that. So
4 I have, at this time, seen it.

5 But my point is, I guess there's two issues
6 here: The ultimate thing that Mr. Rouse is
7 requesting is that his conviction be overturned so
8 that he be allowed to see the entire discovery and
9 make an informed decision of whether he should plea
10 or go to trial based on, A, if there was evidence of
11 crack in the video or not, and B, if his father --
12 if there was evidence his father could have been
13 arrested in the video or not. That's what he's
14 asking for.

15 But he cannot prove that that is in fact what
16 the video shows or doesn't show; that's just what
17 he's been told, what he believes. So for the
18 purpose of this PCR hearing, if this Court needs to
19 find prejudice in deciding whether to grant his
20 request, the only way I can see to do it is if the
21 Court reviews the video and looks for those things.

22 THE COURT: I'm not going to do that because
23 it's not within my knowledge base to understand what
24 I'm looking at. I don't even know his father. I
25 mean, how am I going to know the things he wants me

1 to look at to protect his rights?

2 Now, having said that, it is my general opinion
3 that they took this video as evidence against this
4 man and he has made accusations about him relying
5 upon the observations of an attorney which he claims
6 are deficient. And it seems to me that fundamental
7 fairness requires that he be allowed to see the
8 video.

9 Now, if he looks at the video and says there's
10 nothing there, I don't know where we go from there,
11 I don't know what he'll do to his application. If
12 he wants to point out to the Court where he thinks
13 something is different, then I think he's got only
14 one chance to do that, and that's now. And whether
15 the Court disagrees or agrees with him is a
16 different matter.

17 And then a separate matter all together is
18 whether there's some compelling reason to preclude
19 him from seeing this video based on what I said
20 earlier. So my opinion is that I should continue
21 this hearing, give the State an opportunity to
22 notify the Solicitor's Office, and y'all come in
23 front of me and we'll hear what it is that's such a
24 compelling reason that they can't show this video to
25 this man three years, four years later.

1 Now, I agree with you that there certainly are
2 dangers to informants in the generic sense. I don't
3 know how much that is overreached and how many times
4 solicitors just adopt a blanket approach when there
5 is no real threat to the informant and everybody
6 knows who it is and he's been out on the street for
7 four years and nobody has done anything to him. So
8 I don't know.

9 It's a case-by-case evaluation. And for me
10 just to sit up here and say the State can take the
11 video so that we can hang it over somebody's head
12 and say we've got you on video but never show it to
13 him, that just strikes me as bizarre. Now, do y'all
14 want to put Mr. Siegler up or do y'all want to
15 recess it now?

16 MS. GOLDBERG: Well, what I was about to
17 suggest -- and if the State disagrees with me,
18 that's fine. I agree with Your Honor as far as how
19 to handle the video and Mr. Rouse and how to proceed
20 from here. But I believe that Mr. Siegler's
21 testimony would not necessarily change based on any
22 of that because he would just testify to his actual
23 representation and what he did see on the video
24 before, if he remembers, and what he did tell
25 Mr. Rouse, if he remembers. So I think it would be

1 acceptable if he'd go ahead and testify today and
2 then likely not have to come back.

3 THE COURT: Ms. Valenzuela, noting your
4 objection to the whole process --

5 MS. VALENZUELA: Right. No. He's my witness,
6 so I guess I would decide, since he wasn't called by
7 the Applicant, and I would say that we would call
8 him, get his testimony on the record, and then we
9 would respectfully request a continuance so that we
10 could resolve the issue of the CI video.

11 THE COURT: I note your objection to the whole
12 matter. All right. So are we ready for
13 Mr. Siegler?

14 MS. VALENZUELA: Yes, Your Honor. The State
15 would call Mr. Siegler to the stand.

16 W. GREG SIEGLER
17 being first duly sworn, testified as follows:

18 THE WITNESS: I do, sir.

19 DIRECT EXAMINATION

20 BY MS. VALENZUELA:

21 Q. Mr. Siegler, were you appointed to represent
22 Mr. Rouse in this case?

23 A. Yes, ma'am.

24 Q. Okay. And what was your employment at the
25 time?

1 A. I was the Tri-County public defender.

2 Q. How long had you been the Tri-County public
3 defender at the time you represented Mr. Rouse?

4 A. I took over in '07 and Mr. Rouse pled in, looks
5 like, August of '13 maybe.

6 Q. Okay. Had you been in the office before 2007
7 as well?

8 A. No. I took over in 2007 after Mr. Sturkey
9 retired and was continuously the Tri-County public
10 defender until July of 2014.

11 Q. Okay. Let's talk about the video. Did you
12 watch the video that's at issue?

13 A. I did.

14 Q. Okay. And did you go over what you had seen in
15 that video with your client, the Applicant?

16 A. Mr. Rouse and I discussed what I had viewed,
17 yes, and, as he indicated accurately, a few of the
18 still-frame shots.

19 Q. And who selected the still-frame shots?

20 A. I don't recall.

21 Q. Is it -- do you get to select which photos you
22 print off the video or does the State?

23 A. I wouldn't -- I don't recall selecting which
24 photos to provide to Mr. Rouse.

25 Q. Okay. So that would have come from the State,

1 the still photos?

2 A. I guess, ma'am.

3 Q. So you showed the photos to your client and you
4 discussed with him what you had watched in the
5 video?

6 A. That's what I recall, yes, ma'am.

7 Q. And why could you not show the video to your
8 client?

9 A. The State wouldn't allow me to show it to him.
10 I didn't have the -- they had the copy. They had
11 provided me all of the paper discovery that
12 Mr. Rouse and I went through, but they indicated
13 that in the event the video was shown, that all
14 offers would be withdrawn, was my recollection,
15 which was a typical policy in the Tri-County.

16 Q. So you couldn't watch the video --

17 A. I did.

18 Q. I mean, the client can watch the video --

19 A. Could have.

20 Q. -- but to do that, the client has to indicate
21 that they wish to proceed forward with trial?

22 A. Not necessarily proceed with trial, but the
23 State would have withdrawn any offer to resolve his
24 charges. That was their indication to me.

25 Q. And did you communicate to your client, the

1 Applicant?

2 A. Yes. I mean, based on my recollection, I did.
3 As indicated, it's been some time ago, but I always
4 inform them of anything that I was made aware of.

5 Q. Okay. And so explaining to him that he could
6 watch the video but the offer would be withdrawn,
7 what was your client's answer after you presented
8 that to him? Did he wish to watch the video and
9 have the offer withdrawn or did he wish to proceed
10 forward with the offer?

11 A. I don't recall exactly what he said, but
12 obviously he wanted to go forward with the offer
13 because he pled to it. But I can't testify
14 specifically what me and Mr. Rouse talked about; I
15 can't recall.

16 Q. Okay. The discussions about the Applicant's
17 father, do you remember talking to the Applicant
18 about the risk that his father had or the exposure
19 that his father had?

20 A. I reviewed the file. I note that there is a
21 picture of an older guy that I assume is Mr. Rouse's
22 father based on his allegations in his application,
23 but I don't recall specifically talking to Mr. Rouse
24 about that matter. I'm not saying that it didn't
25 happen, but I don't recall it. And I don't recall

1 talking to his father either. Again, not saying it
2 didn't happen, but I do not recall that.

3 Q. You don't recall talking to his father, is that
4 what you just said?

5 A. Not based on my recollection, ma'am, no. I can
6 assure you though, as Mr. Rouse indicated, if the
7 Solicitor's Office indicated to me that in any way I
8 interpreted that his father was in jeopardy, I would
9 have relayed that to him. I don't recall that
10 specific conversation, but I certainly would have
11 informed him if I was made aware by prosecutors.

12 Q. Okay. And when you talked to your client about
13 pleading, did he indicate to you that he wanted to
14 plead -- that it was his decision or was it your
15 decision to plead guilty?

16 A. Mr. Rouse is an intelligent guy, and I
17 represented him many times on various different
18 things. And it was certainly his decision after
19 some time of considering whether to plead or not.

20 Q. You said that you had represented him several
21 times in different pleas. Had you explained the
22 process that he could anticipate in going forward
23 with the plea judge?

24 (Brief interruption.)

25 A. I certainly would have, ma'am.

1 THE WITNESS: I apologize, Judge.

2 THE COURT: That's all right.

3 A. I explain to all my clients their rights, and I
4 have before with Mr. Rouse. And I'm certain,
5 although I don't recall specifically, that we did --
6 we did discuss his rights.

7 Q. Okay. And there's an allegation --

8 THE WITNESS: Judge, may I turn this off?

9 THE COURT: Sure. You need to take a break?

10 THE WITNESS: No, sir. I just want to turn it
11 off so it doesn't interrupt the proceedings again.
12 I thought it was off. I apologize.

13 Go ahead, ma'am.

14 BY MS. VALENZUELA:

15 Q. The allegations are that you incorrectly
16 informed the Applicant regarding what sentence he
17 would receive. Do you remember making -- did you
18 ever make any promises to the Applicant as to what
19 sentence he would receive?

20 A. No. I'm certain that I told him that I'd do
21 the best I could and argue for as little sentence as
22 possible. I believe that's indicated on the
23 transcript. The sentencing sheet, I believe,
24 indicates what he's pleading to, and it was a cap of
25 ten, if I recall correctly, on the sentencing sheet.

1 I'm not sure.

2 Q. But you would have -- you would talk to your
3 client about what the offer is leading into the --

4 A. Absolutely.

5 Q. -- guilty plea?

6 Now, when you review the video, you review the
7 video to make sure it matches up with the facts that
8 are going to be presented by the solicitor during
9 the guilty plea?

10 A. When I watched the video...

11 Q. What are you looking for when you watch the
12 video for your clients?

13 A. What's on the video, what evidence that they
14 have. I mean, I reviewed I couldn't tell you how
15 many CI videos.

16 MS. VALENZUELA: Nothing further.

17 THE COURT: Thank you, ma'am.

18 All right. Any other questions?

19 MS. GOLDBERG: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. GOLDBERG:

22 Q. Judge Siegler, I believe you said, I just want
23 to make sure it's clear, you never had possession of
24 the video yourself; is that right?

25 A. I don't know for certain. I know as you

1 indicated the file that has been provided to me by
2 the public defender, the current public defender,
3 doesn't have it in here. But I'm not going to
4 pretend that I recall whether I had possession of it
5 or not. I do know that I reviewed it and I do know
6 that I talked to Mr. Rouse about it.

7 Q. Were you typically given videos like that from
8 the State?

9 A. It varied, quite frankly, from case to case,
10 ma'am.

11 Q. Okay. And you said that the State's attorney
12 was clear that if the video was shown to Mr. Rouse,
13 all offers would be withdrawn, correct, or there
14 would be no offers?

15 A. Again, that was typical procedure.

16 Q. Do you recall -- well, you believe that you
17 watched the video in this case; right?

18 A. Right.

19 Q. Do you have any independent recollection of
20 this video?

21 A. No, ma'am. Again, it's been, what, three years
22 ago. I'm not going to sit up here and tell you that
23 I recall that video. Again, I had a bunch of cases.

24 Q. Right.

25 A. Don't get me wrong, Mr. Rouse's case was very

1 important to me, as everybody's was. I'm not going
2 to tell you that I recall the contents because I do
3 not. I have looked at the file, I've seen the still
4 shots, we went through those, that's what I have in
5 the file.

6 Q. So just so the record is clear, whether there
7 were drugs or not shown in this particular video,
8 you don't recall?

9 A. I don't remember.

10 Q. And what his father's involvement may have been
11 in the video, you don't --

12 A. No. But, again, I reviewed the file and there
13 is a picture of an older gentleman that I assume is
14 Mr. Rouse's father.

15 Q. Okay. And do you have any --

16 A. I don't remember his involvement, I don't
17 remember --

18 Q. Right.

19 A. -- any details.

20 Q. And do you have any other independent
21 recollection of if the confidential informant can
22 actually be seen or if their identity is seen --

23 A. No, ma'am.

24 Q. -- in this video?

25 A. I don't recall.

1 Q. Okay. Do you remember if Mr. Rouse pled on
2 his -- on a trial date? Was he supposed to go to
3 trial that day or was it just a plea day?

4 A. I don't remember. I don't remember whether he
5 was scheduled for trial or not.

6 Q. Does it appear that you prepared this case for
7 trial anticipating --

8 A. Again, we'd been through -- we went through the
9 discovery, with the exception of the video, of
10 course, numerous times. But we would have been
11 prepared if it would have been called.

12 Q. If it would have been -- it doesn't appear that
13 you were prepared to go to trial necessarily that
14 same day; there weren't workup notes that reflect
15 that?

16 A. No, ma'am. It doesn't appear it was going to
17 be called that day. But, again, I don't remember.

18 Q. Okay. That's fair.

19 MS. GOLDBERG: I think you've answered
20 everything else. Thank you.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: Redirect?

23 MS. VALENZUELA: Your Honor, what I'd ask for
24 is if there's a reason to recall the judge, that we
25 could do that actually when we reopen the case.

1 And, of course, I'll put my reasonings on the record
2 at that point.

3 THE COURT: Yes, ma'am.

4 You may step down. Thank you.

5 THE WITNESS: Thank you, sir.

6 THE COURT: If we continue the hearing at a
7 later point, I'm most likely going to let anybody
8 testify, including the attorney who represented the
9 Applicant at the plea.

10 MS. GOLDBERG: I'm sorry?

11 MS. VALENZUELA: I'm sorry, Your Honor?

12 THE COURT: The attorney who represented the
13 Applicant at the plea and pretty much anybody else
14 who might need to testify if we continue the hearing
15 and offer additional evidence is going to be allowed
16 to testify. As to whether there's any motion about
17 limiting the examination to issues that relate to
18 the video, that'll be something I have to address
19 down the road, if it comes up at all.

20 Again, I stated my confusion because of the
21 mention about the confidential informant in the
22 transcript. It's also been testified, if I recall
23 correctly, that the Applicant was under the
24 impression that the confidential informant was not
25 shown in the video. I don't know if the setting

1 would be sufficient to enable identity. Again,
2 those are all things I'd just be speculating.

3 And I'm not saying that by going through the
4 process of a further inquiry into whether this
5 evidence can be offered or not that I'm suggesting
6 how I might rule. I don't know how I'm going to
7 rule. And, also, I'm fully aware it's in the
8 context of a guilty plea where the standards are
9 different.

10 Anything else today?

11 MS. GOLDBERG: Your Honor, just to clarify for
12 everybody to possibly make things easier, if the
13 attorney general goes back to the Solicitor's Office
14 and law enforcement and they decide that rather than
15 coming to court and testifying that they would
16 rather just go ahead and allow the Applicant to see
17 the video, I'm happy to arrange that without a
18 hearing if we -- you know, we could always come up
19 with a consent order.

20 I'll arrange for Mr. Rouse to see it and we
21 could have all those things addressed without a full
22 hearing, if the State consents. I just wanted
23 everyone to know that that -- that I'm happy to work
24 with that, if that's an option.

25 THE COURT: All right. None of us know where

1 we're going to go exactly from here. We'll just
2 recess this hearing today. It's in recess. And
3 I'll wait to see if we need to reconvene or if
4 that's all the evidence I'll have to decide by.
5 Thank you all very much.

6 MS. GOLDBERG: Thank you, Your Honor.

7 MS. VALENZUELA: Thank you, Your Honor.

8 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Edgefield County, South Carolina, on the 6th of July, 2016.

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

October 25, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

EDGEFIELD COUNTY-
CLERK OF COURT
CHARLES S. REEL

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2014-CP-19196

2016 SEP 26 PM 1:41

WADE ROUSE,
SCDC # 300130)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent,)

MOTION TO AMEND PLEADINGS
TO CONFORM TO EVIDENCE

COMES NOW Applicant, by and through his undersigned attorney, and requests that this Court allow the Applicant to Amend his Application for Post-Conviction Relief pursuant to SCRCP 15.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 20, 2014. Kristy Goldberg, Esquire, was appointed to represent the Applicant by Order July 10, 2014. Counsel for the Applicant thereafter filed an Amended Application on November 26, 2014 and a Second Amended Application on June 17, 2016.

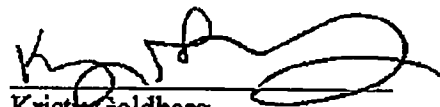
An evidentiary hearing was conducted on July 6, 2016 in front of the Honorable William P. Keesley. During the hearing the Court heard the testimony of the Applicant and trial counsel Greg Seigler. The Court provided the State with the opportunity to present additional witness testimony regarding why the Applicant has not been allowed to view the video footage taken by the confidential informant witness. The State agreed to present this evidence and the Court agreed to hold the record open until that time. This additional hearing has been scheduled for September 29, 2016.

During the hearing trial counsel Greg Seigler testified that he did view the video footage taken by the confidential informant witness prior to the Applicant's plea but he was never given a copy or able to give the Applicant access to the video. Seigler further stated that he was informed by the State that if the Applicant insisted on viewing the video evidence then all plea offersⁱ would be withdrawn.

Applicant did not anticipate that the witness would testify that the plea offer was conditional on the waiver of discovery. Based upon this testimony previously provided to the Court, the Applicant hereby requests leave of court to Amend the Applicant's pleadings to assert that counsel was ineffective for failing to object to the State's offer of a plea agreement which was conditional on forgoing discovery. Counsel has attached a Third Amended Application for Post-Conviction Relief in this matter for the Court's consideration.

Counsel believes that this allegation has merit based upon the plain language of Rule 5 of the South Carolina Rules of Criminal Procedure, the Memorandum offered by the Supreme Court of South Carolina on March 1, 2004, and the Fifth Amendment to the United States Constitution.

I so move,



Kristy Goldberg
1720 Main Street, Suite 303
Columbia, SC 29201
Attorney for Applicant

September 21, 2016
Columbia, SC

ⁱ The testimony provided during the evidentiary hearing showed that the Applicant was originally charged with one count of Distribution of Crack Cocaine 3rd offense, Distribution of Marijuana, Distribution of Hydrocodone, Distribution of Oxycodone, and Burglary 3rd. The plea offer extended by the State was to reduce the Distribution of Crack Cocaine 3rd offense charge to a Distribution of Crack Cocaine 2nd offense charge for a cap of 10 years and dismiss all remaining charges.

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

WADE ROUSE
SCDC # 300130,

Applicant,

vs.

STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
2014-CP-19-196

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

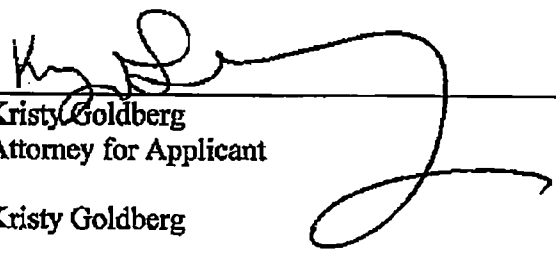
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THIRD AMENDED APPLICATION
FOR POST CONVICTION RELIEF

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- (a) Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges, specifically including but not limited to the alleged video of the drug transaction, and therefore client make an uninformed decision in waiving his right to trial and entered into an involuntary guilty plea.
- (b) Ineffective assistance of trial counsel –Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.
- (c) Ineffective assistance of trial counsel – Counsel failed to sufficiently advise the Applicant regarding the procedure and substantive information that would be presented to the Court during the guilty plea and incorrectly informed Applicant regarding what sentence he would receive.
- (d) Ineffective assistance of trial counsel – Counsel failed to object to the State's offer of a plea agreement which was conditional on forgoing discovery.



Kristy Goldberg
Attorney for Applicant

Kristy Goldberg

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Columbia, South Carolina

This 21st day of September, 2016

1	State of South Carolina	)	In the Court
2	County of Edgefield	)	Of Common Pleas
3	Wade Rouse,	)	Case No.: 2014-CP-19-00196
4	Applicant/Plaintiff,	)	
5	vs.	)	Transcript of Record
6	State of South Carolina,	)	
7	Respondent/Defendant.	)	
8		)	

9

10 September 29, 2016
11 Lexington, South Carolina

12 BEFORE:

13 The Honorable William P. Keesley, Junior, Judge

14

15 APPEARANCES:

16

17 Kristy Goldberg, Esquire
18 Attorney for the Applicant/Plaintiff19 Joanna Valenzuela, Assistant Attorney General
20 Attorney for the Respondent/Defendant

21 ALSO PRESENT:

22 Wade Rouse

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

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1 Thereupon, the following proceedings were had,

2 THE COURT: All right. What do we need to put on
3 the record concerning Mr. Rouse's case?

4 MS. VALENZUELA: Your Honor, this is 2014-CP-19-196.
5 We had Mr. Rouse's PCR hearing on July 7th of 2016. Now
6 Judge Seigler was his attorney when he pled guilty and
7 Mr. Seigler was here as a State's witness. We had
8 testimony from both the applicant and Mr. Seigler. The
9 applicant was represented by Kristy Goldberg at the time.
10 At the end of the hearing there was a request by the
11 applicant which was a renewed request to look at the
12 confidential informant video. There was an order, a
13 discovery order in the case that limited the CI video to
14 only being shown to his PCR counsel and PCR counsel had
15 to come to the AG's Office in order to watch it in our
16 office. PCR counsel had had the ability to view that
17 prior to the PCR hearing but she renewed her client's
18 request to be able to see the video and at that point the
19 Court had some questions for the State about the CI and
20 whether the CI was still working, what the danger was,
21 why the CI video couldn't be shown to Mr. Rouse and so we
22 with the court's permission left the record open in order
23 for us to get witnesses and we have present today both an
24 officer and the Assistant Solicitor in the case to talk
25 about the CI.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 In the meantime PCR counsel filed a motion to amend
2 the PCR application to conform to the testimony that was
3 presented at the hearing and I believe the Court has been
4 provided a copy of that and so those are the issues that
5 we have today. So the State is ready to present our two
6 witnesses on the issue of the CI video.

7 THE COURT: All right. So what's the issue about
8 amendment?

9 MS. GOLDBERG: Your Honor, the motion -- Do you have
10 a copy of that in front of you?

11 THE COURT: No. I don't. Did you e-mail it to me?

12 MS. GOLDBERG: I did not. I filed it though. But
13 if you don't have the packet, that's why you don't have
14 it. Here's the file.

15 THE COURT: I have got the packet but I don't have
16 the file from Edgefield.

17 MS. GOLDBERG: Your Honor, prior to the PCR hearing,
18 there was a second amended application filed back in
19 June. Attached to that motion is a proposed third
20 amended application which is essentially identical just
21 adding one additional ground just based on the testimony
22 that was provided at the first evidentiary hearing.

23 Unexpectedly to the applicant or to myself Greg
24 Seigler testified that -- Let me actually, I want to
25 quote because I don't want to misstate anything. He

1 testified that he could not show the confidential
2 informant video to the defendant because if the video was
3 shown to a defendant, all offers were withdrawn by the
4 State; that that was routinely done by the Solicitor's
5 Office and that was done in this case as well. That's
6 what - that's the basis of adding my additional
7 allegation.

8 THE COURT: What's the State's position on
9 amendment?

10 MS. VALENZUELA: Your Honor, we had agreed to limit
11 the remaining, leaving the record open so that we could
12 focus on the specific issue of the CI video and so I
13 think that this is an untimely amendment but I also and
14 frankly with all due candor to the Court did see
15 subsection (A) which was existing on there as reaching
16 this issue and the issue that counsel has clarified as
17 being one of the things that we are arguing before the
18 Court.

19 MS. GOLDBERG: Your Honor, I don't think it adds
20 that much to the existing claims at the time of the last
21 hearing except a little bit more specificity.

22 THE COURT: All right. Motion to amend is granted.
23 If we need to reconvene for further testimony, I'll let
24 you do that.

25 MS. VALENZUELA: Thank you, Your Honor.

ROOSEVELT YOUNG - DIRECT BY MS. VALENZUELA

6

1 THE COURT: All right. So what about the issue that
2 we left the record open for? Is the applicant ready to
3 proceed on it?

4 MS. GOLDBERG: Yes, Your Honor. I believe that the
5 intent was for the State to present additional witnesses
6 and additional information but we are here and ready to
7 go forward.

8 THE COURT: All right. If y'all are ready to call
9 witnesses.

10 MS. VALENZUELA: The State calls Mr. Young to the
11 stand, Lieutenant Young to the stand.

12 Thereupon,

13 ROOSEVELT YOUNG
14 after having been first duly sworn, testified as follows,

15 MS. VALENZUELA: Your Honor, may I approach with a
16 case?

17 THE COURT: Yes, ma'am.

18 MS. VALENZUELA: And I provided, or actually counsel
19 informed me she already has a copy of this but I'm
20 handing it up, Your Honor, because it conforms to the
21 decision throughout the testimony and then our argument
22 but that case is Hyman versus State 397SC35.

23 DIRECT EXAMINATION

24 BY MS. VALENZUELA:

25 Q. Lieutenant Young, can you give us a little bit of

1 your --

2 THE COURT: State your full name for the record
3 first.

4 BY THE WITNESS:

5 A. Yes, sir. Roosevelt Young.

6 MS. VALENZUELA: Thank you, Your Honor.

7 BY MS. VALENZUELA:

8 Q. Mr. Young, can you give us just a brief history of
9 your history in law enforcement?

10 A. Yes, ma'am. I have been at the Edgefield Sheriff's
11 Office approximately 20 years and 16 of those years has been
12 in narcotics.

13 Q. And then what is your involvement in terms of
14 confidential informants who work for the Sheriff's Office?

15 A. We manage them on a daily basis for any kind of
16 criminal activity or any information they can provide us
17 regarding criminal activity within the county.

18 Q. Are you familiar with the CI who would have worked
19 on Wade Rouse's case?

20 A. Yes, ma'am. I am.

21 Q. Are you familiar with the video in Wade Rouse's
22 case?

23 A. Yes, ma'am.

24 Q. Now, without giving us any identifying
25 characteristics about that CI, is that CI still working in any

ROOSEVELT YOUNG - DIRECT BY MS. VALENZUELA

8

1 way, shape or form for the Sheriff's Office?

2 A. Yes, ma'am.

3 Q. In what way is he still working?

4 A. We get information from that individual on a case by
5 case basis, various information. Some of the open cases that
6 some of the other criminal investigators may have we will
7 sometimes contact that individual and see if that person knows
8 anything about what's going on with that particular case.

9 Q. And tell me a little bit about, have you ever - what
10 are the concerns with - or are there any concerns with
11 revealing the identity of the confidential informant either
12 during or after, let's start with during an investigation? /

13 A. Yes, ma'am. Basically witness tampering during an
14 investigation, fear of retaliation. After the investigation
15 in this instance we really didn't want nobody getting hurt in
16 the streets and don't want to hurt any potential cases that
17 this person can make in the future.

18 Q. Have you had, in your history have you had any
19 situations of witness tampering? Or have you had any
20 situations with a confidential informant's identity being
21 revealed?

22 A. It wasn't revealed through the court but word of
23 mouth in another county and an informant was killed and we
24 still haven't found the body yet. That was in Aiken County.

25 Q. And the idea there was that the informant was killed

1 based on his or her involvement with the prosecution?

2 A. Correct. Yes, ma'am.

3 Q. So do you know the applicant in this case Wade
4 Rouse?

5 A. Yes, ma'am.

6 Q. Are there any concerns that you have based on your
7 knowledge of Mr. Rouse if he should learn the identity of this
8 confidential informant?

9 A. Yes, ma'am. I wouldn't want anyone from Mr. Rouse's
10 family to interfere with any investigation that we may have
11 going on with that informant. Don't want anybody to get hurt
12 out there in the streets involved in this case.

13 Q. Tell us a little bit about Mr. Wade Rouse's family.

14 A. He has quite a large family, friends, associates and
15 stuff still in Edgefield and what they are capable of I have
16 no idea but once again the informant's safety is the utmost
17 concern for law enforcement.

18 Q. Is it fair to say that it's both in securing their
19 safety and also ensuring that informants continue to cooperate
20 with law enforcement because they aren't scared of their
21 safety or identity being revealed?

22 A. Yes, ma'am. And also, ma'am, it would be hard to
23 even work an informant or even find an informant if their name
24 gets revealed all the time in court.

25 MS. VALENZUELA: Please answer any questions that

ROOSEVELT YOUNG - CROSS BY MS. GOLDBERG

10

1 Ms. Goldberg has for you.

2 THE WITNESS: Yes, ma'am.

3 MS. GOLDBERG: May it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. GOLDBERG: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MS. GOLDBERG:

8 Q. Lieutenant Young?

9 A. Yes, ma'am.

10 Q. Good afternoon. All right. Lieutenant Young, you
11 said you were familiar with this incident and the video that
12 resulted?

13 A. Yes, ma'am.

14 Q. You are aware that this occurred in June of 2012?

15 A. I don't know the exact date but I was involved in
16 the case. Yes, ma'am.

17 Q. And do you recall the defendant wasn't arrested
18 until November of 2012?

19 A. Yes, ma'am.

20 Q. And at all times since then he's been in jail?

21 A. Yes, ma'am.

22 Q. You are aware of that. How how did you become
23 acquainted with the confidential informant in this case?

24 A. We made a controlled buy with the informant and we
25 met the informant and interviewed the informant and the

1 informant at that time stated that he wanted to help hisself
2 out with charges.

3 Q. Do you remember approximately what year that was?

4 A. No, ma'am. I don't. Not without looking at the
5 file.

6 Q. Did he have pending charges as a result?

7 A. He did.

8 Q. Do you know what happened with those charges?

9 A. They're still pending.

10 Q. Did this all take place before his buy from Mr.
11 Rouse?

12 A. It did. Yes, ma'am.

13 Q. So these charges have been pending since before
14 2012?

15 A. Yes, ma'am.

16 Q. Has this confidential informant been paid as a
17 result of working with law enforcement --

18 A. No, ma'am.

19 Q. -- in any case?

20 A. No, ma'am. Maybe given some fuel to help get from
21 point A to point B but other than that that's it.

22 Q. What were you - what did - how did the confidential
23 informant become involved in this particular case, do you
24 recall?

25 A. Yes, ma'am. The informant basically told us that he

1 could make a purchase from Mr. Rouse.

2 Q. Did you know anything about the history or
3 relationship between the two?

4 A. No, ma'am.

5 Q. Did you know if this confidential informant had
6 bought from Mr. Rouse in the past?

7 A. No, ma'am.

8 Q. So you were unaware whether they had had any
9 dealings before or not; is that correct?

10 A. That's correct. Yes, ma'am.

11 Q. Explain again why you think disclosure of the video
12 would create danger to the safety of the informant in this
13 particular case?

14 A. I just don't want anybody to get hurt in the
15 streets. I don't want Mr. Rouse to make contact with anybody,
16 family members, associates, et cetera, and the informant get
17 hurt.

18 Q. Mr. Rouse does not have a violent record, is that
19 correct, to your knowledge?

20 A. I don't -- Without looking at his rap sheet, ma'am,
21 I don't know.

22 Q. But you are familiar with him?

23 A. I am. Yes, ma'am.

24 Q. You said the confidential informant has been used in
25 other cases?

1 A. Mm-hmm.

2 Q. Have any of those cases gone to trial?

3 A. No, ma'am. One is still pending and one pled.

4 Q. So he's only been involved in two other cases?

5 A. Yes, ma'am.

6 Q. Did those have anything to do with Mr. Rouse?

7 A. No, ma'am.

8 Q. And there wasn't any specific information you have
9 about Mr. Rouse or his family that would lead you to believe
10 there is any specific danger?

11 A. No, ma'am.

12 MS. GOLDBERG: Nothing further.

13 THE COURT: Anything else of the witness?

14 MS. VALENZUELA: No, Your Honor.

15 THE COURT: Thank you, lieutenant. You may step
16 down. Any other witnesses?

17 MS. VALENZUELA: Yes, sir. Your Honor, we call
18 Mr. Ervin Maye to the stand.

19 Thereupon,

20 ERVIN MAYE

21 after having been first duly sworn, testified as follows,

22 DIRECT EXAMINATION

23 BY MS. VALENZUELA:

24 Q. Mr. Maye, state your full name for the record
25 please.

ERVIN MAYE - DIRECT BY MS. VALENZUELA

14

1 A. My name is Ervin Maye. I work with the Eleventh
2 Circuit Solicitor's Office and have been for during the
3 pendency of this plea and for many years been the managing
4 Assistant Solicitor in Edgefield, McCormick and Saluda
5 Counties. I was involved in this case with Investigator Young
6 and the narcotics unit and also with then public defender Greg
7 Seigler as we took care of this case.

8 Q. Let's talk a little bit about your plea
9 negotiations. What are your plea negotiations? What are - or
10 what kind of rules of the road do you follow when you have a
11 plea negotiation that involves a confidential informant
12 video?

13 A. What I have always done, and I guess I inherited
14 this 24 years ago when I went to work with the Solicitor's
15 Office, in the days before videotape and now subsequent with
16 video tape we always allow the defense lawyer in the case to
17 view the videotape or listen to the audio tape in days gone
18 by. I know Mr. Seigler went back with Investigator Young and
19 was allowed to view the videotape but one thing is we have got
20 to comply with Rule 5. I think that's turning it over to
21 defense in this case and making it available through their
22 counsel. The defense lawyers watch it to determine whether or
23 not the video -- It's all shot from point of view with the
24 body cams that they are using on these videos to see if there
25 is an opportunity to view Mr. Rouse in this case, if you can

1 identify him based on the video and audio to determine if the
2 videotape has sufficient information so that you can ascertain
3 whether or not that transaction took place.

4 We always allow the defense lawyer to come in and
5 look at it. We don't provide them with a copy of the tape
6 unless we're going to trial. We ask that the defense bar if
7 they know anything specifically about the videotape that would
8 allow a defendant to make an identification of who the
9 confidential informant is not to intentionally or purposely do
10 so. With Greg Seigler we usually did so on an accelerated
11 basis, let him look at it farther ahead of time because one of
12 the things that the public defender has to do is make a
13 determination is this confidential informant somebody that I
14 have represented or I represented them on the charge which
15 they're working on and so with Mr. Seigler we always let him
16 look at the videotape on the front end to determine whether or
17 not he might have a potential conflict in representing a
18 defendant.

19 He apparently did not have a conflict with Mr. Rouse
20 because he proceeded to represent him. And we don't turn over
21 copies of the tape and allow the defendant to look at the tape
22 unless they're proceeding to trial in all candor just to
23 protect the identity of the confidential informant, not to
24 needlessly jeopardize them. Because of the video shot point
25 of view and there's audio and video, if there's adequate

ERVIN MAYE - DIRECT BY MS. VALENZUELA

16

1 information to identify the client and listen to what's going
2 on there, that certainly allows a defense counsel to make a
3 determination of the validity of the evidence, the power of
4 the evidence and advise their defendant or whoever they're
5 representing accordingly. They could make an uninformed
6 decision at that point in time and it needlessly jeopardizes
7 the confidential informant.

8 If they want to see that and we get to that point,
9 then where we're at a trial stage then. I mean, we're ready
10 to go to trial and we take all offers off the table. Usually,
11 you know, with judges whenever we've been asked to disclose
12 this, they usually don't have us do so until, you know,
13 basically a week or two before trial at the latest. When we
14 turn that over we're gonna have to go to trial because that
15 minimizes the time period for which there could be jeopardy or
16 witness tampering or something taking place. And I have had
17 that on a routine basis in cases where even within a week's
18 time when we have turned over the identity of confidential
19 informants I have had people threatened. I have had charges.
20 I have prosecuted cases even in this courtroom for people
21 threatening to intimidate witnesses based on the identity of
22 an informant or the identity of a witness being disclosed.
23 It's an ongoing problem and that's the way that we handle it
24 in the manner in which we do.

25 Q. Okay. Just to briefly summarize. If a CI video is

1 involved, you allow the defense attorney to view that video.
2 The timeline of when that defense attorney can see it may vary
3 at different times. But with the public defenders they would
4 be able to see it early enough in their representation to
5 identify if they recognize the person wearing the camera so
6 that if they have a conflict of interest, they can remove
7 themselves from the case?

8 A. Absolutely. And we did so and continue to do so
9 with the public defender to this day. Usually we do an
10 exchange of discovery, give it to the defense usually at the
11 first term of court when their case comes up. We tell them,
12 you know, go back and look at the video. I purposely don't
13 want to know who the confidential informant is. I don't even
14 want to look at the tape for the most part. I asked the
15 investigator, in Edgefield I ask Investigator Young or
16 Investigator Miller, is it a good tape? Can you identify the
17 person? Is it a good view of the confidential informant? And
18 I know in this case they printed a still out of the point of
19 view and provided it to the defense ahead of time so he
20 already had, he had had an opportunity, the defense counsel,
21 to view the videotapes substantially in advance of the plea
22 and he had been provided with a still photograph from that in
23 this case.

24 Q. So you gave him -- So in this case, so not even
25 speaking generally, in this case specifically Seigler, the

1 applicant's attorney, was able to watch that video during the
2 plea negotiations, correct?

3 A. Yes. Provided with a still.

4 Q. And he was also given still photographs. And those
5 still photographs could be shown and were shared with the
6 applicant?

7 A. Absolutely. Like I said, I feel like -- And the one
8 thing that I will ask even though I don't involve myself I try
9 not to go back and look at the tape because I don't want to
10 know who the confidential informant is until the last minute.
11 I do want to make sure and I feel like it's exculpatory if the
12 confidential informant was unavailable or they were deceased.
13 And so I always ask the detectives in this case, you know,
14 when I'm negotiating to negotiate in good faith, is this a
15 person we can get a hold of? Is this somebody we can produce
16 as a witness? Is this not somebody who is Hispanic or
17 somebody that's gone back to Mexico? Is this an available
18 witness? And can you get this person if I need to subpoena
19 them?

20 And I always do that and in this case I was informed
21 that there was but I don't know -- I didn't know at that time
22 who the confidential informant was I don't believe. I
23 sometimes if it becomes relevant if we're prosecuting another
24 case where the confidential informant is represented by, or is
25 involved in multiple cases it might be that I know the

1 identity. In this case I don't have any recollection of who
2 it is now or if I knew then but it is something I routinely
3 try to distance myself from. I just rely on them to tell me
4 whether or not that they think that it is a good videotape
5 showing the transaction clearly and what the nature of it is
6 and then I negotiation accordingly.

7 Q. Okay. And so you would have provided at least the
8 opportunity to watch the video to Mr. Seigler, the still
9 photographs and if there were information which, of course,
10 based on Lieutenant Young's testimony there wasn't that, if
11 the CI had been dead or unavailable or wasn't available at
12 that point you would have provided that information?

13 A. Absolutely. I routinely, and I did that in this
14 case. I know that under Rule 5 it says that we have got to
15 provide anything that we potentially intend to introduce in
16 trial to the defense in this case and I take the position that
17 providing it to defense counsel, actually letting them look at
18 it, letting them view that fully complies with Rule 5.

19 Certainly if we're gonna go forward and try the
20 case, I think we go above and beyond that and allow them to
21 have a copy of it to look at it but we do try to minimize the
22 time frame in between the defendant being able to view it
23 because sometimes from a situational standpoint even though
24 it's a point of view shot with a camera, a confidential
25 informant will know, well, you know, he'll hear the voice of

1 the confidential informant, he'll see the situational aspects
2 that are available and know who it is and be able to make an
3 identification based solely on the tape even though we don't
4 directly show them the face of the confidential informant.

5 They usually know. I mean, it's rare that there is
6 a video that they couldn't pretty accurately ascertain who the
7 confidential informant was. Maybe if it was somebody
8 completely unknown to them but that's rare. And like I say,
9 we have had problems. I have had multiple times over the last
10 24 years where confidential informants were harmed,
11 confidential informants were threatened. I have charged
12 people for threatening and intimidating witnesses and that's
13 certainly the reason that we do it in the manner in which we
14 do to minimize the jeopardy and the potential for obstruction
15 of justice and subsequent charges arising out of a case.

16 Q. I want to go back a little bit to what you were
17 talking about there and what you talked to us about earlier in
18 that if this were to go to trial as you have other cases that
19 have CI videos go to trial or if a judge were to order that
20 you needed to go ahead and turn over the CI video, what
21 happens to your offer, any offer that you would have had at
22 the time?

23 A. We usually proceed to trial at that point in time.
24 If we're gonna have to burn a confidential informant, have
25 them get up and give live testimony, we can't continue to use

1 them. Oftentimes we have had informants make as many 20 or 30
2 buys on separate defendants before we would round people up.
3 Sometimes that occurs over a multi year basis in a county like
4 Edgefield County. We have a confidential informant that is
5 continuing to make cases on an ongoing basis but we know just
6 as soon as they testify in a small community like Edgefield,
7 McCormick, or Saluda, once they testify in one case, nobody is
8 ever going to deal with them again and so we know they're
9 burned and their utility to law enforcement is at an end.

10 And like I said, if we're gonna have to burn the
11 informant and they want to see the video themselves where they
12 can have an opportunity to ascertain the identity of the
13 person prior to trial, we just proceed to trial at that point
14 in time because it ends whatever utility that we have or
15 whatever usefulness the confidential informant has with us.

16 Q. If you had to go to trial with Mr. Rouse had Mr.
17 Rouse had not elected to plead guilty in this case, would he
18 have gotten a copy of this video prior to going to trial?

19 A. Yes. If they had asked for it or wanted it. At
20 that point in time we're gonna certainly show it to them prior
21 to the case going to trial and that varies. Sometimes people
22 push for it and sometimes they don't. At that point in time
23 the defense lawyer has already seen it. He knows whether or
24 not it's a good tape or not. He knows whether or not it's
25 good evidence. And Mr. Seigler certainly was experienced

1 counsel. He had an opportunity to look at that videotape and
2 determine whether or not he thought it would be good and
3 powerful and persuasive evidence and he had an opportunity to
4 advise his client prior to him entering a plea in this case as
5 to whether or not he thought that it was in his interest or
6 not.

7 Ultimately it's the defendant's decision as to
8 whether or not to proceed to trial. But he was certainly
9 informed and knew the situation or at least we informed his
10 counsel and I would certainly assume that his counsel provided
11 him the necessary information for them to make an informed
12 decision as to whether or not that entering a plea was in his
13 interest or not. To let someone come back at the PCR phase
14 and find out who that informant is kind of violates the spirit
15 of everything we are doing on the front end where if they get
16 to come back and find out who it is, they may think they know
17 who it is but to actually turn over the tape where that person
18 can readily and easily identify who the person is kind of
19 defeats and thwarts everything that we're trying to do to have
20 a good faith relationship with confidential informants because
21 we tell them we're not gonna go out of our way to burn you and
22 disclose your identity. You're a confidential informant and
23 we're gonna do everything that we can to protect you, to
24 protect your identity but we always tell them if the case goes
25 to trial, you will have to get up and testify and at that

1 point in time your identity will be known but we're certainly
2 gonna do everything we can to deal with them on a good faith
3 basis

4 Q. You use the term burn. The reason why I want to
5 focus on exactly kind of like where in the timeline we're
6 saying that a CI has been burned. Do you consider a CI to be
7 burned at the time that you release the identity of the CI
8 either in the video or playing it out loud in a way that the
9 applicant can know or the defendant can know about it and
10 share it with the community or they're only burned when they
11 take the stand at a trial?

12 A. As soon as we give the videotape or allow a
13 defendant to view it nine times out of ten they can tell you
14 who did them by watching the videotape even though it's from
15 point of view because they're either gonna recognize their
16 voice or they're gonna see the situation in which the buy took
17 place, the location and they're gonna know. And like I said,
18 it's not unusual in those circumstances for my phone to start
19 ringing because Investigator Young will contact me and say,
20 look, they know who it is at this point in time. This person
21 is getting threatened. We need to move somebody.

22 Sometimes somebody might end up in jail and we'll
23 tell them they need to move them to another facility. They're
24 getting threats in the jail. Both of these people are in jail
25 at the same place. We've got to move this person to Saluda or

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1 we've got to move them to McCormick because this person is
2 getting threatened on an ongoing basis and that has occurred
3 multiple times after we let people look at the videotape just
4 within a week or two prior to trial. It's an active and
5 ongoing problem. It's unfortunate but I guess that's just the
6 nature of narcotics prosecution.

7 Q. And I think you touched on this earlier but just
8 going with the definition of what you talked about with burn
9 there, if a person were to plead and get the benefit of a
10 bargain of the plea offer that you offered in exchange for
11 not, you know, they didn't see the video, you don't have to
12 burn a CI, you reduced charges or offered to make a
13 recommendation or a negotiation and then a year later on PCR
14 they were able to learn the identity of the CI, would your CI
15 still be burned at that stage?

16 A. Absolutely. They would basically could come back at
17 at this stage, find out who exactly what the identity is and
18 confirm the identity of the confidential informant and like I
19 said, I'm in a situation right now where I have a person that
20 has completed working and is out of prison and it's now on an
21 ongoing basis harassment of a confidential informant and I had
22 to go back and do research to find out whether or not I can
23 charge them with threatening or intimidating a witness on a
24 case that's over with and we can. From my reading of the law
25 all we can do is charge somebody with a magistrate court

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1 assault and battery or assault first, second, or third if they
2 were assaulted but one of the first times now I'm faced with
3 it and like I said post release I have an informant that's
4 being actively harassed and we've brought charges in order to
5 try to protect them but after the charge is over with, we're
6 at somewhat, we're somewhat limited.

7 I think on the front end while the charge is pending
8 I charge them with obstruction, attempt to obstruct justice,
9 threatening or intimidating a witness. On the backside of it
10 our options are extremely limited based on, you know, if you
11 threaten somebody, maybe charging them with assault and
12 battery third. That's something that I'm grappling with right
13 now on another case in Saluda. And so I certainly at this
14 stage of the game when someone is closer to getting back out
15 on the street, I certainly don't want to do anything to let
16 them benefit from that on the front end of plea negotiations.

17 We tell them up front, you know, you don't have to
18 plea but there's certainly a discount in what we offer people
19 at the plea stage as opposed to the posture we're at on the
20 eve of trial. We usually tell them all offers are off the
21 table and if that was disclosed and let somebody get the
22 benefit of a bargain and then subsequently come back and
23 nullify that at this stage and certainly that's - we want to
24 protect the identity of the confidential informant. These
25 narcotics officers can't make them - they're almost at a

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1 standstill if they can't work the informants and they don't at
2 least have some belief that we're gonna on a good faith basis
3 do everything we can to protect their identity unless it's
4 absolutely necessary to burn them or disclose their identity
5 either through releasing a tape or having them testify as a
6 live witness.

7 MS. VALENZUELA: Thank you, Mr. Maye. Answer any
8 questions Ms. Goldberg has for you.

9 MS. GOLDBERG: May it please the Court.

10 THE COURT: Yes, ma'am.

11 CROSS EXAMINATION

12 BY MS. GOLDBERG:

13 Q. Good afternoon, Mr. Maye.

14 A. Good afternoon.

15 Q. All right. One thing that you said on direct I want
16 to make sure if I understand. I believe that you said that if
17 you're going to have to burn a CI even if that's by order of
18 the Court, you're going to go to trial at that point. Is that
19 what you said?

20 A. Yes. Basically go forward at that point in time.
21 Like I said, when you're in plea negotiations we're routinely
22 dropping charges and we're doing a variety of things that give
23 the defendant a benefit to the bargain and the negotiation of
24 plea negotiations and at the point in time that we have to
25 disclose the identity of the CI so that they know who they

1 are, it's of detriment to the State and it's certainly a
2 detriment to the CI if we have to disclose that in a fashion
3 where they actually know the identity. Like I said, I feel
4 like we comply with Rule 5 by giving it to the defense and
5 making it available and letting them look at it and we do that
6 in every case.

7 Q. And obviously it's not just the Solicitor's decision
8 whether there's a trial or not, correct? The Solicitor
9 doesn't decide?

10 A. No. No. Ultimately the --

11 Q. The defendant?

12 A. Yes. It's the defendant whether or not he's going
13 to exercise -- I guess we could refuse to negotiate on the
14 front end at all and there are some cases that are so bad we
15 don't do any negotiating. It's just on a case by case
16 basis.

17 Q. So that's just another way of saying that even if
18 someone asserts the rights to view the evidence and the Court
19 orders that they are entitled to view the video, the
20 Solicitor's Office would respond by withdrawing all plea
21 offers. That's what you're saying?

22 A. Not on every case basis. I'll just tell you in as
23 many years as I have done this every case is different.
24 Sometimes they know who a CI is and they'll come to us and
25 tell us I know who did me and so every case is different and

1 if we believe sometimes, I'm not going to make any absolutes
2 because sometimes we are so convinced they know who it is, we
3 know we're not giving up anything. But in some cases we know
4 they might possibly know who it is and we're not going to
5 remove all doubt but we certainly comply with Rule 5 and
6 always let -- I don't know if there's any difference in
7 between letting a defendant's attorney view it. We have
8 turned over -- I think knowledge is imputed to the defendant's
9 counsel's imputed to a defendant and so I have never had any
10 issue where they said we were not complying with Rule 5 and
11 handling it in the manner in which we're handling it.

12 Q. Speaking of Rule 5, do you know if in this case
13 there was a protective or modifying order request made by the
14 State under Rule 5(D)(1)?

15 A. No. I do not. I have no idea. I know that we
16 handle all other cases with the public defender in exactly the
17 same manner and we feed everybody from the same spoon on
18 that.

19 Q. So routinely the Solicitor's Office doesn't make
20 those modifying or restriction requests?

21 A. We turn over what we believe that we have a good
22 faith basis subject to Rule 5 and we turn those items over and
23 we endeavor to comply with the rules of discovery.

24 Q. What circumstances could exist where you would have
25 made this video available for the defendant to review aside

1 from actually going to trial?

2 A. If we believe they already knew who the defendant
3 was and there was nothing to be gained and we were completely
4 done with working somebody, we might not fight about it. You
5 know, I've learned you've got to pick and choose your battles.
6 Sometimes it's a situational basis. You know, I rely very
7 much on the detective in this case. When we were talking
8 about us disclosing this now, I talked with Investigator
9 Young. I sought his guidance as to whether or not he thought
10 that there was potential threat to the confidential informant.
11 I sought any advice that I could obtain from him as to whether
12 or not this person was continuing to work and like I said,
13 it's very much on a situational basis.

14 So sometimes we wouldn't fight it and I know in
15 working with some defense lawyers on a regular basis they're
16 not gonna want to be involved in a situation. It would put a
17 defense lawyer in a very difficult situation if he went back
18 to a defendant and told them enough details to try to help
19 them make an identification of who the confidential informant
20 was and then the confidential informant was subsequently
21 murdered based on that defense counsel providing that
22 information back to his client.

23 It's a slippery slope and I know that it's one that
24 I have heard defense counsel grapple with openly to me. They
25 say, you know, I know I need to do my job as an attorney and I

1 need to review the evidence in this case but I don't want to
2 do anything that's going to jeopardize an outside witness or
3 potentially have my client get in trouble for threatening and
4 intimidating somebody directly or indirectly or through a
5 third party and so I know that that's something that the
6 defense bar grapples with. I know in this case that we have
7 with Investigator Young that was a case that we were involved
8 in, we know the confidential informant was murdered and I
9 certainly wouldn't want to be the defense lawyer that had
10 provided information to somebody on the front end that
11 resulted in somebody being harmed as a result of something I
12 did.

13 Q. Now, I think you've just testified that while
14 Mr. Rouse's case was pending you did check with Lieutenant
15 Young to make sure that the confidential informant was
16 available, still around, still working on cases. That's what
17 you said, correct?

18 A. Yes. I don't know if I actually sought the
19 identity. There are so many of these cases that we have
20 pending I wouldn't remember if I did now but I routinely
21 don't. I just feel like the fewer people that are in the loop
22 and the fewer people that know the identity of an informant,
23 the fewer chances there is for either purposeful or
24 inadvertent disclosure, you know. If a confidential informant
25 was murdered, I always want to be in a situation, or if they

1 were harmed prior to court where the information didn't flow
2 through me and so I found that the easiest way for me to
3 insulate myself from that is to rely on the detectives, to ask
4 them, you know, is the person available? Is the video good
5 video? And I negotiate on that basis. And me because
6 sometimes I will look at the video and listen to a voice and I
7 can tell you who it is even though it's from point of view
8 just based on my long standing experience in those areas.

9 Q. Were you aware that Mr. Rouse was telling his
10 lawyer, was asking to see the video personally? Did you know
11 or do you recall if you knew that he was asking for that?

12 A. I can't tell you. I had to go back -- When I was
13 informed that y'all were seeking the video in this case, I had
14 to go back and refresh my recollection with Investigator Young
15 in this case. But no. I do not know that. But I know that
16 Mr. Seigler from my ongoing relationship with him, you know,
17 if he looked at the videotape, he would come back to me
18 routinely when I had not seen it and go this video is
19 horrible. It's of no evidentiary value. You can't see
20 anything. You can't identify him. And usually those are ones
21 that we can't produce stills on and so I know that given the
22 fact that we had produced stills in this case it was at least,
23 there was a belief that there was enough evidentiary value to
24 produce a still photograph that at least showed the defendant
25 with enough clarity to where he was able to make a decision

1 and advise him, look, this is good evidence in this case. It
2 shows your face. They printed a still out. And they
3 routinely provide those to the defendant and my understanding
4 in this case the still was provided to the defendant himself
5 Mr. Rouse as well as his attorney being able to view it.

6 Q. Understanding that sometimes these cases are handled
7 on a case by case basis and we know the fact or it's been
8 testified to that the confidential informant was still around,
9 available, still working on cases, if Mr. Rouse had pushed the
10 issue and wanted to see the video himself and demanded to see
11 the video himself, what would the consequences have been?

12 A. I can't tell you. It varies. Like I said, it would
13 depend on whether or not it was somebody we really just felt
14 like was in jeopardy, whether or not they were alive or not.
15 Like I said, I have had situations where the confidential
16 informant was dead and that's exculpatory and I've told that
17 when that's happened.

18 Q. Right. But with all due respect, you've already
19 testified that you already checked on that?

20 A. Oh, in this case.

21 Q. In this case?

22 A. Yes. That person was available in this case and was
23 around.

24 Q. Right. So if he had pushed the issue and demanded
25 to see the video, what consequence would you have?

1 A. At the point in time that we would have disclosed
2 that and turned the video over, we would have been done with
3 plea negotiations in the case and we would have been in a
4 trial posture.

5 Q. So in the Solicitor's Office opinion that would have
6 terminated plea negotiations?

7 A. Not necessarily. Not in every case but it could in
8 some cases. And I can only tell you in 24 years of doing this
9 every case is different. I mean, Judge Eppes was somebody
10 that I appeared in front of numerous times and he has said the
11 facts and circumstances of every case dealing with the
12 frailties of human beings, you know, there are no absolutes.

13 So I don't know the answer to that because he didn't
14 choose to do that either through the advice of his counselor
15 or through a voluntary decision that he made, he entered a
16 guilty plea and there are a myriad of factors that go into
17 that not the least of which is the advice of able counsel who
18 had been provided with discovery and that took place in this
19 case. He had an experienced lawyer who had full disclosure,
20 discoverable evidence in this case, had been given an
21 opportunity to view the tape far in excess of the time, or far
22 in advance of the time that he entered the guilty plea and I
23 can only assume from my experience with Mr. Seigler that he
24 advised Mr. Rouse on what he thought was in his best interest.

25 And he received the benefit of that in this case and

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1 we don't want the PCR phase now for him to go back and be able
2 to make a conclusive identification of the confidential
3 informant with what we believe to be needless at this point in
4 time. I don't know how far along he is in serving his
5 sentence but we certainly don't want to jeopardize that
6 confidential informant at this stage and let him receive the
7 benefit of the reduced offer on a plea and then come back on
8 the back side and still be able to find out who the
9 confidential informant is concretely which we believe that
10 turning over the video in this case would allow him to do.

11 Q. Do you have any specific information as to why this
12 particular confidential informant might have a safety issue
13 related to this particular defendant Mr. Rouse other than the
14 generalities that you and Lieutenant Young have already
15 discussed?

16 A. I rely on what Investigator Young tells me. I find
17 him to be a believable and reliable person. I asked him if
18 this was a situation that he thought that the confidential
19 informant could potentially be in jeopardy based on the family
20 connections of this defendant and this defendant himself and I
21 value his opinion and I am in opposition to turning it over
22 based on my own judgment and also on my reliance on what I
23 believe to be his able and capable judgment because he's on
24 the street. He knows these people far better than I do and I
25 have found him to be an exceedingly good judge of those

1 circumstances in which it was worth digging our heels in and
2 having a scorched earth battle over whether we were going to
3 turn over the video or not. I relied on his judgment
4 countless times and continue to do so.

5 Q. So this Court could just rely on his testimony
6 because there's nothing else you have to add in that
7 particular regard?

8 A. No. Other than the fact based on my experience as a
9 prosecutor in those cases when we've had to disclose it, I
10 have had repeated and ongoing problems and I continue to
11 battle that to this day. I've got one right now that's
12 extremely heart wrenching. They know who the confidential
13 informant was and an unusual circumstance, the circumstance
14 that resulted in disclosure late in the game and this person
15 is being tormented and we've got limited tools to protect them
16 and I think it's a real deficit in our law or the way the law
17 is written that while the case is pending there is one
18 standard of what we could do to protect the confidential
19 informant as opposed to afterwards. I'm looking at it and
20 there's very little we can do. Might could charge somebody
21 with simple assault and battery or A and B second but that
22 doesn't have anywhere near the teeth of charging somebody with
23 obstruction of justice, attempt to obstruct justice or
24 threatening or intimidating a witness which are tools that
25 available on the front end. We are now at a situation where

1 this confidential informant would even be more vulnerable now
2 as opposed to where we would have been in the posture prior to
3 us entering, or him entering a plea in this case.

4 Q. You have testified that you don't recall if you
5 watched this video or not?

6 A. I don't. I don't. I usually -- I don't want to
7 watch it unless we're gonna try it. If we're gonna try it,
8 obviously I sit down and I review all the evidence and I look
9 at the tape but like I said, the fewer people that are in the
10 loop on who a confidential informant is, the safer that a
11 confidential informant remains because even the best
12 intentioned people can sometimes speak without -- We just got
13 to be exceedingly careful when we're talking about anybody
14 being an informant when we talk about their name whether I
15 write it down on a piece of paper and inadvertently leave it
16 in the file or anything else, there are all sorts of ways an
17 inadvertent disclosure can take place and the fewer people
18 that are in the loop on that to my belief the safer an
19 informant is.

20 Q. Do you recall at any time suggesting to anyone that
21 Mr. Rouse's father could be criminally charged based on the
22 contents of the video?

23 A. I've never heard that before I came in this
24 courtroom today.

25 Q. Do you remember anybody saying that?

1 A. No. I don't believe that to be the case. Certainly
2 that would have been something that would have triggered some
3 recollection on my part. I have never heard that mentioned
4 prior to coming up here. I saw some paperwork that indicated
5 something about his father. I consulted with the detective in
6 this case. I've never heard that before this day.

7 MS. GOLDBERG: No further questions.

8 MS. VALENZUELA: Your Honor, one redirect
9 question.

10 THE COURT: Yes, ma'am.

11 REDIRECT EXAMINATION

12 BY MS. VALENZUELA:

13 Q. Now, the applicant today is alleging that his
14 counsel was ineffective for not pushing to show this video to
15 him and so if Seigler had pushed you to be able to show that
16 CI video to his client before he pled, what would you have
17 done in terms of the plea offer that was on the table?

18 A. It vary well could have jeopardized any plea offer.
19 I'm not saying that's an absolute but if we have to burn a
20 confidential informant and put that person in jeopardy,
21 terminating any future value they have to the State, that's of
22 detriment to the State. Getting a plea offer is certainly a
23 benefit to a defendant and I believe it's infinitely fair once
24 they have got the advice of able counsel who have been
25 provided that very same information.

1 MS. VALENZUELA: Thank you.

2 MS. GOLDBERG: Nothing further.

3 THE COURT: Thank you, sir. You may step down. Any
4 other evidence to be presented by the State or the
5 applicant?

6 MS. VALENZUELA: No, Your Honor. Just brief
7 argument on the case that I handed up.

8 MS. GOLDBERG: Same here, Your Honor.

9 THE COURT: You ready to argue?

10 MS. VALENZUELA: Yes, Your Honor.

11 THE COURT: Go ahead, please.

12 MS. VALENZUELA: So looking at State v. Hyman, I
13 know I turned that up earlier and opposing counsel said
14 that she is already familiar with the case. That case is
15 very similar to the case, to the facts that you have
16 before you here. I do want to point out a couple of
17 things. In the motion to amend opposing counsel
18 submitted to the Court she attached, and I don't know if
19 it was a memorandum or an order, from then Chief Justice
20 Toal that dated back to 2004 or 2006 with some sort of
21 suggestion that it was unethical for Solicitors to
22 condition plea offers on withholding discovery and so
23 just for the context for the Court I would point out that
24 this decision came out in 2012; that the lead author of
25 the decision was Chief Justice Toal; that the panel that

1 decided this case all decided, all concurred with Chief
2 Justice Toal and that panel is exactly the same panel as
3 makes up our current Supreme Court with the exception of
4 Chief Justice Toal being gone and now Few being added to
5 the court. And I think that adds a little context as to
6 what that earlier memorandum would have meant.

7 This case involved an offer that was conditioned on
8 the defendant not seeing the video due to the
9 confidential informant. Defense counsel in Hyman also
10 was able to watch the video just like in this case.
11 Seigler had earlier testified that he was able to watch
12 the video. He was able to observe that there was a drug
13 transaction that happened before he advised his client to
14 plead in that case and that was the same as the facts
15 that were present in Hyman.

16 Additionally the defendant questioned and said that
17 he wanted to be able to - he had some questions about
18 whether he was the actual person on the video because he
19 said that he never wore hats. This is the Hyman
20 defendant. That's what he told his counsel. So counsel
21 then went back to the State and said I'm having issues
22 assuring him that he was the person on the video and so
23 they gave him still photographs at that point and that's
24 present in this case as well in fact without even Seigler
25 having to push for those. The State offered still

1 photographs in this case that showed the applicant and in
2 those cases - those photographs are referenced in the
3 transcript which is before the Court because those were
4 presented during the plea. So not only did the applicant
5 see it but the presiding judge I believe also saw it.

6 Additionally, Your Honor, just like you've raised
7 concerns about this issue, the PCR judge in Hyman also
8 raised concerns but he still denied the PCR and of course
9 his decision was upheld by the full Supreme Court.

10 The Court in Hyman looked at this from the Brady
11 perspective and said that this is not a Brady violation.
12 The Solicitor gave the video to defense. Disclosure to
13 the defense attorney is enough and furthermore there's no
14 materiality proven because there's no prejudice in a case
15 where the applicant is seen on the video doing a drug
16 transaction. Those facts are exactly the same here as
17 they were in Hyman.

18 Additionally the Court looked at whether this was a
19 Rule 5 violation and they said no because you disclosed
20 the existence of the CI in the video. You made it
21 available. You provided still photographs and if you
22 look at the language used in Hyman the court says they
23 went above and beyond. They use language that suggests
24 that it was above and beyond to provide still
25 photographs.

1 And then additionally they would not have withheld
2 it if they had proceeded forward to trial and you heard
3 testimony today that if they had proceeded forward to
4 trial, that would have, of course, been turned over at
5 that time.

6 Now, the Court looks at - instructs the court at
7 pincite 47 that you have to weigh the interests of the
8 access of evidence against the interests of protecting
9 the identity and the safety of the informant. And so in
10 this case you have heard testimony both that the CI is
11 still working and so that there are concerns that it
12 could affect the work that he is doing for the State but
13 that additionally specifically this applicant has family
14 and friends, a big connection to the community which is a
15 very small community where people know each other and
16 that if the CI were revealed to him, he could let his
17 family and friends know and that would not only affect
18 the work that the State is doing, it could actually put
19 the safety of the CI at risk.

20 Additionally, you have heard Mr. Maye testify about
21 how the State is limited in terms of what they can do to
22 protect CI's. Before a case goes forward they can go
23 forward with an obstruction charge. In the posture that
24 we are presently before the Court which is after the
25 conviction has happened Mr. Maye feels that his hands and

1 the State's hands are more tied with what you can do to a
2 person who threatens or hurts a CI. But, of course, the
3 harm to the State and to that CI still remains just as
4 large as it was before but now we don't have any tools to
5 dissuade people as to why they shouldn't do that not only
6 with criminal actions but additionally with the fact that
7 there's no longer a plea offer because he's already
8 gotten the plea negotiations that he wanted to at the
9 time.

10 It touches a little bit, that case touches a little
11 bit about what situations we are talking to in terms of
12 when you have to release information and it references
13 the Humphries case that says only where identity is
14 relevant and helpful to defense or essential for a fair
15 determination of the State's case. There is nothing that
16 was presented either at this hearing or at the last
17 hearing to suggest that they didn't have enough.

18 Mr. Seigler was able to watch that video. That
19 video is here if the Court needed to see it. It shows
20 the applicant. It shows distinctive tattoos on the
21 applicant's body. It shows the applicant talking and
22 interacting with the CI at various times and it shows the
23 drug transactions and has a full audio for you to see.

24 And then additionally no obstruction for you to be
25 able to see that yes, in fact, it was the applicant

1 participating in yet another drug deal that led to yet
2 another drug conviction.

3 And then finally I would just point out that the
4 court in Hyman at pincite 48 said that the State in that
5 case with facts exactly identical to the facts before ,
6 this case struck the appropriate balance by allowing the
7 defense counsel to view the tape and providing the
8 defendant stills during negotiations.

9 And then it further went on to look at prejudice as
10 a prejudice prong because again Hyman is a PCR case just
11 like this is a PCR case and so the pincite 49 that the
12 Court needs to look at is would the outcome have been
13 different had the defendant chosen not to plead until
14 after he himself had watched the video. And in this case
15 it would have been different. If he had watched the
16 video, he would not have benefited from the bargain and
17 that plea offer. He would have gone to trial and
18 certainly gotten a much worse sentence than what he got
19 by being able to get the benefit of the bargain, Your
20 Honor. So for all the reasons that Hyman has laid out
21 and addressed, this case and the testimony that is very
22 specific to this applicant we would ask you to deny this
23 application.

24 THE COURT: Okay. Ms. Goldberg.

25 MS. GOLDBERG: Thank you, Your Honor. May it please

1 the Court. I think the Attorney General is right. This
2 is the case that I found that's the most closest and on
3 point. There's a couple of distinctions that I want to
4 make that I think are important while they appear to be
5 details in the case I think they're important. One is
6 that in Hyman the lawyer, trial counsel testified
7 specifically that her client at all times wanted her to
8 see the video and tell him what was on it. That was very
9 specific. I think at the PCR level the applicant said
10 otherwise but the Court specifically made a credibility
11 determination that they believe that in trial counsel's
12 regards. So I think that somewhat of the applicant's
13 argument in Hyman may have been presented in a much
14 weaker case than what we have here.

15 Also, the way the plea offer was presented in Hyman,
16 the defendant was told that you are, we are giving you
17 this plea offer if you waive your right to see the video.
18 That would have to be an intelligently made decision. He
19 ultimately didn't take that plea and ended up pleading
20 straight up later so it's kind of not relevant but I
21 think that both of those things are distinctive from the
22 case we have at hand.

23 The arguments from the applicant here are really
24 about the intelligent voluntary nature of the plea. The
25 way that Mr. Seigler testified was that if the video had

1 been shown to the defendant, all offers were to be
2 withdrawn. It was not do you wish to take this offer and
3 waive your rights? It was if you ask for it, if you make
4 me push this, all offers would be withdrawn. The
5 applicant would argue this is a much more coercive
6 nature. I don't believe that the testimony today really
7 altered that in any large extent.

8 Mr. Rouse also argues that his plea was
9 unintelligently made because obviously he wasn't allowed
10 to inspect the video. We are not arguing that he should
11 have been entitled to the identity of the confidential
12 informant. What Mr. Rouse's argument has always been is
13 what does the video show? Does it show a drug
14 transaction at all? When he testified at the previous
15 hearing he had some doubts about what could be seen on
16 the video and what could not. So this is not just an
17 identity issue. He wanted to see the video itself.

18 Hyman is couched a large part of that case as a
19 Brady violation case. That is difficult if not
20 impossible for us to argue and this is the whole reason
21 we came back today. It still is because the defendant
22 has still to this day not seen the video so he cannot say
23 what - we can't argue it's exculpatory. We can't argue
24 whether it would if shown change anything. He can only
25 assert that his plea was coerced and unintelligently

1 made.

2 To the extent of the Rule 5 violation, that's
3 touched on in Hyman. Hyman said that it was not a Rule 5
4 violation to just let counsel see it. I don't know if
5 this argument just wasn't made in that case but frankly I
6 believe that all Solicitor's Offices that I'm aware of
7 are doing this incorrectly. Rule 5 clearly says the
8 defendant should have access to inspect material evidence
9 against them. There's a provision where if the State
10 doesn't want to do that and that's under the subsection
11 (D) (1) that says upon a sufficient showing the Court may
12 at any time order the discovery or inspection be denied,
13 restricted or deferred or make any such order that's
14 appropriate.

15 The default here should always be that they are
16 entitled to inspect all material evidence against them.
17 It's only when the State doesn't want to give them that
18 that the State should have the burden to go to the court
19 and ask that it be restricted. It shouldn't be on
20 defense to do that. Seigler allowed the State to just
21 prevent, to not give the defendant access for that. He
22 did not push the issue. He didn't file a motion. I
23 don't think he should have had to. I think the State did
24 it wrong but since the State didn't file that motion
25 Seigler did not do anything proactive to access the

1 video, and his advice as he testified himself to Mr.
2 Rouse was if you need to see the video, all plea offers
3 are withdrawn. I believe that's coercive. Thank you,
4 Your Honor.

5 THE COURT: Anything else from the State?

6 MS. VALENZUELA: No, Your Honor.

7 THE COURT: Do either of the attorneys feel we need
8 to hold the record open any further in light of the
9 amendment?

10 MS. VALENZUELA: No, Your Honor.

11 MS. GOLDBERG: No, Your Honor.

12 THE COURT: Do you need your copy back, Ms.
13 Goldberg?

14 MS. GOLDBERG: Thank you, Your Honor.

15 THE COURT: (Proffering.)

16 MS. GOLDBERG: Your Honor, can I add one more thing
17 for clarity?

18 THE COURT: Sure.

19 MS. GOLDBERG: I just don't want it to have gotten
20 lost in something that was said earlier. Mr. Rouse is
21 asking for his convictions to be overturned. This isn't
22 a discovery motion asking to view the video. Our
23 argument is that his plea was involuntarily made and his
24 conviction should be overturned through the discovery
25 process. If his case is remanded to the trial court, I

1 think the video issue would then be resolved. I just
2 want to make that distinction that that's what he's
3 asking for.

4 THE COURT: Yes, ma'am. All right. I did a
5 memorandum order dealing with the motion made about
6 amendment of the application. Obviously it's an
7 Edgefield case, so I will take this original page to
8 Edgefield to be filed but I have given you a copy. It's
9 not clocked in obviously. Thank you very much for your
10 assistance. I'll notify you of the decision in writing.
11 Is that it for the day?

12 MS. VALENZUELA: Thank you, Your Honor. Yes, sir.
13 That's it.

14 WHEREUPON, THE HEARING WAS CONCLUDED.
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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 29th day of September, 2016.

11 I FURTHER CERTIFY that the forgoing 48 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 2nd day of June, 2018.

17
18 
19 Steven E. LeBlanc, Sr., R.P.R.
20 Eleventh Circuit Court Reporter
21 State of South Carolina.
22
23
24
25

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

157

COUNTY OF EDGEFIELD

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L REEL

Case No. 2014-CP-19-00196

Wade Rouse, #300130,

Applicant / Petitioner

2016 OCT -5 PM 12:25

MEMORANDUM ORDER

vs.

State of South Carolina,

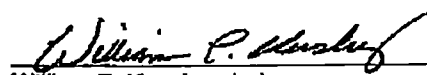
Respondent.

Following a hearing, the court makes the following ruling(s) as indicated below.

The applicant's motion to amend pleadings to conform to the evidence is granted, and the applicant is allowed to proceed with his third amended application, previously filed and served. This motion was filed after the record was left open from a hearing in July 2016. The court reconvened today to complete the record. If the record needs to be supplemented further, in light of the amendment, the attorneys will be allowed to request a further hearing to address the amendment.

IT IS SO ORDERED.

Date: September 29, 2016


William P. Keesley, Judge

Court Reporter: Steven LeBlanc

Attorney for Applicant: Kristy Goldberg, Esq.

Attorney for State: Sr. Asst. Dep. Atty. Gen.

Johanna Valenzuela

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

Wade Rouse,
S.C.D.C. No. 300130

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

)

) ELEVENTH JUDICIAL CIRCUIT

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) C.A. No. 2014-CP-19-0196

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ORDER OF DISMISSAL

2018 SEP 10 AM 9:32

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

This Edgefield County matter comes before this Court by way of a *pro se* application for post-conviction relief filed June 20, 2014, by Wade Rouse (Applicant). Applicant was assigned PCR counsel, attorney Kristy Goldberg, Esquire, who filed an Amended PCR Application alleging two grounds of ineffective assistance of counsel. Respondent made its Return on May 5, 2015, requesting an evidentiary hearing be held.

WAC #1
Prior to hearing, Ms. Goldberg filed a Second Amended PCR Application on June 14, 2016. By consent of the parties, this Court convened a PCR evidentiary hearing in this matter at the Lexington County Courthouse on July 6, 2016. Applicant was present at the hearing and represented by Ms. Goldberg. Respondent was represented by Assistant Attorney General Johanna Valenzuela. Applicant testified on his own behalf. Plea counsel W. Greg Siegler, Esquire (now the Honorable Judge W. Greg Siegler, hereinafter referred to as "plea counsel") was called to testify by Respondent. Following the conclusion of testimony, this Court left the record open and continued the matter in order to allow the State to produce testimony from the Edgefield County Solicitor's officer concerning discovery production. The hearing was reconvened on September 29, 2016, wherein Lieutenant Roosevelt Young and Managing Assistant Solicitor Ervin Maye testified. This Court also granted Applicant's Motion to Amend

his pleadings to conform to the evidence presented. Therein, this matter proceeded on the basis of Applicant's Third Amended Application for Post-Conviction Relief.

This Court had before it Applicant's appellate records, Edgefield County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the Edgefield County Clerk of Court records for this current proceeding. After reviewing the record in its entirety, along with the testimony and evidence presented at the evidentiary hearings, this Court finds Applicant has failed to establish any constitutional deprivations or other grounds entitling him to relief and hereby denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

WPH
#2

The records before this Court establish that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. The Applicant was indicted at the January 2013 term of the Edgefield County Grand Jury for distribution of crack cocaine; third offense (2013-GS-19-0142). Applicant was also charged with Distribution of Schedule III Drug (2013-GS-19-144 – *nol prossed*), Distribution of Marijuana (2013-GS-19-141 – dismissed), Distribution of a *Schedule II Drug* (2013-GS-19-143 – *nol prossed*), and *Burglary 3rd degree* (2013-GS-19-145 – *nol prossed*). However, as part of his guilty plea agreement from the State, these additional charges were not prosecuted and Applicant was permitted to plead guilty to *distribution, of crack cocaine, second offense*, with the recommendation of a ten year sentencing cap. Applicant was represented by W. Greg Seigler, Esquire. On August 13, 2013, the Honorable Thomas A. Russo accepted Applicant's plea and sentenced Applicant to ten (10) years imprisonment. The sentence was set to run concurrently with Applicant's probation revocation.

A timely notice of appeal was filed on the Applicant's behalf. In an order filed October 30, 2013, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). The Remittitur was returned on November 15, 2013.

Petitioner filed his *pro se* PCR Application on June 20, 2014, alleging ineffective assistance of counsel, coercion, fraud upon the Court, perjury, and entrapment. Following the appointment of PCR Counsel, Ms. Goldberg filed an Amended PCR Application on November 25, 2014. Applicant, by and through counsel, then moved for an Order to produce discovery in this matter, specifically, the confidential informant video. This Motion was granted and later amended to permit PCR counsel to view the video, but not permit Applicant himself to view the video or be told of identifiable information about the informant. Respondent submitted its Return May 15, 2015. Applicant subsequently submitted a Second Amended Application for Post Conviction Relief on June 14, 2016. This Second Amended Application asserted three grounds of ineffective assistance of counsel:

- a) Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges, specifically including but not limited to the alleged video of the drug transaction, and therefore client made and uninformed decision in waiving his right to trial.
- b) Ineffective assistance of trial counsel – Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.
- c) Ineffective assistance of trial counsel – Counsel failed to sufficiently advise the Applicant regarding the procedure and substantive information that would be presented to the Court during the guilty plea and incorrectly informed Applicant regarding what sentence he would receive.

A PCR evidentiary hearing was convened on July 6, 2016, and the parties proceeded on the basis of these three claims. Applicant and plea counsel testified before the court. This Court ordered

that the matter be continued and reconvened at a later date to permit testimony from the Solicitor's office on matters concerning discovery production prior to Applicant's guilty plea.

The PCR hearing was reconvened on September 29, 2016. As an initial matter, Applicant moved to amend his pleadings to conform to the evidence presented. This Court granted the motion and this matter proceeded on the basis of Applicants' Third Amended Application for Post Conviction. This Third Amended Application asserts four grounds for relief:

1. Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges, specifically including but not limited to the alleged video of the drug transaction, and therefore client made an uninformed decision in waiving his right to trial and entered into an involuntary guilty plea.
2. Ineffective assistance of trial counsel – Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.
3. Ineffective assistance of trial counsel – Counsel failed to sufficiently advise the Applicant regarding the procedure and substantive information that would be presented to the Court during the guilty plea and incorrectly informed Applicant regarding what sentence he would receive.
4. Ineffective assistance of trial counsel – Counsel failed to object to the State's offer of a plea agreement which was conditional on forgoing discovery.

WAL
#4

Testimony resumed and Respondent called Lieutenant Roosevelt Young and Managing Assistant Solicitor Ervin Maye to testify. At the conclusion of testimony and arguments from counsel, this matter was taken under advisement. This Order of Dismissal follows.

SUMMARY OF FACTS ADDUCED AT HEARING

The witnesses presented at the evidentiary hearing testified extensively, the facts adduced from their respective testimonies are summarized as follows:

Applicant Wade Rouse

Applicant testified that he was arrested in connection to a criminal domestic violence charge that was ultimately dismissed, but that the distribution of crack cocaine charge accompanied his arrest. (June 6, Tr., p. 5). Applicant made no mention of the four other charges

that were ultimately *not prossed* or dismissed as a result of his negotiated guilty plea. He confirmed that he was appointed an attorney, and that plea counsel met with him at the jail to review discovery for his charges. (June 6, Tr., p. 6). Applicant stated that he reviewed some photographs with plea counsel, but that he specifically requested an opportunity to view the State's video evidence supporting his distribution charge. (June 6, Tr. p. 6). Applicant testified that he was informed he could not view the video due to the State's desire to protect the identity of the confidential informant used to obtain the video evidence. (June 6, Tr., p. 7). He testified that plea counsel informed him that the only way in which he'd be permitted to view the video was if he chose to proceed to trial. (June 6, Tr., p. 8). However Applicant also claimed that plea counsel informed him that after his plea he would be permitted to look at a copy of the video that would be kept in his attorney's client file. (June 6, Tr., p. 8).

WPH
#5
Applicant has never seen the confidential informant video, but he did confirm that he was given two photographs taken as still shots from the video. (June 6, Tr., p. 9). He asserted that one photograph depicted him with a plastic bag in his mouth, and the other depicted his father sitting. (June 6, Tr., p. 8). He testified that plea counsel advised him that while crack cocaine was not identified in the video, marijuana was visible and that a jury would likely convict him of the charge regardless. (June 6, Tr., p. 30-31).

Applicant conceded that plea counsel had viewed the video prior to his plea, and had reviewed with Applicant what he had seen in the video. (June 6, Tr., p. 24). Despite having viewed the photographic evidence and the fact that plea counsel had reviewed the contents of the video with him prior to accepting his plea deal, Applicant testified that he believed he had a right to view the video himself before deciding whether to plead guilty. (June 6, Tr., p. 9). Ms. Goldberg asked Applicant during direct examination how watching the video would have

affected his decision regarding whether to plead guilty. Applicant responded that "Without me seeing it, I mean, I don't - I can't - I can't give you a direct answer as to what the outcome would have been." (June 6, Tr., p. 9-10). Applicant claims that he initially desired to go to trial on his charges, but that "they started telling me that my family members would be arrested, that my father would be arrested if I went through with the trial proceeding. He'd be arrested for conspiracy to crack cocaine, distribution. . ." (June 6, Tr., p. 10). Applicant stated that this message came from Solicitor Frank Young, and was relayed to him by plea counsel. (June 6, Tr., p. 10). Applicant testified that he called his father from the county jail, and that his father informed him that plea counsel had visited and assured him that the solicitor was just blowing hot air and that it was not a serious matter. (June 6, Tr., p. 11). Applicant testified that he never had that conversation directly with plea counsel, or else he would not have chosen to plead guilty. (June 6, Tr., p. 11).

WPC #6
Applicant testified that he believed the plea offer from the State was a "five to ten cap. It was no recommendation about the ten years, it was only a five to ten. It was a chance I could get five, a chance I could get ten, in which I was told - I was advised that most likely I would not get ten years." (June 6, Tr., p. 13). He claimed that plea counsel informed him that they were in a "good situation," in front of Judge Russo, and that "he didn't see me getting ten years and it was highly unlikely that I would get ten years." (June 6, Tr., p. 13).

Applicant testified that the Solicitor displayed some still photographs to the judge and informed the judge that they displayed Applicant with crack cocaine in his mouth. Applicant claimed that plea counsel informed him beforehand that there was no visual conformation of crack cocaine in the video. However, Applicant admitted at PCR hearing that he confirmed the accuracy of the facts asserted by the Solicitor at his plea, including the photographs provided to

the court. (June 6, Tr., p. 21-22). Applicant then argued that he only agreed because counsel told to "go along" with what was said and admit guilt to the crime. (June 6, Tr., p. 21).

Applicant complained that the State brought up his criminal record, including a "charge on my record of threatening a public official" that occurred while he was still seventeen. (June 6, Tr., p. 14). As a result, Applicant believed he was not sufficiently prepared for his guilty plea hearing. (June 6, Tr., p. 15). Applicant testified that he believed his guilty plea was involuntarily made due to his denied right to view the State's video evidence. (June 6, Tr., p. 15). In relief, Applicant requested that his conviction be overturned and that he be allowed to view the video before deciding whether or not to plead guilty. (June 6, Tr., p. 16). He also requested that this Court watch and consider the video in consideration of his PCR claims. (June 6, Tr., p. 16).

On cross-examination, Applicant testified that he did not remember the State recommending a ten year cap at the beginning of his plea hearing. (June 6, Tr., p. 17; See Plea Tr., p. 3). He also did not recall Judge Russo advising him that his charge could carry between five and thirty years. (June 6, Tr., p. 17-18; Plea Tr., p. 5). He confirmed that he informed Judge Russo that he had not been induced to plead guilty by threat or promise, and was doing so freely and voluntarily. (June 6, Tr., p. 18). Applicant conceded that he informed Judge Russo that he was satisfied and "very thankful" for plea counsel. (June 6, Tr., p. 18-19). Applicant also acknowledged that he waived his various constitutional rights in order to plead guilty. (June 6, Tr., p. 19).

Plea Counsel W. Greg Siegler

Plea counsel confirmed that he viewed the video and discussed its contents with Applicant prior to his plea. (June 6, Tr., p. 44). Plea counsel explained that he had received all of the State's discovery, other than the video, and had reviewed the discovery several times with

Applicant. (June 6, Tr., p. 45; 52). Plea counsel explained that the State would not allow him to show the video to Applicant during plea negotiations. Plea counsel noted that Applicant would only be permitted to see the video if he chose to go to trial, in which case all plea offers would be withdrawn. (June 6, Tr., p. 45). According to plea counsel, this was the typical policy for the tri-county area. (June 6, Tr. p. 45; 50). Plea counsel could not recall the specifics of the video in question, having watched so many CI videos in his career, but agreed that in watching the video he would have analyzed the content of the video and the strength of evidence that the State has to convict. (June 6, Tr., p. 49-50).

W/Pl #8
Plea counsel testified that though he cannot recall the specific discussion, he is confident that he explained the State's position regarding the video to Applicant and that Applicant chose to proceed with the plea offer. (June 6, Tr., p. 46). Plea counsel acknowledged that one of the photographs had an older gentlemen in it, whom he presumed was Applicant's father, but does not specifically recall speaking to Applicant's father about the matter of a potential charge. (June 6, Tr., p. 46-47). He also stated that he had no recollection of the Solicitor threatening to bring charges against Applicant's father, but confirmed that if such matter was made known to him, he would certainly have relayed the issue to his client. (June 6, Tr., p. 47).

Plea counsel was confident that he made no guarantee of a certain sentence to Applicant and only stated that he would do his best to argue for as little a sentence as possible. (June 8, Tr., p. 48). He also confirms that Applicant understood that it was his decision whether or not to accept the plea offer, and that his rights the guilty plea process would ^{HAVE} ~~had~~ ^{W/Pl} been thoroughly reviewed. (June 6, Tr., p. 47-48). He could not recall when trial was set for Applicant's case, but was confident that he would have been prepared at the time the trial arrived. (June 6, Tr., p. 52). Plea counsel was unable to recall any other specifics regarding Applicant's case.

Lieutenant Roosevelt Young

Lieutenant Roosevelt Young (herein after Lieutenant Young) testified that he works in the Narcotics division of the Edgefield Sheriff's Office, and has done so for the past sixteen years. (Sept. 29, Tr., p. 7). He testified that with any confidential informant there are dangers in revealing their identity. The main two concerns being witness tampering and fear of retaliation against the informant. (Sept. 29, Tr., p. 8). Lieutenant Young testified that the identity of confidential informants is purposefully not disclosed in order to prevent any harm coming to informant and to prevent jeopardizing their ability to assist police in other cases in the future. (Sept. 29, Tr., p. 8). By way of example, Lieutenant Young testified that on one occasion the identity of a confidential informant in Aiken County was discovered and spread by word of mouth in the community, and as a result that informant had been murdered and his remains had yet to be recovered. (Sept. 29, Tr., p. 8). He testified that the safety and anonymity of informants is essential and that it would be difficult to work with or even find a willing confidential informant if their identities were consistently revealed in court. (Sept. 29, Tr., p. 9).

Lieutenant Young confirmed that he was familiar with both the confidential informant used in Applicant's case and the video in question. (Sept. 29, Tr., p. 7). Specific to Applicant, Lieutenant Young testified that Applicant had a very large group of family, friends, and associates, and as a result there was concern in his mind that someone might attempt to harm or interfere with the informant in this case. (Sept. 29, Tr., p. 9). He conceded that he had no knowledge of what any particular acquaintance to Applicant was capable of, and knew of nothing that would raise *specific* concerns, but that the safety of the informant is paramount. (Sept. 29, Tr., p. 9; 12).

On cross-examination, Lieutenant Young testified that prior to his involvement in Applicant's matter, the informant had met with police and agreed to perform a controlled purchase of drugs in exchange for assistance with the criminal charges he was facing. (Sept. 29, Tr., p. 10-11). Afterwards, this same informant told police that he could make a purchase of drugs from Applicant. Lieutenant Young did not know of what previous relationship or history the informant had with Applicant. Lieutenant Young testified that in addition to Applicant's case, this particular informant has been involved in two other cases for police. One case had resulted in a guilty plea, and the other case was still pending.

Assistant Solicitor Ervine Maye

Assistant Solicitor Ervine Maye (hereinafter "Solicitor Maye") serves as the managing Assistant Solicitor for Edgefield, McCormick, and Saluda Counties, and has done so for many years. (Sept. 29, Tr., p. 14). Solicitor Maye confirmed that for purposes of plea negotiations, it is his office's policy not to provide a defendant with a copy of a video/audio tape obtained by a confidential informant, or to even permit the defendant to view such evidence unless the matter proceeds to trial. He then explained the reasoning and purpose behind the policy.

Solicitor Maye explained that keeping the identity of the informant confidential is vital to the safety of the informant and to prevent witness tampering, as well as to enable police to continue using the confidential informant for future busts. With most videos taken by confidential informants, the voice of the informant, the locations displayed, and the circumstances of the interaction usually provide enough information for a defendant to confidently determine the identity of the informant. (Sept. 29, Tr., p. 19-20; 23). Consequently, showing the video to defendants creates an unnecessary risk of danger for the confidential informant, the potential for witness tampering issues for the State, and the negated ability for

police to continue using the confidential informant. (Sept. 29, Tr., p. 20-21). For these reasons, a defendant is not given immediate access to the video or audio evidence obtained by the confidential informant.

However, Solicitor Maye testified that his office *always* allows the defense attorney to view and/or listen to a video or audio tape taken by a confidential informant. (Sept. 29, Tr., p. 14-15; 17). In the case of public defenders such as plea counsel, they usually provide this opportunity early in the process so as to allow defense counsel to determine whether he has a conflict of interest with the confidential informant used. (Sept. 29, Tr., p. 15; 17). Solicitor Maye testified that in making this evidence available to counsel, he believes he is in full compliance with Rule 5 discovery production requirements. (Sept. 29, Tr., p. 14). He stated "if there is adequate information to identify the client and listen to what's going on there, that certainly allows a defense counsel to make a determination of the validity of the evidence, the power of the evidence and advise their defendant or whoever they're representing accordingly." (Sept. 29, Tr., p. 15-16).

If the defendant decides that they still desire to see the video themselves, then ~~the~~ Solicitor Maye permits them to do so, but withdraws his negotiated plea offers and proceeds to trial. (Sept. 29, Tr., p. 16).¹ Solicitor Maye explained that in order to protect the identity of the confidential informant and not needlessly jeopardize their safety or ability to continue assisting law enforcement, his office seldom ~~ever~~ provides a copy of such evidence to defense counsel unless they choose to go to trial. (Sept. 29, Tr., p. 15; 28). In such circumstances, Solicitor Maye explained that judges generally don't require disclosure of the video until a week or two before trial, at the ~~latest~~ ^{EARLIEST}; this is done in order to minimize the time period for which an informant could

¹ A defendant would certainly still have the right to plead guilty as charged, he would just have to do so without the benefit of a negotiated plea offer.

be subject to witness tampering or personal danger. (Sept. 29, Tr., p. 16). Solicitor Maye testified that he routinely encounters situations where after releasing the identity of the confidential informant, even with just a week before trial, he learns of threats against his witness. (Sept. 29, Tr., p. 16; 23). He described the issue as an active and ongoing problem that usually occurs due to the release of the ^{TAPE} tap, and that his only recourse in such a circumstance is to bring charges for witness tampering and relocate the informant. (Sept. 29, Tr., p. 16; 23-24).

Solicitor Maye went on to explain that as a precaution he delays his own knowledge as to the identity of the confidential informant until needed for trial, but ensures through discussions with police officers that the tape is a quality recording that can definitively identify the defendant and that the confidential informant is still available to testify. He does so in order to ensure he negotiates in good faith with the defendant. (Sept. 29, Tr., p. 17-18). Solicitor Maye testified that it is not within the spirit of the State's good faith relationships with confidential informants to allow Applicants access to the identity of confidential informants at the PCR phase of litigation. (Sept. 29, Tr., p. 22). Informants are told that in assisting police officers, everything possible will be done to protect their identities and maintain their safety, but if a case goes to trial, they will have to appear and testify. (Sept. 29, Tr., p. 22).

Specific to Applicant's matter, Solicitor Maye confirmed that he was personally involved in Applicant's case and worked with Lieutenant Young, the narcotics unit, and plea counsel to litigate the case. (Sept. 29, Tr., p. 14). He testified that, consistent with his office's policy, Applicant was not provided a copy of the confidential informant video or given an opportunity to view it. However, he testified that plea counsel accompanied Lieutenant Young, reviewed the video, and was provided with still shot photographs from the video to take back to his client. (Sept. 29, Tr., p. 14; 17). He presumed that plea counsel and Applicant discussed the contents

of the tape, and noted that plea counsel certainly had the opportunity to view the tape, evaluate its strength and persuasiveness, and advise Applicant as to whether a plea agreement was in his best interest. (Sept. 29, Tr., p. 21-22). Solicitor Maye confirmed that, if Applicant had chosen to go to trial, he would have been provided a copy of the video, but all plea negotiations would likely have been withdrawn due to the loss of the confidential informant. (Sept. 29, Tr., p. 21; 33; 37). However, Solicitor Maye testified that even at the PCR stage of litigation, permitting an applicant to view his or her video evidence would still result in the identification and termination of an active confidential informant who is still assisting law enforcement. (Sept. 29, Tr., p. 24). Doing so at the PCR stage can also create a more difficult circumstance for bringing legal action to deter witness intimidation. (Sept. 29, Tr., p. 25). Solicitor Maye testified that if applicants are permitted to obtain the benefit of the bargain from a negotiated plea, and then come back at PCR and retroactively learn the identity of the confidential informant anyway, law enforcement would quickly lose any ability to work with informants and conduct drug busts. (Sept. 29, Tr., p. 25-26; 34).

WAC
#13

On cross-examination, Solicitor Maye testified that occasionally a case arises where the defendant knows with certainty who served as a confidential informant against them. In such cases, when the Solicitor is convinced that the informant is known, then the procedure for denying the video to defendant and/or withdrawing all negotiated pleas may change. He refused to testify in absolutes. (Sept. 29, Tr., p. 27-28). Solicitor Maye also noted that he has never encountered a Rule 5 noncompliance issue in handling confidential informant evidence in this manner. (Sept. 29, Tr., p. 28). He also noted that whether an informant is still assisting police, or has no concern for safety, can also be factors discussed with law enforcement that might also dictate release of video evidence. (Sept. 29, Tr., p. 29). Solicitor Maye testified that he could not

recall whether at the time of the plea negotiations he knew that Applicant was demanding the video tape from plea counsel. (Sept. 29, Tr., p. 31). However, he also noted that in frequent exchanges with plea counsel, if a CI video did not provide quality evidence, plea counsel would alert him to this concern and that such videos are usually the ones where still photographs cannot be acquired. (Sept. 29, Tr., p. 31). The existence of the still photographs demonstrated, at the very least, that Applicant was identifiable and therefore quality evidence existed against him. (Sept. 29, Tr., p. 32). Solicitor Maye testified that in weighing potential danger to the confidential informant used in Applicant's case, he relied upon the advice and knowledge of Lieutenant Young, and continues to do so. (Sept. 29, Tr., p. 34). Lastly, Solicitor Maye testified that he has never heard of the possibility of Applicant's father being criminally charged based on the contents of the video. (Sept. 29, Tr., p. 36). He does not believe that scenario to be the truth, as such would certainly have triggered a recollection on his part. (Sept. 29, Tr., p. 37).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

WPK
#14
This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. This Court finds that Applicant's testimony is not credible on the issues presented, and that the testimony of plea counsel, Lieutenant Young, and Solicitor Maye ^{is} ~~to be~~ credible on the issues presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

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." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (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 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. 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. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668. "[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, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

In the context of guilty pleas, *Strickland* is still the applicable test, but its application is directed toward determining whether the plea was voluntarily, knowingly, and intelligently entered. *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S. Ct. 366, 370 (1985); *Hyman v. State*, 397 S.C. 35, 43, 723 S.E.2d 375, 379 (2012) (citing *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000)).

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

Hyman, at 379 (citing *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011)). A plea is proper if it can be shown that a defendant was "aware of the nature and crucial elements of the offense, the maximum and any minimum penalty, and the nature of the constitutional rights being waived." *Id.* at 380.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel:

Allegation 1

Ineffective assistance of trial counsel – counsel failed to allow Applicant to review all available discovery materials related to his criminal charges, specifically including but not limited to the alleged video of the drug transaction, and therefore client made an uninformed decision in waiving his right to trial and entered into an involuntary guilty plea.

Applicant has failed to demonstrate that counsel was deficient in not providing Applicant an opportunity to view the video evidence taken by a confidential informant during a controlled drug purchase. Applicant has also failed to demonstrate any prejudice in his accepting the State's negotiated plea offer, and has failed to demonstrate that his plea was entered involuntarily. The record is clear that Applicant was correctly informed that he could watch the informant video if he chose to, but that doing so would reveal the identity of the confidential informant and result in the State withdrawing its efforts to negotiate a plea deal. In such circumstances, our South Carolina Supreme Court has held that an applicant is not entitled to PCR relief when defense counsel is permitted to view video evidence from a confidential informant and discuss the strength of that evidence with the defendant for purposes of considering a negotiated offer to plead guilty. *Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375 (2012), abrogated on different grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). This Court finds that Applicant's first allegation must be dismissed.

This Court finds that the Supreme Court decision in *Hyman v. State* is precisely on point in this matter. In summary, Mr. Hyman was indicted for distribution of cocaine, ^{THIRTY} ~~thirty~~ offense, and distribution of cocaine within the proximity of a school. Defense counsel undertook plea negotiations with the State. *Hyman v. State*, 397 S.C. 35, 39, 723 S.E.2d 375, 377 (2012), abrogated by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The State offered to reduce

the charge to a second offense and five year sentence, but required that the plea agreement be conditioned upon not disclosing the videotape to Mr. Hyman. The State informed counsel that they desired to maintain the confidential identity of their informant so as not to compromise the informant's safety and to allow the informant to continue assisting law enforcement. *Id.* at 39-40. While the offer was still on the table, defense counsel reviewed the tape, concluded that it clearly depicted Petitioner engaged in a drug transaction, and relayed that opinion to Mr. Hyman. *Id.* at 40-41. Mr. Hyman still disputed the evidence, and defense counsel requested still photographs taken from the video to confirm Mr. Hyman's identity. *Id.* at 41. Mr. Hyman conceded that the photographs identified him, but that the photographs did not depict a drug sale and therefore refused to accept the solicitor's offer. *Id.* Following the expiration of the plea offer, a jury was struck, but Mr. Hyman chose to plead guilty as charged prior to the beginning of trial. The trial judge ordered he serve concurrent fifteen year and ten year sentences for his charges, which was the minimum concurrent punishment for his two convictions.

WAC
#18 On PCR Appeal, the Supreme Court affirmed the PCR judge's ruling, provided an in-depth analysis of the matter, and concluded that the nondisclosure of the videotape to Mr. Hyman, *personally*, did not render his plea involuntary. The Court found that the prosecution had not committed any *Brady* violations in establishing this negotiated plea arrangement. *Id.* at 46-47. The Court then explained that there likewise were no violations of Rule 5 of the South Carolina Rules of Criminal Procedure. *Id.* at 47. The Court concluded that the State had properly disclosed the existence of the videotape, permitted defense counsel to view the videotape, and "took the extra step of generating still photographs to assuage Petitioner's concerns about the contents of the videotape." *Id.* at 47. There was no indication that the State would have withheld the videotape had Mr. Hyman proceeded to trial. The Court also confirmed that "in cases

involving a confidential informant, a criminal defendant's interest in access to certain evidence must be weighed against the State's interest in protecting the identity and safety of the informant. *Id.* (citing *State v. Humphries* 354 S.C. 87, 90, 579 S.E.2d 613, 614-15 (2003)). As such, there was no argument to prove deficient performance by counsel.

The Court also concluded that Mr. Hyman had failed to demonstrate prejudice for his counsel's alleged deficient performance. *Id.* at 48. The Court agreed with the PCR judge, that since the videotape was not exculpatory, Mr. Hyman was not prejudiced in his matter. The Court concluded that "Petitioner was fully aware of the inculpatory nature of the videotape throughout the negotiations and the guilty plea proceeding. Consequently, Petitioner has failed to prove how the outcome would have been different had he chosen not to plead guilty until after he watched the video himself." *Id.*

WPC
#19
In comparison, Applicant's case at hand is nearly identical to the circumstances in *Hyman*. Though he could not recall the details of the video footage, plea counsel was informed of the videotape, was permitted to view the tape, reviewed and discussed the contents of the tape with his client, and provided Applicant with still photographs from the video that clearly identified him. Applicant was offered a negotiated plea deal that enabled him to avoid prosecution on his four other charges, reduced his distribution of crack cocaine from a third offense to a second offense, and limited his sentencing exposure to a ten year cap. Applicant had sufficient opportunity to discuss with plea counsel what specifically occurred in the video, and made an informed decision to plead guilty based on his chances at trial. Applicant's own testimony confirmed that these discussions occurred, and that counsel advised him that he would not likely be successful at trial. (June 6, Tr., p. 30).

There is some dispute in the record, *albeit only from Applicant's testimony*, that he was informed by plea counsel that the video could not *visually* identify crack cocaine. Even if true, given the record, this is not a substantial issue for a number of reasons. First, Applicant's argument assumes that the video contained no discussion or reference to the sale of crack cocaine for which a jury could judge guilt. Applicant's assumption is contrary to the description of the video's contents provided by Solicitor, Franklin Young, at the guilty plea hearing. Therein, Solicitor Young described the confidential informant video and evidence to the plea court as follows:

a discussion ensued between the CI and Mr. Rouse about the purchase of some marijuana and also about some hard, crack cocaine. There are still shots of where, on the porch of his father's residence, he began to take a quantity of marijuana out of a jar and transferred that into a bag.

...
They then got into the CI's truck and drove to a location where he [Applicant] resides on Addison Street here, again, in the city of Edgefield, in the county of Edgefield.

...
The transaction and negotiations for price and everything else went back and forth at his residence, during a part of which you can see him go over to a bag, tear it open with his teeth and then transfer a quantity of that to another bag, which was handed over at some point to the CI.

...
Both before and after, the vehicle and the CI were thoroughly searched. There was no crack on him [the CI] until he returned. And when he came back, he came back with point seven grams of crack and some marijuana, both of which tested positive.

(Plea Tr., p. 12-14).²

² The Court acknowledges that following the description of the video by Solicitor Young, Applicant's comments to Judge Russo prior to sentencing would seem to suggest that he knew ~~who~~ the identity of the confidential informant. However, the Court cannot be certain as to whether this level of detailed description of the video had been provided to Applicant during plea negotiations with the State. Likewise, the Applicant appeared to believe that he at some point got high with the informant, which is otherwise unsubstantiated by the record. It is reasonable to

The record here demonstrates a number of critical points. First, the description of the video demonstrates that the transfer of marijuana occurred at the residence of Applicant's father, before the CI and Applicant drove to Addison street for a different transaction. This second transaction is described to have occurred when Applicant tore open a bag with his teeth, which is consistent with the still photograph taken of Applicant "with a plastic bag in [his] mouth." (June 6, Tr., p. 8). Second, while a visual confirmation of crack cocaine was not established, the negotiation and payment for crack cocaine occurs in the video. Third, the State was not limited to *only* the video evidence in question. The plea transcript indicated that the informant and his vehicle were searched prior to and after the sale by Applicant; only after the sale did the informant return in possession of 0.7 grams of crack cocaine and some marijuana. After hearing the Solicitor's recitation of the video's contents and the other evidence of guilt, Applicant confirmed the accuracy of the State's case against him. (Plea Tr., p. 17).

WAC #21 At the PCR hearing, Solicitor Maye also indicated that the informant was available to testify had a trial been necessary, as were the officers, given their presence and participation in the plea hearing and PCR hearing. (Plea Tr., p. 3; Sept. 29, Tr., p. 30). Lastly, Applicant conceded that the video does indicate that he was in possession and sold marijuana, which was one of his five different charges. (Sept. 29, Tr., p. 30). Applicant's decision to plead guilty is not isolated solely to the charge of crack cocaine, but instead was a decision that resolved all of his charges. Regardless of the fact that Applicant did not see the video himself, he knew full well

believe that the State felt Applicant could not conclusively determine the identity of the informant, but it is also irrelevant for purposes of this proceeding to make such a determination. The State is permitted to negotiate plea offers, in good faith, as it did in Applicant's case. Whether the identity of the informant was correctly deduced by Applicant or not by the time his plea hearing ended is irrelevant for questions concerning ineffective assistance of counsel.

the general content of the video and the evidence against him in the case, and took full advantage of an exceptionally beneficial plea offer from the State.

Applicant has failed to demonstrate that the video tape was exculpatory, has failed to demonstrate prejudice such that there was a reasonable probability that but for not viewing the video, he would have proceeded to trial, and has failed to demonstrate error by counsel given that Applicant was informed that he could watch the video if he desired to, albeit without the ability to accept the State's ~~gracious~~ ^{like} plea offer. There is neither error nor prejudice supporting Applicant's allegation, and his guilty plea was given freely, voluntarily, and intelligently. Applicant's claim for relief is therefore denied.

Allegation 2

Ineffective assistance of trial counsel – Applicant was induced into entering an involuntary guilty plea based on statements made by counsel that Applicant's father would be arrested if Applicant asserted his right to trial.

JAL
#22 Applicant's Allegation 2 asserts that he did not voluntarily enter a guilty plea, but was instead pressured and coerced into the guilty plea in order to protect his father from subsequent conspiracy charges. As previously stated, this Court does not find Applicant's PCR testimony credible, and the record does not support this claim. Based on the plea hearing and the PCR hearing testimony, this Court finds that Applicant has failed to establish that Applicant's plea was given involuntarily due to coercion. Relief is therefore denied.

The only basis to support the Applicant's allegation comes from Applicant's own testimony. Therein, Applicant testified that he originally wanted to go to trial, but that plea counsel relayed to Applicant that Solicitor Young would arrest his father on conspiracy to distribute crack cocaine if Applicant did not accept the plea offer provided. (June 6, Tr., p. 10-11). Applicant further testified that plea counsel specifically spoke with his father on this subject

and assured his father that there was no legitimate risk of conspiracy charges. (June 6, Tr., p. 11). While one of the still shot photographs taken from the video identifies Applicant's father, there is no evidence to suggest that Solicitor Young or any other member of his office coerced Applicant in such a manner.³ In response to this allegation, Solicitor Ervin Maye testified that he had absolutely no recollection of such a tactic or intention being used against Applicant, did not believe it to be an accurate accusation, and noted that such a circumstance would certainly have triggered a memory if true. (Sept. 29, Tr., p. 36-37). As Solicitor Maye was an active participant in prosecuting Applicant's case, the Court finds this testimony compelling. (Sept. 29, Tr., p. 14).

Plea counsel noted that he did find a photograph of "an older guy that I assume is Mr. Rouse's father based on his allegations in his application." While not testifying to the veracity of the allegation, plea counsel testified that he had absolutely no recollection of speaking to Applicant or Applicant's father about this issue. (June 6, Tr., p. 46-47). Plea counsel followed by testifying that Applicant was an intelligent client, whom he had represented on prior occasions, and that after considering whether or not to plead guilty, it was his decision to do so. (June 6, Tr., p. 47).

The plea hearing also provides insight to the claim. The plea Judge's colloquy was thorough, and Applicant confirmed that he had not been promised or threatened in anyway in order to secure his guilty plea, that he was pleading guilty of his own free will, and that he was indeed guilty of the crime. (Plea Tr., p. 11-12). Applicant also confirmed the recitation of facts, which included specific reference to the photograph of his father, but made absolutely no

³ As the confidential informant's controlled drug purchase occurred in part at Applicant's father's residence, the utility of this still photograph assists in confirming the identity of Applicant in the video.

mention of any coercion in his case to the plea judge. (Plea Tr., p. 12; p. 17; p. 22). This Court finds no merit to the claim.

Assuming arguendo that Applicant's claim is truthful, the claim is substantially damaged by the remainder his own testimony. Applicant testified at the PCR hearing that following the alleged threat of charges against his father, he had an opportunity to speak with his father and learn that plea counsel had assured his father that conspiracy charges were not a realistic threat. (June 6, Tr., p. 11). As such, any alleged coercion and threat appears to have been alleviated, as Applicant did not testify to any further discussion of the topic with counsel prior to his plea. Furthermore, if such allegations were indeed true, Applicant could have secured the testimony of his father and/or Solicitor Frank Young in order to bolster his claim and remove the concern of hearsay from Applicant's testimony. Neither witness was provided and this Court cannot ~~not~~ speculate as to the content of witness testimony not presented at hearing. *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). In colloquy with the Judge Russo, the record shows that Applicant understood his charges, potential punishments, and waived constitutional rights. Applicant agreed with the evidence against him, denied any threats to secure his plea, and made no mention of conspiracy charges against his father. Applicant presented no other witnesses or evidence to support his claim, such threats of charges against his father could not be confirmed by plea counsel, and such threats were firmly denied by Solicitor Maye.

This Court finds absolutely no merit to Applicant's claim. Applicant has failed to demonstrate any deficient performance by counsel, and likewise any prejudice in accepting the plea offer, given that his colloquy responses fully support a freely and voluntarily entered guilty plea. Relief is therefore denied and the allegation is dismissed.

Allegation 3

Ineffective assistance of trial counsel – Counsel failed to sufficiently advise the Applicant regarding the procedure and substantive information that would be presented to the Court during the guilty plea and incorrectly informed Applicant regarding what sentence he would receive.

Applicant's third allegation asserts that plea counsel failed to adequately prepare him for his plea hearing and incorrectly informed him of the plea offer and sentencing he would receive. The Court finds no merit to this claim and denies relief.

Applicant first alleges that counsel failed to adequately prepare him for the guilty plea process, which included the Judge's colloquy, the recitation of facts by the State, review of his prior record, his probation violations, and an argument for leniency. Therein, Applicant's main complaint is that he was not prepared for the Solicitor to provide the still photographs to the judge, and inform the judge "that that was me with crack cocaine in my mouth in which, as far as I know of, Mr. Seigler had relayed to me beforehand that there's never any visual of crack cocaine in the video." (June 6, Tr., p. 14; 15). Applicant also complains that a charge from when he was seventeen was introduced in his prior record history to the judge, and argued that plea counsel should have warned him that this would be brought up. (June 6, Tr., p. 14). Applicant claims he would not have taken the plea had he known these issues would occur.

On cross-examination, Applicant testified that he did not recall that the State's ten year recommendation was put on the record at the beginning of his plea, or that Judge Russo informed him that for his distribution of crack cocaine, third offense, he could receive between five to thirty years. (June 6, Tr., p. 17-18; Plea Tr. 3; 5, 11). Applicant confirmed the remainder of his colloquy responses, including denying any threats, promises, or displeasure with plea counsel. He testified that he answered as he did because he was "just going to go along with" what was

said, that counsel instructed him to do so, and that he was interrupted from contesting the still photographs. (June 6, Tr., p. 21-22).

Applicant also argues that counsel did not properly inform him of the State's plea offer and alleges that he was never informed of the State's intention to recommend a ten year sentence. He testified instead that "what I was relayed was a plea of five to ten cap. It was no recommendation about the ten years, it was only a five to ten. It was a chance I could get five, a chance I could get ten . . ." (June 6, Tr., p. 13). Applicant then testified that his attorney advised him that he would not likely get ten years. (June 6, Tr., p. 13). He states at hearing that "My public defender told me that we was in a good situation, in was in front of a good judge, Mr. Russo, one of the best judges in South Carolina, and that for the drug charges, he didn't see me getting ten years and it was highly unlikely that I would get ten years." (June 6, Tr., p. 13).

WAL #26
This court finds no merit to the claims in *Allegation 3*. First, Applicant has mischaracterized the description of the photographs and video provided to the Judge Russo by the Solicitor. At no time did Solicitor Young describe the still photographs or the video as visually depicting crack cocaine. Reference was made to the verbal discussion and negotiation for sale of crack cocaine, and the actions of Applicant tearing a bag with his teeth, but at no time did the Solicitor inform the court that cocaine was visible in the video. (June 6, Tr., p. 12). Also contrary to his testimony at PCR hearing, there is absolutely no indication that Applicant attempted to interrupt the solicitor to contest the photographic evidence or otherwise raise his concerns to the court. (June 6, Tr., p. 22). Concerning the terms of the negotiated plea deal, there is no indication from any party that the Solicitor's office agreed not to weigh in with a recommendation to the Court, only that they would inform the court as to the ten year cap agreement. Given the minimum sentence requirements for the charge and the Solicitor agreement

to a ten year cap, ^{will} he Applicant's own explanation of his plea offer is accurate. The Court finds no error or prejudice to any of these arguments.

Concerning Applicant's claim that he was unprepared to have Judge Russo informed of his prior record, Applicant conceded that he did have the threatening a public official conviction and that counsel corrected the Solicitor on his prior distribution conviction. (Plea Tr., p. 26; 15). Applicant also conceded that he was well versed in the guilty plea process, having gone through it numerous times with plea counsel on prior charges. (Plea Tr., p. 28-30; 19; June 6, Tr., p. 47). Plea counsel testified that he did not make any promises as to what sentence Applicant would receive, only that he would do his best to argue for as little sentence as possible. (June 6, Tr., p. 48). He was also confident that he would have reviewed the negotiated plea offer from the State with his client prior to Applicant making a decision. (June 6, Tr., p. 49).

WHL
#27 This Court finds the testimony of plea counsel credible and compelling in this matter. There is no evidence, aside from Applicant's testimony, that plea counsel committed any error in preparation or advocacy concerning the guilty plea that Applicant chose to enter. There is likewise no basis to prove prejudice, as the evidence of guilt and prior record were properly presented to the court, and Applicant having prior knowledge of these innocuous issues would not have dissuaded him from pleading guilty. Furthermore, the content of Judge Russo's colloquy and the statements made at the plea hearing certainly afforded Applicant an opportunity to raise concerns if the information provided conflicted with his understanding. However, Applicant provided nothing but respectful confirmation to the questions posed by Judge Russo. "[W]here a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 710 (2018) (citing *Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014)). "To find a guilty plea is voluntarily

and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Roddy v. State*, 339 S.C. 29, 33–34, 528 S.E.2d 418, 421 (2000)).

Applicant has failed to satisfy his burden under *Strickland*. Post-conviction relief is hereby denied, and allegation three is dismissed.

Allegation 4

Ineffective assistance of trial counsel – Counsel failed to object to the State’s offer of a plea agreement which was conditional on forgoing discovery.

In similar posture to *Allegation 1*, *Allegation 4* asserts that plea counsel was ineffective for failing to object to the State offering a plea agreement conditional on forgoing discovery. For the same reasons discussed in *Allegation 1*, Applicant has failed to carry his burden of proof and relief is therefore denied.

Spec
f28 As previously discussed, *Hyman v. State* held that when plea counsel is notified of confidential informant video/audio evidence, is permitted to view that evidence, and is provided still photographs so as to confirm the identity of their client,⁴ the State is permitted to negotiate a plea deal with a defendant on condition of maintaining the confidential identity of the informant. *Id.* As in *Hyman*, Applicant was never denied the right to see the video, his viewing the video was merely conditioned on withdrawal of negotiated plea bargains from the State. In addition to the reasoning in *Hyman*, a defendant is not entitled to receive plea negotiations or favorable deals from the State as matter of course for litigating criminal charges. An Applicant therefore cannot

⁴ The Supreme Court in *Hyman* characterized this effort as “an extra step,” that is not necessarily required to satisfy the Rule 5 compliance in such a circumstance. *Id.* at 47.

prove impropriety in the form of conditional plea negotiations when the State is not obligated to negotiate in the first place.

Applicant was informed that he could view the video if he chose, but he instead accepted the plea offer. This Court finds that the facts of this case are materially indistinguishable from *Hyman*, agrees that there is no basis for error or impermissible dealings, and therefore rules in accordance with our South Carolina Supreme Court precedent. There is neither error nor prejudice in counsel's failure to object to the conditional limitations on discovery for purposes of plea negotiations. Relief on the basis of *Allegation 4* is therefore denied and dismissed.

CONCLUSION

Based on the foregoing, this Court finds and concludes 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 is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 17th day of Sept., 2018.

William P. Keesley
WILLIAM P. KEESLEY
Presiding Judge
11th Judicial Circuit

Edgefield, South Carolina

WITNESSES

Edgefield County Sheriff's Department

Warren Miller

Law Enforcement Case #:

ARREST WARRANT NUMBER

2012A1910100186

ACTION OF GRAND JURY

TRUE BILL

Timothy Dennis
Foreperson of Grand Jury
Date: *Jan 14, 2013*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS1900142

The State of South Carolina

County of Edgefield

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

**THE STATE
vs.**

Wade Valdaise Rouse

CDR #: 3039

Indictment for

Distribution of Crack Cocaine

§ 44-53-0375(B)(3)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)
)

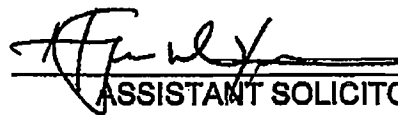
INDICTMENT FOR
Distribution of Crack Cocaine

§ 44-53-0375(B)(3)

At a Court of General Sessions, convened on January 2013, the Grand Jurors of Edgefield County present upon their oath:

That Wade Valdaise Rouse in Edgefield County, South Carolina, on or about June 13, 2012, the Defendant, Wade Valdaise Rouse, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Crack Cocaine, in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Edgefield
STATE VS.
Wade Valdaise Rouse

AKA: _____

Race: _____ Sex: M Age: 32DOB: 1981 SS#: _____

Address: _____

City, State, Zip: Edgefield, SC 29824

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DISTRIBUTION OF CRACK COCAINE - 2ND OFFENSEin violation of § 44-53-315(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3015☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
Solicitor5736
SC Bar#Wade V Rouse
Defendant[Signature]
Attorney for Defendant16711
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Concurrent with Probation violation☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit for 278 days & time served☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

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

Clerk of Court/ Deputy Clerk Shirley J NewbyCourt Reporter: Stacy Sheppard

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1900142A/W#: 2012A1910100186Date of Offense: 6/13/2012S.C. Code § : 44-53-0375(B)(3)CDR Code #: 3039

SENTENCE SHEET

☐ CONVICTED or ☒ PLEADS

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: ORDER ATU☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge [Signature]Judge Code: 2141Sentence Date: 8-13-2013