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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Richland County

Honorable Brooks P. Goldsmith, Circuit Court Judge

TRAVIS KENARD WALTERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001066

APPENDIX

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Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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1	STATE OF SOUTH CAROLINA	)	
2	COUNTY OF RICHLAND	)	COURT OF GENERAL SESSIONS
3		)	No. 2016 GS 40 01308; 01309
4	STATE OF SOUTH CAROLINA	)	00311
5		)	
6	versus	)	TRANSCRIPT OF RECORD
7		)	
8	TRAVIS KENARD WALTERS	)	
9	Defendant	)	
10			Columbia, South Carolina
11			November 8, 2016
12			
13	B E F O R E :		
14	HONORABLE R. KNOX McMAHON, Judge Presiding		
15			
16	A P P E A R A N C E S :		
17	For the State:		V. CATO, Esq. Assistant Solicitor
18			
19	For the Defendant:		NEILE, Esq.
20			
21	Reporter Present:		CRYSTAL HOLMES
22			
23			HARRIET P. BENNETT Reporter, S. C. Court Administration 46 Regency Oaks Drive Summerville, S. C. 29485
24			
25			

1 (The within matter came before the Court for hearing
2 on November 8, 2016)

3 SOLICITOR: Your Honor, we are still on the record here
4 in the matter of Travis Walters. Also, as Your Honor knows,
5 I believe Mr. Walters has now chosen that he would like to
6 plead guilty to a negotiated fourteen on -- concurrent on
7 three counts of distribution first, Your Honor.

8 THE COURT: Please place him under oath.

9 (Whereupon, the Defendant Walters was sworn by the Clerk
10 for purposes of the within matter)

11 THE COURT: Mr. Neile, you represent Travis Kenard
12 Walters?

13 MR. NEILE: I do, Your Honor.

14 THE COURT: Have you explained to him the charges he
15 faces and the possible punishment, as well as his constitu-
16 tional rights? His right to a jury trial?

17 MR. NEILE: I have, Your Honor.

18 THE COURT: In your opinion does he understand all of
19 it?

20 MR. NEILE: He does, Your Honor.

21 THE COURT: And how does he indicate that he wishes to
22 plead to these charges?

23 MR. NEILE: Guilty, Your Honor.

24 THE COURT: All right, sir. You are Travis Kenard
25 Walters?

1 DEFENDANT: Yes, sir.

2 THE COURT: Mr. Walters, before I can accept pleas of
3 guilty, it is necessary that I determine that any plea made
4 before me is freely and voluntarily entered and with full
5 understanding, so it is necessary that I ask you some ques-
6 tions.

7 If you do not understand my questions, please let me
8 know and I will be glad to explain them.

9 If at any time you need to talk with your attorney, if
10 you will let me know that I will be glad to allow it.

11 Do you understand?

12 DEFENDANT: Yes, sir.

13 THE COURT: I will need you to speak up loudly so I am
14 able to hear you and the Court Reporter can hear you as
15 well.

16 DEFENDANT: Okay. Yes, sir.

17 THE COURT: How old are you, Mr. Walters?

18 DEFENDANT: Thirty-nine.

19 THE COURT: How far did you go in -- how much educa-
20 tion do you have?

21 DEFENDANT: Eleventh and then I went for my GED so I
22 didn't finish.

23 THE COURT: Have you ever gotten your GED?

24 DEFENDANT: No.

25 THE COURT: Have you talked with your attorney about

1 the charges against you?

2 DEFENDANT: Yes, sir.

3 THE COURT: You are from Richland County?

4 DEFENDANT: Yes, sir.

5 THE COURT: Did you grow up in Richland County?

6 DEFENDANT: Yes, sir.

7 THE COURT: What type of work do you do?

8 DEFENDANT: Well, I have did construction work and I

9 (Portion Inaudible).

10 THE COURT: I need you to speak up loud for me. We

11 need to hear what you are saying.

12 DEFENDANT: Yes, sir.

13 THE COURT: Are you today under the influence of any

14 drugs or alcohol?

15 DEFENDANT: No, sir.

16 THE COURT: Do you have any physical, mental or emo-

17 tional problems that would keep you from understanding what

18 you are doing today?

19 DEFENDANT: No, sir, unless you are talking about the

20 incidents we're here about and what happened in those

21 things.

22 THE COURT: Would that keep you from understanding the

23 things you're doing today?

24 DEFENDANT: No, sir, I don't think so.

25 (TRANSCRIPTION NOTE: Defendant very difficult to

1 understand and poor audio)

2 THE COURT: I need to make sure that you understand
3 here today what you are doing. These Indictments deal with
4 cocaine or cocaine base or crack cocaine. Do you under-
5 stand what you are doing here?

6 DEFENDANT: Yes, sir.

7 THE COURT: Has your attorney explained to you the
8 possible punishment you could get on these charges, zero to
9 fifteen years? Do you understand?

10 DEFENDANT: Yes, sir.

11 THE COURT: I've been handed up three Indictments to
12 which you have indicated a desire to plead guilty, so I
13 will go over them.

14 Indictment 2016 GS 40 1308 charges that you did here
15 in Richland County on or about July 20, 2016, distribute a
16 quantity of cocaine . .

17 (Brief pause)

18 THE COURT: . . or it might have been cocaine base on
19 Indictment 1308 -- cocaine base, and that carries up to fif-
20 teen years. Do you understand?

21 DEFENDANT: Yes, sir.

22 THE COURT: The next Indictment 2016 1311 deals with
23 crack cocaine and said that you did distribute that on or
24 about September 12, 2015. It carries zero to fifteen years.

25 Do you understand that?

1 DEFENDANT: Yes, sir.

2 THE COURT: The last Indictment which is 2016 GS 40 1309
3 charges that you did here in Richland County on or about
4 August 21, 2015, distribute a quantity of crack cocaine,
5 third offense, which also carries up to fifteen years. Do
6 you understand that?

7 DEFENDANT: Yes, sir, I do.

8 THE COURT: If at any time you plead to a similar of-
9 fense or are found guilty of a similar offense you could then
10 receive upon motion of the State a sentence of up to life
11 in prison. Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: Also, when you plead guilty you give up
14 certain important constitutional rights. The first is that
15 you give up your right to remain silent, the right to say
16 nothing at all, when you enter a plea of guilty. Do you
17 understand?

18 DEFENDANT: Yes, sir.

19 THE COURT: Second, you give up your right to a jury
20 trial, the right to have a jury decide whether or not you
21 are guilty, and the State would at a trial have the burden
22 of proving your guilt beyond a reasonable doubt. You
23 would not have to prove yourself not guilty or even to tes-
24 tify in a trial. Do you understand that?

25 DEFENDANT: Yes, sir.

1 THE COURT: If you enter a guilty plea, you give up
2 your right to a jury trial. Do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: At a trial the State would have to put up
5 witnesses to testify against you and you would have the
6 right to examine those witnesses. You could as well put
7 up witnesses of your own if you decided to do so. Do you
8 understand?

9 DEFENDANT: Yes, sir.

10 THE COURT: You could at a trial take the stand and
11 testify in your own behalf but you could not be required to
12 do so. If you decided to remain silent and not testify at
13 a trial the jury would be instructed that they could not
14 hold that fact against you in any way or even discuss it at
15 all. Do you understand?

16 DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that if you plead guilty
18 you give up those constitutional rights?

19 DEFENDANT: Yes, sir, I understand I would give them
20 up.

21 THE COURT: Is that what you want to do, give up those
22 rights?

23 DEFENDANT: Yes, sir.

24 THE COURT: You wish to give up your right to have a
25 jury in Richland County determine your guilt or innocence?

1 DEFENDANT: Yes, sir.

2 THE COURT: And enter guilty pleas to these Indict-
3 ments?

4 DEFENDANT: Yes, sir.

5 THE COURT: And the State has negotiated with you and
6 your lawyer concerning a sentence in exchange for your en-
7 tering these pleas?

8 DEFENDANT: Yes, sir.

9 THE COURT: And that is what?

10 SOLICITOR: A negotiated fourteen years, Your Honor,
11 concurrent.

12 THE COURT: Is that your understanding, Mr. Neile?

13 MR. NEILE: It is, Your Honor.

14 THE COURT: Is that your understanding as well, Mr.
15 Walters?

16 DEFENDANT: Yes.

17 THE COURT: Knowing all of that do you still wish to
18 plead guilty?

19 DEFENDANT: . . .

20 (Brief pause)

21 DEFENDANT: Yes, sir.

22 THE COURT: Has anyone promised you anything in exchange
23 for this plea of guilty?

24 DEFENDANT: No, sir.

25 THE COURT: Anyone threatened you or forced you to

1 plead guilty?

2 DEFENDANT: No, sir.

3 THE COURT: All right, I'll let the Solicitor tell me
4 the circumstances in a few moments, but are you satisfied
5 with the services of your attorney?

6 DEFENDANT: Yes.

7 THE COURT: Is there anything you feel he could have
8 done or should have done for you that he has not done?

9 DEFENDANT: Not really.

10 THE COURT: All right. Solicitor?

11 (Portion inaudible)

12 (TRANSCRIPTION NOTE: There is no further audio on this
13 matter on the device of the Reporter. The balance contains
14 static only.)

15 ----- END OF AVAILABLE TRANSCRIPT OF RECORD-----

16

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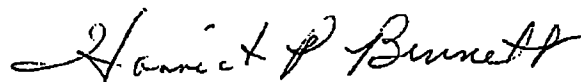
24

25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South
3 Carolina Court Administration, hereby certify that the
4 foregoing Transcript was prepared from the records of
5 Crystal Holmes to the best of my ability, having been
6 heard in the Court of General Sessions for Richland
7 County on November 8, 2016.

8 FURTHER, I certify that I am neither of kin nor of
9 counsel to any party to this matter, nor do I have any
10 interest in the same.

11 

12
13 September 9, 2017

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25

STATE OF SOUTH CAROLINA

County of MarlboroTravis Walters #293999

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION 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 EVANS Cor. EAST / F4A-260
6010 Hwy 9 West, Bennettsville, S.C. 29512
2. Name and location of Court which imposed sentence Richland County Judicial
Center, 1701 Main Street, Columbia, S.C. 29201
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Distribution 1st November 7th and 8th 2016
 - (b) I do not know the indictment number.

2017 MAY 11 AM 8:49
C.C.P. & S.S.
FILED

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) November 7+8 2016 14 years non-violent
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty ✓
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no direct appeal made by Counsel on my behalf
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. _____
 ii. N/A
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. N/A
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. N/A
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) Attorney kneece had 10 days to file direct appeal
 (b) and did not file to my knowledge.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistant of Counsel
- (b) Subject Matter Jurisdiction
- (c) Double Jeopardy
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel did not raise viable issues
- (b) Court did not stay with matter at hand. Used a dropped prior case
- (c) Sentence was done using a prior dropped case.
12. Prior to this application have you filed with respect to this conviction: NO
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

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

- i. _____
- ii. N/A
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

(a) was waiting on my trial Counsel to file appeal.
 (b) Judge inform me that I had to keep Counsel.
 (c) Using a Thrown out prior offense to Convict me.

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

(a) your arraignment and plea? Yes Guilty plea
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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. Attorney Robert Kneece Jr.
2520 Devine St., Columbia, S.C. 29205
 ii. _____
 iii. _____

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

i. representation at my guilty plea, when I wanted
to plea not guilty, but was told I couldn't by Judge. (sorry)
 ii. to relieve Counsel from the Case The Judge
said I had to keep him or represent myself.
 iii. _____

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

Suspension of Current Sentence of 14 Years. And
That The Leg monitor charge be terminated due to
me not removing it. The Detention Center took it off.

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

NO

STATE OF SOUTH CAROLINA

County of Marlboro

VERIFICATION

1. Travis Walters, 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.

Travis Walters

SWORN to and subscribed before me this 22
 day of March, 2017.

Stouffer (L.S.)
 Notary Public

My Commission Expires: 2/17/24

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

I, Tina's Walters, 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.

Tina Walters
Applicant

SWORN or affirmed to and subscribed before me this
22 day of March, 2017.

S. Quitten
Notary Public

My Commission Expires: 2/17/24

2017 MAY 11 AM 8:49
 C.C.P.S. 60

JEANETTE W. McBRIDE
Clerk of Court

VIRGINIA F. BELCHER
Chief Deputy Clerk of Court



MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, S.C. 29202-2766

TELEPHONE:
Phone: (803) 576-1950
Fax: (803) 576-1785
TDD (803) 748-4999

RICHLAND COUNTY CLERK OF COURT

Richland County Judicial Center
1701 Main Street, Room 205
Columbia, S. C. 29201

May 12, 2017

Jessica E. Kinard
Attorney at Law
South Carolina Attorney General Office
Post Office Box 11549
Columbia, South Carolina 29211

Re: Travis Walters, #293999
2017-CP-400-2851

Dear Ms. Kinard:

I am enclosing a copy of an Application for Post Conviction Relief that has been filed in the Office of the Clerk of Court and assigned civil action number 2017-CP-400-2851.

Also, I have enclosed a copy of his/her criminal records.

Sincerely,

Richland County Clerk of Court – Civil Records

Enclosures

cc: Mr. Dan Johnson, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Travis Kenard Walters, #293999,	)	Case No.: 2017-CP-40-2851
Applicant,	)	
	)	RETURN, MOTION FOR MORE
v.	)	DEFINITE STATEMENT, AND
	)	PARTIAL MOTION TO DISMISS
State of South Carolina,	)	
Respondent.	)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on May 11, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In March 2016, the Richland County Grand Jury indicted Applicant for three counts of manufacturing, distribution, etc. of cocaine base, third offense (2016-GS-40-01311, -01309, -1308). Robert Kneece, Jr., Esquire,¹ represented Applicant. Assistant Solicitor Vance Eaton, Esquire, prosecuted the case. On November 8, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable R. Knox McMahon. In exchange, he received a negotiated sentence of fourteen years' imprisonment, with all sentences to run concurrent. Applicant did not appeal his convictions or sentences.

II.

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

1. "Ineffective Assistance of Counsel"

¹ The transcript reflects a "Mr. Neile" as representing Applicant. The State believes this is a scrivener's error, as the transcript was prepared from the records of a court reporter whom was not present during the hearing. Furthermore, it does not contain the entire plea, and the actual pronouncement of the sentence is missing.

- a. "counsel did not raise valet issues"
- 2. "Subject matter jurisdiction"
 - a. "Court did not stay with matter at hand. Used a dropped prior case."
- 3. "Double Jeopardy"
 - a. "Sentence was done using a prior dropped case"

Attached to this return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent interprets Applicant's first allegation as alleging his plea counsel was ineffective and submits this allegation is without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of PR counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that the court lacked subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 321 S.C. 75, 472 S.E.2d 38 (Ct. App. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. Respondent moves for summary dismissal pursuant to South Carolina Code Ann.

§17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

V.

The Applicant contends that he was subjected to double jeopardy. This issue is not one that can be raised in a post-conviction relief proceeding. PCR is not a substitute for a direct appeal. Claims that could or should have been raised in a direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); Sellers v. Boone, 261 S.C. 462, 200 S.E.2d 686 (1973) (double jeopardy). Nevertheless, Respondent submits that Applicant's allegation of a double jeopardy violation is without merit.

The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense and second prosecutions for the same offense after an acquittal, a conviction, or an improvidently granted mistrial. When there are multiple punishments imposed in the same trial, the Double Jeopardy Clause does no more than prevent the sentencing judge from prescribing greater punishment than the legislature intended. Missouri v. Hunter, 459 U.S. 359 (1983); State v. Wilson, 311 S.C. 382, 429 S.E.2d 453 (1993). Accordingly, Respondent moves for a summary dismissal of the double jeopardy allegation because it is a direct appeal issue and because no constitutional violations occurred in this case.

VI.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to support each ground or to explain with any specificity whatsoever the facts upon which his claims are based. In particular, he has failed to note which issues he believes are valid and should have been raised by counsel. The Uniform Post-Conviction Procedure Act

requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VII.

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

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII.

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

IX.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel. As to the allegations of lack of subject matter jurisdiction and double jeopardy issues, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

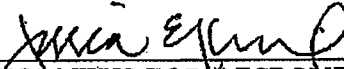
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
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Assistant Attorney General

By: 
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15 Feb, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Travis Kenard Walters

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

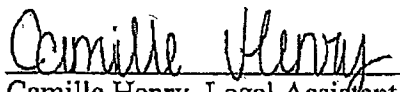
2017-CP-40-2851

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, Motion for More Definite Statement and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 Post Office Box 1015
 Rock Hill, South Carolina 29730

DATED this 15th day of February, 2018.


 Camille Henry, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2017-CP-40-2851
	)	
	)	
	)	
TRAVIS WALTERS,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
DEFENDANT.	)	
	)	

March 19, 2018
Columbia, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.

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

LEAH B. MOODY, ESQ.
Attorney for the Applicant

RASHEEDA CLEVELAND, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness

(DW) - Denotes Defense Witness

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(DW) ROBERT E. KNEECE:

Direct Examination by Ms. Cleveland.....	29
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E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

MS. CLEVELAND: Our next case is Travis Walters vs. The State of South Carolina. For the record, that docket number is 2017-CP-40-2851. Mr. Walters was indicted at the March 2016 term of the Richland County Grand Jury for three counts of manufacturing, distributing cocaine base third offense. He was represented on those charges by Mr. Robert Kneece. Assistant Solicitor Vance Eaton prosecuted the case on November 8th, 2016. Mr. Walters pled guilty as indicted to all charges before the Honorable R. Knox McMahon. In exchange, he received a negotiated sentence of 14 years imprisonment with all sentences to run concurrent. Mr. Walters did not appeal his convictions or sentences. He filed this Post Conviction Relief action on May 11th, 2017, alleging ineffective assistance of counsel, subject matter jurisdiction and double jeopardy. He is present in the courtroom today and represented by Ms. Leah Moody.

MS. MOODY: Thank you, Your Honor. May it please the Court. At this time, I'd like to call Mr. Walters to the stand.

THE COURT: All right.

TRAVIS WALTERS, after being duly sworn, testified as follows:

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MS. MOODY:

Q Mr. Walters, can you please state your full name for the record?

A Travis Walters.

Q And what are you currently incarcerated in prison for?

A Distribution first.

Q Distribution first?

A Distribution.

Q Okay. Distribution?

A First.

Q First. Of what drug?

A Crack cocaine.

Q Crack cocaine. And how many charges do you have that you're serving a sentence on?

A They say three, but when I pled guilty, all I know is I was going to get distribution first, you know.

Q So who was your attorney during that time?

A Mr. Robert Kneece.

Q Okay. Was he your original attorney?

A Yes.

Q Did you have occasion to ever hire anybody else during the length of your time talking with Mr. Kneece?

A Well, I talked to some other people and Mr. Kneece

1 directed me to tell them to call him. When they got off
2 the phone with him, they say there wasn't anything they
3 could do. So I wanted to fire him. I told Mr. McMahon,
4 you know, that I wanted to fire him. He said I had to go
5 with Mr. Kneece or represent myself.

6 Q Well, we're going to come back to that, but you
7 talked to some other attorneys, but at no other time --
8 you were not represented by any other attorneys during the
9 timeframe that you were waiting to go forward on these
10 charges?

11 A No, ma'am.

12 Q Okay. All right. You filed your Post Conviction
13 Relief act against Mr. Kneece?

14 A Yes.

15 Q Okay.

16 A And the...

17 Q All right. Go ahead.

18 A And the fact that I'm -- the judge told me that I had
19 to represent myself or go with Kneece.

20 Q We're going to come to that, but you filed your PCR
21 application just against Mr. Kneece, correct?

22 A (There was no response).

23 Q He's the only attorney you filed the PCR application
24 against?

25 A Yes.

1 Q In your application, you alleged that Mr. Kneece
2 didn't do certain things for you, correct?

3 A Yes.

4 Q Do you recall what those things are?

5 A Okay. Well, I asked him to get the videotape. He
6 told me that if he get the videotape, I got to plead
7 guilty. I don't understand why I had to do that. We was
8 almost at trial then.

9 Q Okay.

10 A It was like a couple weeks before trial. And he got
11 upset with me because I ain't finish paying him his money.

12 Q Hold on one second. Now, just relax for a second,
13 okay. Now, we talked your case on the phone, correct?

14 A Yes.

15 Q Okay. And remember when we talked about your case,
16 we talked about the grounds that you alleged in your PCR
17 application, correct? Do you remember?

18 A I mean, you a hard person to deal with, though, too.
19 Like the man said, it seems like you're not working with
20 me. You're working against me, that's what it seems, at
21 least. But I'm answering your question, if you say you
22 did, you did.

23 Q Okay. When we talked on the phone, did we talk about
24 your application?

25 A Yes, I tried to talk to you, but you just kept

1 telling me what...

2 Q I'm just trying to get your grounds out on the
3 record. Can we do that?

4 A Okay.

5 Q Okay. So your first allegation is that your attorney
6 was ineffective assistance of counsel, correct?

7 A Yes.

8 Q All right. You also stated that your counsel failed
9 to raise valid issues on your behalf?

10 A Yes.

11 Q And then you stated that there was no subject matter
12 jurisdiction as it relates to your charges?

13 A Say that again. Break it out for me.

14 Q No subject matter jurisdiction?

15 A That mean that --

16 Q In your application, you said no subject matter
17 jurisdiction. The Court did not stay with matter at hand,
18 used a dropped prior case?

19 A Oh, yeah. The solicitor did bring up the charge that
20 was thrown out in court. So that's why.

21 Q We're going to come back to that.

22 A Okay.

23 Q And your last allegation in your application was
24 double jeopardy, the sentence was done using a prior
25 dropped case?

1 A Yes.

2 Q All right. You completed your application yourself,
3 correct?

4 A Well, I had help somewhat.

5 Q All right. But these are the allegations that you
6 say consist of your PCR application?

7 A Yes.

8 Q All right. And this is against Mr. Kneece?

9 A Yes.

10 Q Okay. Going back to the ineffective assistance of
11 counsel, you indicated Mr. Kneece didn't do certain things
12 for you. Did you have an opportunity to meet with
13 Mr. Kneece?

14 A Yeah.

15 Q How often did you meet with Mr. Kneece?

16 A I can't say how many times, but we met a few times.

17 Q Okay. So you met with him?

18 A Uh-huh.

19 Q And did you have an opportunity to tell him your
20 case, what you understood the charges were?

21 A Yes. And all he said to me was plead guilty, plead
22 guilty, plead guilty. That's all I got from him.

23 Q Okay. And so as to the charges that he was asking
24 you to plead guilty to, plead guilty to, this dealt with
25 your charges from a September incident 2015?

1 A No. I looked at it on paper. All the days are
2 wrong. They got all the charges, the time I started my
3 time wrong on all the papers, so no. It didn't come from
4 September.

5 Q So there was a --

6 A Oh, yeah, okay. It was three different
7 distributions. Is that what you're saying?

8 Q That's what I'm trying to get at.

9 A One was in July. One was in August and one was in
10 September.

11 Q Those are your charges that you discussed with
12 Mr. Kneece?

13 A Yes.

14 Q Okay. And when you discussed with Mr. Kneece your
15 opportunities to have a trial or do a plea, you're saying
16 that he instructed you to plead guilty on all of these?

17 A Yes. He instructed me to plead guilty. All that
18 came to me was a guilty plea.

19 Q All right. So what, if anything, did you talk about
20 in terms of a defense?

21 A None.

22 Q All right. So you did not discuss any defense?

23 A Ain't no defense. It was just plea, plea, plea.

24 Q All right. And so originally, were you going to
25 plead?

1 A No.

2 Q All right. And so you had to go before the court
3 with Judge Hood, correct?

4 A Uh-huh.

5 Q All right. And do you want to tell the Court about
6 what happened before Judge Hood?

7 A Well --

8 Q When you went before Judge Hood, what were you going
9 before him for?

10 A I don't know why I came to court that day. I mean, I
11 guess it was just an appearance.

12 Q And then what happened that day when you were in
13 court?

14 A He had -- they had a plea from eight to 14 and Judge
15 Hood told me he would give me eight that day if I would
16 plead.

17 Q All right. So when you say they had a plea for you,
18 the solicitor made an offer to Mr. Kneece?

19 A Yeah, I guess.

20 Q And before you came to court on that day, had you
21 talked about an offer?

22 A Yeah, yeah. I told him I wasn't going to plead
23 guilty, though.

24 Q Okay. So you told Mr. Kneece that you weren't going
25 to accept any offer that the State presented at that time?

1 A Yes.

2 Q All right. And so when you got before the judge, you
3 weren't going before the judge to plea at that moment.
4 They just put it on the record that you were before the
5 judge on eight to 14 years?

6 A Yes.

7 Q Okay. And after that day, what, if any, conversation
8 did you have with Mr. Kneece about your charges?

9 A Well, just plea. He came to the hospital. I was in
10 the hospital because my sugar was high. He came to the
11 hospital. I had to come to see him after I leave the
12 hospital, trying to get me to plead. And I think that's
13 the day I asked him to see the tape and he told me --

14 Q The tape?

15 A Get the video from --

16 Q All right. Talk into it, please?

17 A That's the day I told him to get the video and he
18 told me if he get the video, I got to plead guilty.

19 Q Okay. And so can you tell the Court, this was --
20 these charges were considered to be a buy from you of
21 drugs?

22 A Yes.

23 Q Okay. And the tape that you're referring to is the
24 evidence that they recorded of those particular buys?

25 A There's no recording of any buys.

1 Q I understand. So how did you know to tell him to get
2 tapes?

3 A Because they said they had them.

4 Q Okay. And what did you understand to be on those
5 tapes?

6 A I understand that he told me it was on the tape.

7 Q I mean, I get that, but what was the State saying
8 they have on the videotapes?

9 A They said they had me selling the drugs.

10 Q Okay. So you asked Mr. Kneece to get you those
11 tapes?

12 A Yes.

13 Q All right. Did he get you those tapes?

14 A Yeah, he got them.

15 Q Did you have an opportunity to review those tapes?

16 A Yeah.

17 Q What, if anything, did y'all discuss about those
18 tapes?

19 A Nothing. He just said my face on there. And my
20 past, like if I go to trial, it would be 30 years a piece.
21 He would give me 90 years. That's what he tell me.

22 Q So when you all talked about the video, you disagreed
23 with the video?

24 A Yeah, I disagreed with it.

25 Q Okay. But in discussing the evidence that was on

1 that video, Mr. Kneece explained to you what you were
2 facing as far as like prison sentence? That you could do
3 30 years, you just mentioned 30 years.

4 A Yeah, 30 years. He mentioned I could get 30 years.
5 But my face is evidence?

6 Q I couldn't understand what you said.

7 A Is my face evidence? Because that's all on there.
8 We didn't talk about any -- me and that lady ain't talk
9 about no drugs. There's no hand to hand transaction on
10 there, nothing. No showing no drugs or nothing. We never
11 said anything about drugs. When she got in the car, hey,
12 how you doing. I looked at her real quick and that was
13 it.

14 Q So that was on the video?

15 A That was on the video.

16 Q So after he told you about the 30 years, showed you
17 the video, what happened in terms of your cases then?

18 A Well, like I said, we came and we interview in front
19 of Judge Hood and I told him that I wanted to fire my
20 lawyer. And he told me I had to go with Mr. Kneece or
21 represent myself, so. And Mr. Kneece is saying that okay,
22 he's -- the video is so powerful. So I was like --

23 Q All right. I didn't hear what you said.

24 A He told me the video is so powerful. That's why I
25 just -- ain't no need going -- you get the real transcript

1 -- because that transcript you sent me, there's stuff that
2 I ain't said and stuff that I did say is not in there. I
3 don't know if they typed it up and did whatever they
4 wanted to do with it. When he asked me was I satisfied, I
5 said that 14 years is a lot less than 30. My lawyer kept
6 threatening me I was going to get 30 years. I was in
7 trial.

8 I came the second day. They locked me up for
9 nothing. I ain't violated my warrant or nothing. I paid
10 them people \$65 a week. Couldn't leave the house. Stayed
11 on house arrest. I ain't seen my daughter since 2015
12 because they tell me I couldn't go see her. And her mama
13 paralyzed. And they told me I couldn't go get a job, but
14 they wanted their \$65 a week, though. And I did what I
15 had to do to pay them. I come to court and got to go to
16 jail from my start of trial. I don't understand that. I
17 ain't never missed a court date. Any meeting I had Mr.
18 Kneece, I made it, and he can tell you that. I ain't
19 never missed a court date. All the years I got in
20 trouble, I ain't never missed a court date. I ain't never
21 been on the run or nothing. The Judge locked me up from
22 start of trial.

23 Q All right. So let's be clear on it. You're talking
24 about when you came to court for your trial?

25 A Yes.

1 Q Because, ultimately, you decided you wanted to go for
2 a trial?

3 A Uh-huh.

4 Q When you came to court and they were starting the
5 trial?

6 A On the seventh, yes.

7 Q The Judge put you in holding?

8 A Right, put me in jail.

9 Q So he didn't -- you came in the courthouse, but he
10 didn't let you go out because y'all were going to try the
11 case, correct?

12 A Yes.

13 Q And so you had a problem with that?

14 A Yeah, because I ain't violated my bond. I did
15 everything I was supposed to do. I ain't never missed no
16 court date. I was here that day. I came and I was out on
17 a \$100,000 bond and didn't go nowhere. Pay people \$65 a
18 week on house arrest and then I come to court and got to
19 go to jail for nothing.

20 Q So what did you want Mr. Kneece to do?

21 A To say something. He didn't try to help me get it
22 off or nothing. But I understand that I didn't pay him
23 all his money, so he had some --

24 Q You're fading out. Please --

25 A I understand that I ain't paid him all his money, so

1 it was -- he started acting funny with me after that.

2 That's why I wanted to get a new lawyer, even if it was a
3 public defender, but the Judge told me I had to go with
4 Mr. Kneece or represent myself.

5 Q You're talking about Judge Hood?

6 A No, I ain't talking about Judge Hood.

7 Q Well, who are you talking about? I'm just trying to
8 keep it clear.

9 A Judge McMahon.

10 Q So on the same day, you asked for another lawyer, as
11 well?

12 A I asked first before we started the trial.

13 Q And he told you no. And then you all started the
14 trial, correct?

15 A Yes.

16 Q All right. And then what happened?

17 A What happened, we picked the jury and then the Judge
18 said he was going to lock me up. I got to go to jail from
19 the start of trial. But I didn't violate my bond and
20 never missed a court date.

21 Q Okay. After he put you in custody, you came back to
22 the courtroom, right?

23 A Yes.

24 Q And what happened then?

25 A Mr. Kneece was acting like -- he was telling me that

1 the video was so powerful, so I just -- I pled guilty. I
2 pled guilty.

3 Q So you met with your lawyer?

4 A Yeah.

5 Q And was that in a courtroom like this where you were
6 talking to him about the video or did y'all meet in a
7 private room?

8 A At his office.

9 Q No. When you were in custody, the start of the
10 trial, what happened? Did you come back up to the
11 courtroom?

12 A Yeah, I came back the next day.

13 Q So you came back in the courtroom. You didn't leave
14 the courthouse, did you?

15 A No.

16 Q Okay. So in between your being in custody and then
17 you appearing back in court, did you have an opportunity
18 to talk to Mr. Kneece again?

19 A No.

20 Q Okay. So what caused you to enter into a plea?

21 A I don't know. Because I felt like he wasn't doing
22 his job right. I was dealing with 30 years and then he
23 say he was going to come back again and get 30 years and
24 come back again and get 30 more years.

25 Q Okay.

1 A So 14 at the time was the way I left it because I
2 can't go to trial with him. He already knew I wanted to
3 fire him. So how can I know he going to do his best at
4 trial when he already knew? I asked the Judge the day
5 before that I want to fire him and he was standing right
6 there. So he knew I didn't want him to be my lawyer, so
7 how can I win like that?

8 Q Okay. So that was your reason for entering into the
9 plea?

10 A Yes.

11 Q Okay. And that was on one charge you were going to
12 trial that day, correct?

13 A Yes, I guess. I don't know how they were going to do
14 it. All I know when I plead guilty, I was told I was
15 pleading guilty to distribution first. I ain't know about
16 all the other two. If you want to use the transcript,
17 everything wrong. They said I pled guilty to a charge on
18 that transcript July 20th, 2016. I was on house arrest
19 that day. So whatever the Judge read out, if it was so
20 right, the way they typed it up, they said I pled to two
21 charges wrong on that, two days wrong.

22 Q All right. So let's talk about this so that Judge
23 Goldsmith will understand what you're talking. You
24 understand he has to understand what you're saying in this
25 courtroom so he can make a decision, correct?

1 A Yes.

2 Q So on the day of November 8th, 2016, you pled in
3 front of Judge Knox McMahon?

4 A Yes.

5 Q Do you recall signing any kind of documents before
6 you entered into that plea?

7 A Well, yeah. Mr. Kneece had some papers that I
8 signed.

9 Q Did you have an opportunity to go over those papers
10 with him?

11 A Not really. He rushing me. He even told me a lie,
12 that my family was not out there waiting on me. Because I
13 know my family was there, like they here now. He told me
14 they wasn't out there. I thought I seen my aunt
15 wheelchair sitting out there. He told they wasn't out
16 there. He came rushing with the papers for me to sign,
17 hurry up and get it over with. I guess he want to go
18 because I ain't paid him the money.

19 Q So when he came in, you were in custody?

20 A Yeah.

21 Q So he went over the paperwork for the charges for
22 distribution of cocaine first and one dealt with the
23 September 11th, 2015, and then 7/29/2015, and then there
24 was 8/21/2015?

25 A Yeah.

1 Q Do you recall going over the paperwork to sign for
2 you to go forward in front of the Judge for the plea?

3 A All I know he gave me some papers to sign. We ain't
4 went over nothing. He rushed the papers in front of me to
5 sign them and we went over to court.

6 Q So as far as you know, you were -- it was dealing
7 with the drug charges that you were supposed to go to
8 trial on that day?

9 A Yeah.

10 Q That's what you were pleading to?

11 A Yes.

12 Q Okay. And so when you say you don't know about the
13 other two charges, you're telling the Court that you
14 understood you were going to trial on one charge and so
15 when you decided to plead, it was for one charge?

16 A From the get-go, all I know is I'm pleading to
17 distribution first. I ain't know nothing about this one
18 or that one. It was a distribution first.

19 Q I guess what I'm just trying to get clear on the
20 record is when you went to plea in front of Judge Knox
21 McMahon, you thought that you were pleading to one charge
22 because you were scheduled to go to trial on one charge.
23 Even though you had three charges out there, you were
24 scheduled to go to trial on one charge?

25 A All I know is I was going to trial on distribution.

1 first. I don't know about --

2 Q Okay.

3 A I ain't know about the separate stuff, but he told me
4 they could do that. He told me before that they could
5 charge me -- take me to trial for this one and take me to
6 trial for that one, but I ain't understand that -- it
7 wasn't my intention they were doing that that day. He
8 told me that. But all I know is distribution first, I was
9 going to trial on distribution first.

10 Q All right. As to ineffective assistance of counsel,
11 counsel did not raise valid issues. What were those
12 issues that he should have raised?

13 A He should have -- he -- let me look at a few. I'm
14 telling you this stuff. I'm telling you why I wanted to
15 fire him.

16 Q Okay. Let me start with a question like this. Are
17 there any other issues he didn't raise outside of not
18 having you go into custody, the video and then you
19 indicated your plea, that you plead to more than what you
20 understood you were supposed to plead to on that day? Are
21 there any other issues that he should have raised?

22 A No, that was it.

23 Q As to the subject matter jurisdiction, you said the
24 Court did not stay with -- you say stay with matter at
25 hand, used a dropped prior case. What dropped prior case

1 did the Court use?

2 A Well, the solicitor had brought up my last drug
3 charge in 2013, but that charge was dismissed. That's
4 all.

5 Q Okay. So as to your prior record, the solicitor
6 misstated your prior record?

7 A Yes. He brought up the dismissed charge. I don't
8 have a charge in 2013.

9 Q And you felt like Mr. Kneece should have objected to
10 that?

11 A Yes, he should have. Well, I did tell him and he
12 said that the Court knows -- Ms. Walker the one that let
13 the Court know that -- he didn't say it -- he just used
14 me, Ms. Walker said -- Ms. Walker going to let the Court
15 know that that charge been dropped. He did say that.

16 Q Okay. Now, as to the double jeopardy sentencing,
17 that goes to the same charge --

18 A Yeah.

19 Q -- that they indicated was a prior, but it was not?
20 And that's based off of your rap sheet that you know what
21 it's supposed to be?

22 A Yeah.

23 Q Now, how did -- all these things taken together,
24 you're saying your lawyer was ineffective assistance of
25 counsel. How has that prejudiced you in terms of your

1 ability to not be serving this prison term?

2 A I'll just -- I don't think he did the best he could
3 do. And I got a right to fire my lawyer at any time for
4 any reason, and I was told that I couldn't. And I was
5 told that I had to go with him or represent myself.

6 Q Okay. So how did that harm you?

7 A How did it harm me?

8 Q Yes.

9 A How did it harm me? That the Judge told me I had to
10 represent myself or keep Mr. Kneece?

11 Q You're saying Mr. Kneece was ineffective assistance
12 of counsel. And because he didn't represent you and you
13 enumerated to a number of things, how did that harm you?

14 A How did it harm me? How did that harm me? Is you
15 working with me or them?

16 Q I ask the questions. You have to tell the Court how
17 you're harmed.

18 A How many times I have to say it over? You see how
19 I'm harmed. I'm in prison. I wanted a new lawyer.

20 Q He has to see it. I've got to --

21 A I wanted a new lawyer --

22 THE COURT REPORTER: I can only take the testimony of
23 one at a time.

24 THE COURT: You can't talk across each other.

25 MS. MOODY: I understand. I apologize.

1 THE WITNESS: I wanted a new lawyer and my Sixth
2 amendment stated for a fair trial. I didn't get that
3 because he told me I had to go with Mr. Kneece. And this
4 man knew I wanted to fire him and I didn't pay him all of
5 his money, so he wasn't doing the best he could. I just
6 felt that in my heart. And I wanted to fire him, and I
7 couldn't. But it ain't no -- it ain't no big secret. I'm
8 telling you what's going on. You, the Judge, I'm telling
9 everybody. I'm talking to everybody in here.

10 Q So what would have happened if you had another
11 attorney?

12 A How am I supposed to know? I ain't never got a
13 chance to find out.

14 Q Are you trying to relay to everybody that you
15 wouldn't be in jail?

16 A I never got a chance to find out. I ain't -- they
17 took that right from me.

18 Q Is there anything else you'd like the Court to know?

19 A No. No.

20 Q And what relief are you asking the Court for -- from
21 the Court here today?

22 A Whatever they -- because things would have been
23 different. I don't know how things would have went if I
24 had a different lawyer.

25 Q Are you asking the Judge to grant you an opportunity

1 to have a new trial?

2 A New trial, time cut, whatever, dismissed, whatever he
3 can do.

4 Q Well, you understand that he can only start by
5 allowing you to have a new trial?

6 A Okay.

7 Q You understand that Judge Goldsmith cannot cut your
8 time?

9 A Okay.

10 Q So you would like to start over with another trial?

11 A Yes.

12 Q Is there anything else you'd like to tell the Court?

13 A That's it.

14 MS. MOODY: No further questions for this witness,
15 Your Honor?

16 THE COURT: Cross-examination.

17 MS. CLEVELAND: Just briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. CLEVELAND:

20 Q Mr. Walters, do you recall telling Judge McMahon that
21 you were satisfied with Mr. Kneece's services?

22 A No. Because if you get the original transcript, I
23 recall -- and Mr. Kneece right there, and my family right
24 there and my brother, when he asked me what I say, I told
25 him the day before --

1 I told you the day before I wasn't satisfied.

2 But they ain't put that in the transcript, though.

3 Q So based on the transcript --

4 A You got to get the original one. But Mr. Kneece
5 right there, he know what I told him. I told you
6 yesterday I wasn't satisfied. I don't know what I was
7 supposed to say. It had me confused. The day before I
8 got to go with him or represent myself. And then here
9 today, you ask me if I'm satisfied with him. I just told
10 him yesterday I wasn't satisfied with him. It's a mess.

11 Q And do you recall discussing with Judge McMahon that
12 it was a negotiated sentence that you were pleading guilty
13 to in exchange?

14 A Since y'all using the transcript, look over and see
15 all -- go get the original one and see all the stuff
16 that's missing out of the one I got, out of the transcript
17 I got, see the stuff that missing and what different I
18 said. They typed down something different I said from
19 what I did say. The transcript is a benefit for y'all,
20 but not for me. I want the transcript to get all the lies
21 and stuff I didn't say and stuff I said ain't even in
22 there. What are you talking about, the transcript.

23 Q Mr. Walters, at your plea hearing, you told Judge
24 McMahon that you wished to plead guilty, correct?

25 A I really didn't want to, but if we're going to trial,

1 I'd get 30 years. I wasn't pleased with my lawyer. I
2 went ahead and I tried to get back in court.

3 Q Can you repeat that?

4 A I didn't want to plead guilty, but I didn't feel
5 comfortable with my lawyer and I had to go with him or
6 represent myself, so I guess the next best thing was to
7 plead guilty and then try to get back in court. That's
8 why as soon as I got locked up, I put in.

9 He told me he was going to appear -- he told me he
10 was going to appear when we was in court. I said I want
11 to appear. He said, okay. But when I get to the county,
12 I get a letter from him saying -- I got a letter from
13 Mr. Kneece saying that you never detained me. You and
14 your mama promised to give me money. I did pay him
15 \$2,000. And I ran into some hard times, paying the leg
16 monitor and bondsman and everybody else that I couldn't
17 finish paying him his money. And he sent me a letter that
18 said I got to find somebody else to do the appeal.

19 So that's my -- I asked him to appear in court, and
20 he said he was going to do it. But when I got to the
21 county jail, he sent me a letter saying I never detained
22 him and me and my mama ain't never paid him the money.
23 But yeah, I did plead guilty to save myself from getting
24 30 years and another 30 and another 30, according to
25 Mr. Kneece.

1 They ain't even got his name right in the transcript
2 I got. His name -- they got his name for something else.
3 So whatever they type up, they type what they want to type
4 in there, you know, in that transcript.

5 Q Okay. So I'll just move forward. In exchange for
6 your plea of guilty, you received a benefit, correct? You
7 received a 14-year sentence instead of 30 years that you
8 were facing; is that correct?

9 A Yes.

10 Q Mr. Walters, you also testified earlier that you
11 viewed the video evidence against you with Mr. Kneece,
12 correct?

13 A Yeah.

14 Q And that it was you in the video?

15 A Yeah, that was me. It was me, but it wasn't me doing
16 no crime.

17 Q All right. Thank you, Mr. Walters. I have nothing
18 further.

19 MS. CLEVELAND: Nothing further from the witness.

20 THE COURT: All right. Thanks. You may step down.
21 You may call your next witness.

22 MS. MOODY: No witnesses, Your Honor.

23 THE COURT: Any witnesses?

24 MS. CLEVELAND: Your Honor, the State would call Mr.
25 Robert Kneece.

1 ROBERT KNEECE, after being duly
2 sworn, testified as follows:

3 THE COURT: Have a seat.

4 THE WITNESS: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. CLEVELAND:

7 Q Mr. Kneece, how long have you been practicing law?

8 A Thirty-four years.

9 Q And how much of that have you spent practicing
10 criminal law?

11 A I guess it would be hard to quantify it, but a good
12 bit.

13 Q Were you appointed or retained on this case?

14 A I was retained.

15 Q Do you recall when you became involved in
16 Mr. Walter's case?

17 A I had known Travis for a long time. When he first
18 got in trouble when he was young, and then throughout
19 after he got out of jail on that charge and a lot of
20 license, driving under suspension issues, domestic
21 violence, those kind of things. I liked Travis, still do
22 today even after hearing his testimony. I mean, we always
23 had a good relationship as lawyer and client.

24 Q And do you recall how the charges arose and how
25 Mr. Walters came to be arrested?

1 A I do. I received a call, I want to say, from either
2 a friend or family member, that Travis had been arrested.
3 And, ultimately, he got released on bond and came to see
4 me, brought his paperwork, a copy of the arrest warrants,
5 those type of things with him. And we sat down and
6 reviewed things. And, you know, I filed the discovery
7 motions, ultimately, indicated to the Court that I
8 represented him, went to the appearances with him,
9 reviewed the evidence with him.

10 Ultimately, the written evidence that I received,
11 it's a standard practice of mine to provide a copy to the
12 accused and my client for him to review himself. They
13 don't have to sit there in my office and review it and not
14 have questions. I tell them to take it home, look at it.
15 Any questions you have, write them down, come back and
16 we'll talk about it and go through it. And we did that.

17 Ultimately, this was a case where the -- it was
18 alleged that an undercover agent, not an informant, an
19 undercover agent had made three video and audiotaped
20 purchases from Travis.

21 The confusion about the tape when he says is I
22 originally looked at the tape. I received the tapes from
23 the solicitor's office. I couldn't open them on the
24 computer system that I had, so I came up here and met with
25 the IT person, viewed them on their computer to see if it

1 was, in fact, was working. My hope was, as a lawyer,
2 gosh, maybe they're not working, but they were working.

3 So when I came back and told Travis, I said, you
4 know, it's there. It's you on the tape meeting at the
5 Wal-Mart parking lot with a woman who gets in the car,
6 spends 30 seconds. She hands you something, you hand her
7 something, that kind of thing and then you leave. They
8 were monitoring all that and it was on audio. And,
9 ultimately, Travis came to my office because we figured
10 out how to get it open on our computers. He brought
11 somebody with him, a female, and we looked at it.

12 He came up with the defense that it could have been a
13 videotape that I was selling her or something like that.
14 I said Travis, this is not an informant. This is an
15 undercover agent. She's going to testify. They've got
16 audio of her coming to meet you. The setup of the whole
17 thing, all that, nobody is going to believe that, you
18 know, you were meeting -- and I don't want this to sound
19 anyway other than just factually the way I'm saying it.
20 Nobody is going to believe that you were meeting a white
21 girl at the Wal-Mart parking lot, in the back end of the
22 parking lot for you to sell her a videotape. People
23 don't -- they can buy videotapes anywhere. Nobody goes to
24 the Wal-Mart parking lot to buy a videotape of somebody.
25 And I think in his mind, he was just trying to find some

1 way to develop a defense that was right there in front of
2 him on these tapes.

3 Q Do you recall how many times you met with
4 Mr. Walters?

5 A Every time he wanted to meet, I met. And every time
6 I wanted him to come, as he said, he was always there. It
7 was never a situation where I had to complain, Travis,
8 you're not calling me back or Travis, you're not coming to
9 see me like you're supposed to. I don't think he ever
10 complained that I wasn't seeing him or didn't take his
11 calls when he called.

12 I mean, we were always cordial to each other. And,
13 you know, when he talks about the money, if Travis was
14 honest and I think if I asked Travis, I said --

15 Travis, you remember, I kept saying to you this ain't
16 about money. I don't want you to pay me another dime
17 because money is not going to get you out of this
18 situation. I don't want you to feel like paying me money
19 is going to help you or that I'm doing any less because I
20 haven't been paid. Don't pay me any more money.

21 And to the other issue regarding the representation,
22 we actually came to court, was my understanding, maybe not
23 Travis', I can't speak to what was in his mind, for him to
24 actually plead guilty.

25 The original deal from the solicitor was that Travis

1 was going to -- the only thing he was going to offer --
2 because Travis had two prior incarceration periods for
3 drugs. And he was going to allow him to plead to the 10
4 to 30, which is 85 percent time, for the minimum 10 years.
5 That was what was on the table.

6 I negotiated on Travis' behalf a range of sentence
7 from eight to 14 years on a distribution first. We
8 could -- or an alternative would be a negotiated flat nine
9 years on nonviolent, non-85 percent time. So we actually
10 went -- and before we came to court, which I thought was
11 our day to plead guilty in front of Judge Hood, and Travis
12 on that day indicated that he might would want to talk
13 with another attorney. And I have that transcript, which
14 I think I provided to, at least, Ms. Moody.

15 In that, the Court asked, Judge Hood -- and the main
16 purpose of going before the Judge at that point was the
17 solicitor wanted to solidify, one, to renotify Travis if
18 he was not going to plead, but also to tell him that there
19 was a drop dead date on this offer and that he was going
20 to revoke it if he didn't accept it. And there was a date
21 there and all this kind of stuff. But Judge Hood in
22 asking me the question said -- asked, okay, Mr. Kneece.

23 I said, Thank you, Your Honor. I understand
24 Mr. Walters' concern in the sense he is being asked to
25 agree to jail for a substantial period of time.

1 The Court said, Right.

2 I said, He has asked me, presented to me this morning
3 a scenario if he could have the opportunity to consult
4 with another attorney. I have no problem with that. That
5 may be enlightening to him. It may also be that the
6 lawyer either agrees with me or doesn't agree me. And I
7 can understand his desire to do that.

8 I very graciously can understand Mr. Walters being
9 given an opportunity to do that. It carries certain
10 consequences with that, so I just want him to be aware
11 that the solicitor's office can at any time because an
12 offer is not accepted revoke that offer and enhance the
13 situation with Mr. Walters.

14 And that's when the Court went into with Travis
15 about -- and as Travis said, actually told him that day at
16 that time, you know, based on the negotiated sentence of
17 eight to 14, he would give him eight that day if he wanted
18 to go forward, but he was not requiring him to go forward.
19 But he said what I need to make sure that you understand
20 is this, at any time that Mr. Eaton wants to, all he has
21 to do is say that offer of either a range of eight to 14
22 or nine is gone, and Travis responded yes. Actually, they
23 put that there was a date on it and we went past that date
24 because Travis indicated that he wasn't willing at that
25 point to plead guilty.

1 Ultimately, Travis called me up and indicated that he
2 wanted to plead guilty. We came back to court a second
3 time for this plea. He brought his family with him on
4 that day. Everybody was there. That was in front of
5 Judge Barber.

6 I had resurrected the deal that had gone away. In
7 fact, the reason I had to get this transcript was because
8 the solicitor indicated that that was no longer the deal.
9 The only plea he was going to accept was the 10 to 30.
10 And I said no, you know, this is what we agreed to and
11 this and that and whatever. And ultimately, he said okay,
12 we would go back to the eight to 14. We came that day and
13 Travis backed out again, indicating that he didn't want to
14 plead guilty.

15 At that point, you know, stood out in the hall, made
16 disparaging remarks against me to his family. Ultimately,
17 he called me and apologized for that. And so at that
18 point, the trial was on.

19 Now, I did receive two calls from two different
20 attorneys that Travis went to. And when I said Travis,
21 have them call me, the purpose of me -- telling them to
22 call me was so I could outline to them what the situation
23 was. You know, I love Travis, but Travis maybe being able
24 to portray to them hey, this is my case. This is what I'm
25 facing. This is where we are. I thought I could do a

1 better job maybe telling them this is where we are.

2 As I just read to you, I encouraged Travis to go and
3 seek another opinion, to seek other counsel. And I
4 received a call from Debbie Chapman. I received a call
5 from Jonathan Harvey. I was not involved in anything as
6 far as what their discussions were about being hired or
7 not hired or whatever.

8 So we moved forward with the trial. The trial was
9 called in front of Judge McMahon. We had -- on the first
10 day, we had jury selection. That's when Travis talked
11 about that Judge McMahon, which is a former prosecutor,
12 judge's discretion, indicated to Travis and to me as his
13 attorney, I always put the defendant in jail when we start
14 a trial. So Travis went into jail overnight.

15 The next morning, we had opening statements. The
16 solicitor's office was moving forward on just one charge.
17 That's what I explained to Travis. They're trying you on
18 just one of these charges. If it's a mistrial, they can
19 retry you on it. If you're found not guilty, then you've
20 beaten this one charge, but the other two charges, they
21 could try you on those, and explained all that to him.
22 And he understood that.

23 Now, I'm not sure what he's talking about when he
24 says about his family not being here because every
25 discussion we had was -- my recollection was in this

1 courtroom. And if his family wasn't right there, him --
2 for whatever reason, I didn't know that they were outside.
3 They weren't here at the start of it. I knew that when I
4 came in. But nobody was trying to keep his family from
5 him or those kind of things. I don't know how that went
6 or whatever.

7 Ultimately, during -- right at the start of the trial
8 when I talked to Travis, Travis said -- I said, Travis,
9 you understand this Judge could give you 30 years if
10 you're found guilty. I gave him my perception, which I'm
11 not going to state on the record of Judge McMahon and what
12 he might do, considering my knowledge of him as a former
13 prosecutor and a judge and his sentencing. But Travis
14 indicated that he wanted me to work the best deal out for
15 him that I could get. And the best deal became again a
16 nonviolent negotiated 14-year sentence, which allowed him
17 to not have to serve but 85 percent of the time. And he
18 pled guilty.

19 So here we are.

20 MS. CLEVELAND: And did you feel it was in
21 Mr. Walters' best interest to accept the 14-year deal?

22 A I did. I did considering that he had already -- he
23 had served an eight-year sentence on one of his drug
24 charges. His initial sentence, he was given eight years
25 on that. And then the next time he was incarcerated, I

1 was not involved in that. I think he had a public
2 defender on that and I think he got a five-year sentence
3 on that. So we'd had two incarcerations for drugs and
4 getting found guilty in an undercover agent video,
5 audiotape in front of Judge McMahon was not going to turn
6 out well.

7 Q And you were prepared to go forward with the trial?

8 A We were in trial, yes, ma'am, we were.

9 MS. CLEVELAND: Thank you, Mr. Kneece. I have
10 nothing further.

11 THE COURT: Cross-examination.

12 MS. MOODY: Thank you, Your Honor. May it please the
13 Court.

14 CROSS-EXAMINATION

15 BY MS. MOODY:

16 Q Mr. Kneece?

17 A Yes, ma'am.

18 Q You indicated that you all were going to trial. And
19 I think you heard some of the allegations -- one of the
20 allegations is that Travis felt that you didn't raise
21 valid issues as it relates to these charges. Now, did you
22 have an opportunity to talk with the solicitor on each
23 case or did you all extensively talk about the one that
24 you were going to trial on?

25 A Well, initially, it was about the global case and

1 then when it narrowed down to this one particular case,
2 then -- and the agent was here, you know, which is always,
3 you know, kind of a thought process, maybe they really
4 don't want to expose that the agent was undercover. As a
5 lawyer, you're thinking those things. It happens more,
6 obviously, with a confidential informant than it does with
7 an agent that they don't want to expose, but the agent was
8 here sitting at that table. I said, Travis, that's the
9 lady on the tape? He said, Yes, it is. So...

10 Q So as to the prior record, you indicated that you had
11 represented Travis on one other charge. And I guess that
12 was the first drug charge, you said?

13 A Well, I've represented Travis on multiple charges,
14 but his initial charge that he went to jail on was way
15 back in 1991, I think.

16 THE DEFENDANT: Five.

17 A Early '90s, back in the 90's. He received an
18 eight-year sentence for that, then he was released. And
19 then he had some other problems and, like I said, had the
20 public defender involved at one point and got a five-year
21 sentence for drugs. And so he had two prior drug
22 convictions, so that's where we were.

23 Q Well, did you all have an opportunity to talk about
24 the impact of those prior drug offenses?

25 A We did. We did. We talked about it from his being

1 able to testify, what his -- you know, what was going to
2 come out, all those things. We went through that.

3 Q Was that before the trial or was that at the
4 beginning?

5 A That was before the trial.

6 Q When -- I think you heard the testimony where you
7 stated to the Court or you tried to correct the record and
8 you said Mr. Walters would like the Court to know as far
9 as his prior record. Could you explain why you said
10 Mr. Walters?

11 A I did because it was a negotiated 14-year sentence,
12 so there was going to be no impact by what the solicitor
13 had said about his prior record at that -- at the plea.
14 Judge McMahon was either going to give him a 14-year
15 sentence or he was going to allow us to continue on with
16 the trial.

17 And so when he said that, I think my recollection was
18 Travis leaned over and said, He's wrong about that, so and
19 so. That's when I said -- I think I said, Travis -- I
20 might have said Travis, that doesn't matter since we've
21 negotiated a 14-year sentence. But I went to the point
22 where it was important to Travis, so I said Judge, Mr.
23 Walters, wants you to know that one of the charges that
24 the solicitor has referenced was actually dismissed or
25 something like that.

1 Q And so when you -- now that I understand where you
2 were and what he was trying to say, did you have an
3 opportunity to explain to him the difference between a
4 negotiated plea and a recommended plea?

5 A Yeah, we talked about that. If the Judge wasn't
6 going to give him 14 years, we were going to continue on
7 with the trial. The Judge wasn't going to say no, I'm not
8 giving you 14, I'm going to give you 30, you know, that
9 kind of thing. We were not in that situation.

10 Q So in your opinion, do you think that he
11 understood -- I mean, by his actions, do you think that he
12 understood?

13 A Yeah, he understood he was getting a 14-year sentence
14 that day.

15 Q Okay. And so --

16 A Not one day less and not one day more.

17 Q Now, as it relates to the video, I believe you
18 testified that you saw the video. You went back to your
19 office. You were able to -- this is all the videos
20 related to all three cases?

21 A All three cases.

22 Q And on all three cases, Mr. Walters was able to see
23 those videos?

24 A Yes.

25 Q And you testified earlier that there was another

1 person there?

2 A He had another -- he brought a friend with him
3 with -- who actually when Travis would say things, she
4 commented, Travis, that's you. That's your voice. You
5 can see your face. And Travis -- you know, I think Travis
6 kind of got a little miffed at her.

7 Q As to the double jeopardy, I guess that's the same
8 charge that Travis asked you to relate to the Court or has
9 said that wasn't a correct conviction?

10 A Yeah, I'm not sure about that.

11 Q Okay. So did y'all have any discussion about double
12 jeopardy?

13 A No.

14 Q So in between the time that y'all struck the jury,
15 y'all are getting ready to go to trial and you're getting
16 ready to plead, did you have an opportunity to go over all
17 of Travis' rights with him?

18 A Yes.

19 Q And is it your opinion that he understood those
20 rights?

21 A Yes.

22 Q During the plea, did Travis ever indicate he was
23 nervous or he didn't want to plea or anything of that
24 nature?

25 A Well, Travis by nature is just nervous. I mean, he

1 -- you know, he wears it on his sleeve when he is
2 thinking. And, you know, I think he exhibited Travis when
3 he was up here. He's as good as gold, genuine as a person
4 is my perception of him always, but he never completed
5 high school.

6 I think where Travis was this whole time is he has
7 nine children. The deal -- and I told Travis from the
8 get-go, Travis, this is not about you not going to jail.
9 This is about coming up with what we can, the best deal we
10 can do. And he understood that. He understood what we
11 were up against. It was the amount of time that Travis
12 could not understand or not buy into or not agree to in
13 his mind. He just -- his kids were everything to him. He
14 wanted to be there for Christmas for them. Here we were
15 in November. It was all about his children. He knew he
16 needed to go to jail, was going to jail, it's just he
17 wanted to go for as little amount of jail as he could.

18 Q But, ultimately, he went through with the plea?

19 A He did.

20 Q And so the confusion on how many charges he actually
21 pled to, did he -- he got a concurrent sentence, correct?

22 He got a concurrent sentence?

23 A He did.

24 Q Did you all discuss the other charges in terms of
25 what he needed to plea to to stop the solicitor's office

1 from bringing other charges against him?

2 A Yes, everything was going to be disposed of that day
3 and we cleared it up. Ultimately, I got a letter from
4 Travis. This was after he had pled guilty. And he said,
5 Hi, Bobby, how you doing? Good, I hope. Me, I'm still
6 alive, so I'm blessed. Here go these warrants numbers --
7 because he had had somebody call me, there was some
8 confusion about the warrant numbers that were in the
9 system and the electronic monitoring or whatever. So I
10 told them, look, have him write me and tell me exactly
11 what the issues were so I could look into it for him. And
12 we, ultimately, got all that straight. And he sent me the
13 numbers.

14 He said, And I got a hold for leg monitoring. If
15 possible, can I get a copy of my motion, please, Bobby?
16 Thanks for all you have done for me and may God bless you,
17 your friend, Travis. That was the last conversation I had
18 before Travis filed the PCR. Which I don't blame him for
19 filing a PCR.

20 Q I'm sorry?

21 A I don't blame him for filing a PCR. They hear in
22 jail that may help you out, so they do it.

23 MS. MOODY: No further questions for this witness.
24 Thank you.

25 MS. CLEVELAND: Nothing from the State, Your Honor.

1 THE COURT: All right. Thank you. You may step
2 down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Call your next witness.

5 MS. CLEVELAND: Nothing further, Your Honor.

6 THE COURT: All right. State rests.

7 Anything in reply, Ms. Moody?

8 MS. MOODY: No, sir, Your Honor.

9 THE COURT: I'll be glad to hear brief argument.

10 MS. MOODY: Well, Your Honor, based on Mr. Walters'
11 testimony, I believe that he was not clear as to what was
12 occurring with his case and that he felt his attorney
13 didn't do his absolute best for him. He testified here
14 stating that he felt his attorney had an issue with him
15 because he had not paid out his legal bill. And as a
16 result, he felt like he was left with no choice other than
17 to go to trial with an attorney that he did not feel
18 comfortable going forward. And he feels this violated his
19 Constitutional rights.

20 Specifically, Your Honor, as to one of them, the
21 subject matter jurisdiction of the charge that was
22 dismissed, he feels that the Court took that into
23 consideration as to whether or not he -- the amount of
24 time that he received in his sentence. Of course, he
25 understood that he was going before the Court with the

1 offer that I guess was -- I guess that came about. One
2 was cut off and then I guess the offer was renewed for the
3 eight to 14 years. And there was a point at one time
4 where the Court agreed to give him eight years.

5 And so based on his view of it all, Your Honor, is
6 that he didn't have the counsel that he wanted to go
7 forward with, that he felt comfortable with and would
8 defend him and challenge the State as to the evidence that
9 they had. That evidence being videotape, audio,
10 videotapes on each of the charges. One was just an audio
11 and he felt that -- based on his testimony that Mr. Kneece
12 didn't develop a defense for him that would like have him
13 acquitted in that particular charge. And that charge,
14 Your Honor, they were going forward on was July 29th,
15 2015.

16 Outside of that, Your Honor, he indicated that he
17 felt that there was double jeopardy. And I'm not quite
18 clear on the double jeopardy other than it dealt with that
19 previous charge that had been dismissed and the State
20 presented it to the Court as his prior record. And he
21 feels that that particular charge was used as -- I guess
22 gave the Court reason to give him the actual 14 years as
23 opposed to the eight years. And he feels that his
24 attorney should have spoken up for him as far as that's
25 concerned. I think you heard the testimony. I'm not

1 quoting it directly, but he did not like the fact that his
2 attorney stated that Mr. Walters wants -- I guess,
3 basically, that Mr. Walters contested that prior charge
4 being used against him or said it in open court.

5 Ultimately, Your Honor, and I think I'm speaking
6 correctly when I say this. Mr. Walters felt that his --
7 the prejudice comes in whereas he got 14 years. And he
8 feels obviously that he should not have gotten 14 years
9 given the circumstances that he has children, nine to be
10 exact, and he decided to go forward and plead and using
11 the charge, prior charge, as well as not bringing up the
12 different points or the weaknesses, I would say, in the
13 case as he understood the evidence, he feels that his
14 attorney was ineffective assistance of counsel.
15 Therefore, Your Honor, we would ask that you grant him his
16 relief sought in his application.

17 THE COURT: Thank you, Ms. Moody.

18 Yes, ma'am.

19 MS. CLEVELAND: May it please the Court, Your Honor.
20 As Your Honor knows, Strickland requires a showing of
21 deficiency on the part of counsel's performance, as well
22 as prejudice that resulted therefrom.

23 The State would submit that Mr. Walters has failed to
24 meet his burden of proof here today. Mr. Kneece testified
25 that he met with Mr. Walters on several occasions. They

1 discussed the charges against him. They reviewed the
2 videotape evidence. They had went before, I believe it
3 was -- I don't want to misstate the testimony, but three
4 judges and each time Mr. Kneece had negotiated a plea
5 range for Mr. Walters and he rejected those pleas twice.
6 And then on the third time, he accepted the negotiated
7 sentence of 14 years. There is no prejudice in
8 Mr. Walters receiving the 14-year sentence because that
9 sentence was negotiated and, ultimately, he accepted it.

10 With regards to Mr. Walters' claims regarding subject
11 matter jurisdiction, as Your Honor knows, subject matter
12 jurisdiction is the power of the Court to hear the case
13 and determine the case in the general class in which the
14 proceedings in question belong. It was a criminal case.
15 It was heard in criminal court.

16 The indictments in this case were facially valid.
17 They contained all the necessary elements of the offenses
18 intended to be charged. They stated the date of the
19 offenses and the name of the accused. So the State would
20 move to summarily dismiss Mr. Walters' claims of subject
21 matter jurisdiction because the Court did have
22 jurisdiction in that case.

23 In regards to Mr. Walters' claim of double jeopardy,
24 the State would submit that the allegation of double
25 jeopardy is a direct appeal issue and there was no

1 Constitutional violations that occurred in Mr. Walters'
2 case. So we would again ask that this Court would
3 summarily dismiss Mr. Walters' claim of double jeopardy,
4 as well.

5 Your Honor, as I stated, Mr. Walters has failed to
6 meet his burden here today of proving that Mr. Kneece was
7 ineffective in any way, so we would just ask that you deny
8 and dismiss his application with prejudice.

9 THE COURT: Thank you.

10 Okay. After considering the matter, I find that the
11 Applicant has failed to meet his burden of proof and,
12 therefore, deny the application. I'll ask the attorney to
13 please prepare an order within 20 days.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official 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 the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in Court of Common Pleas for Richland County, South Carolina, on the 19th day of March, 2018.

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

April 20, 2018

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Travis Kenard Walters, #293999,

2017-CP-40-2851

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

2018 MAY 14 AM 11:42
FILED
RICHLAND COUNTY
CLERK OF COURT

This matter is before the Court by way of application for post-conviction relief (PCR) filed May 11, 2017 by Travis Kenard Walters ("Applicant"). Respondent submitted its Return and Partial Motion to Dismiss on February 15, 2018. An evidentiary hearing was held on Monday, March 19, 2018 at the Richland County Courthouse. Applicant was present at the hearing and represented by Leah Moody, Esquire. Assistant Attorney General Rasheeda Cleveland, Esquire, represented the State. Applicant testified on his behalf. Robert Kneece, Jr., Esquire, was also present and testified.

Also before the Court were the records of the Richland County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial hearing, and Applicant's records for the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In March 2016, the Richland County Grand Jury indicted Applicant for three counts of manufacturing, distribution, etc. of

cocaine base, third offense (2016-GS-40-01311, -01309, -1308). Robert Kneese, Jr., Esquire,¹ represented Applicant. Assistant Solicitor Vance Eaton, Esquire, prosecuted the case. On November 8, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable R. Knox McMahon. In exchange, he received a negotiated sentence of fourteen years' imprisonment, with all sentences to run concurrent. Applicant did not appeal his convictions or sentences.

CURRENT APPLICATION

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

1. "Ineffective Assistance of Counsel"
 - a. "counsel did not raise valet issues"
2. "Subject-matter jurisdiction"
 - a. "Court did not stay with matter at hand. Used a dropped prior case."
3. "Double Jeopardy"
 - a. "Sentence was done using a prior dropped case"

SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's Testimony

On direct examination, Applicant testified he was convicted of three counts distribution of crack cocaine, first offense. Applicant recalled wanting to fire Counsel but Judge McMahon would not allow him to unless he was going to proceed *pro se*. However, he testified he was never represented by any other attorney. Applicant testified he met with Counsel a few times prior to his plea. Applicant recalled discussing the charges against him but did not recall discussing a possible defense because Counsel wanted him to plead guilty.

Regarding Applicant's allegation of lack of subject-matter, Applicant testified all papers

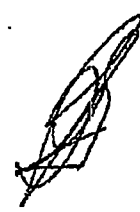
¹ The transcript reflects a "Mr. Neile" as representing Applicant. This Court believes this is a scrivener's error, as the transcript was prepared from the records of a court reporter whom was not present during the hearing. Furthermore, it does not contain the entire plea, and the actual pronouncement of the sentence is missing.

associated with the charges against him were wrong. Applicant recalled there was an offer for eight to fourteen months that was presented to him at a prior plea hearing before Judge Hood. Applicant testified Judge Hood said informed him he would give him eight years if he pleaded guilty that day. Applicant recalled discussing the offer with Counsel but ultimately decided to not accept the offer. Applicant further testified Counsel came to visit him at the hospital to tell him to plead guilty. Applicant recalled it was during that visit when he requested Counsel obtain the video of the drug buys. Applicant testified Counsel granted his request and obtained the videos, and the two of them viewed the tapes.

Applicant recalled discussing the contents of the tapes but he disagreed with the video. However, he recalled Counsel's opinion was the video evidence was "very powerful." Applicant testified he questioned whether or not his face could be considered evidence because he did not see any drugs or a transaction on the tape. Applicant recalled discussing with Counsel the State's evidence and a potential sentence of thirty years. Applicant testified he pleaded guilty because he was scared of exposure to a thirty year sentence. Applicant recalled on the day of the plea, Counsel had "papers" which misled him. Applicant testified he thought he was going to trial and pleading guilty to only one charge.

Applicant further testified prior to trial he was being held in a holding cell, and he wanted Counsel to raise that issue. Regarding Applicant's allegation double jeopardy, Applicant testified Counsel should have objected to the Solicitor's mentioning of Applicant's prior record. Applicant also testified he was prejudiced because he did not think Counsel did a good job, and he was not allowed to fire him. Applicant contended however, he does not know if things would have been different in his case had Counsel handled the case differently.

On cross-examination, Applicant testified he was not satisfied with the performance of



Counsel. He further testified things were missing from the plea transcript. Applicant recalled he did not want to plead guilty and did not like his lawyer. Applicant then testified Counsel did not file an appeal because he did not pay him. Applicant recalled viewing the video evidence and believed it was him in the video. Lastly, Applicant testified the benefit he received from pleading guilty was the fourteen year sentence instead of thirty.

Counsel Testimony

Counsel testified he has been in the practice of law for thirty-four years, a majority of which was spent practicing criminal law. Counsel testified he was retained by Applicant. Counsel recalled he had known Applicant for some time and represented him on prior charges. He further recalled having had a good relationship with Applicant.

Counsel testified he met with Applicant several times. He recalled the two of them met every time Applicant requested. Counsel further testified during those meetings they discussed the entire case, the impact of prior charges, and the possibility of what could come out if Applicant chose to testify. Counsel also recalled them discussing the fourteen-year negotiated plea offer, and the difference between a negotiated plea and a recommendation. Counsel testified he believed Applicant understood if he accepted the plea offer, he was getting a fourteen year sentence. Counsel further testified he went over all of Applicant's rights with him and he understood.

Counsel testified he provided Applicant with a copy of the discovery. Counsel recalled initially there were some problems with being able to view the video evidence but he met with the IT department at the Richland County Courthouse to rectify the problem. Counsel testified when he viewed the video, he also identified Applicant. Counsel testified in the video there was an obvious exchange that occurred between Applicant and the undercover agent. Counsel further

testified when Applicant came to his office to review the tape, he came up with the defense that he was selling something other than drugs to agent.

Counsel recalled he and Applicant met as often as needed. He also recalled entering into plea negotiations on Applicant's behalf, and negotiated a deal that would have allowed him to receive a range of eight to fourteen or a flat nine year sentence with the charge being reduced to cocaine distribution, first offense. Counsel testified at the plea hearing before Judge Hood, Applicant was informed of a drop date for the offer. Counsel recalled Applicant was offered eight years that day but was not willing to accept the offer. Counsel testified it was in Applicant's best interest to plead guilty.

On cross-examination, Counsel testified the undercover agent was present at trial, and Applicant realized that and decided to plead. Counsel testified he explained to Applicant that pleading was not about not going to jail but rather Counsel also read a letter that was written by Applicant following the plea hearing, in the letter Applicant thanked Counsel. Counsel further testified the Solicitor's mentioning of Applicant's prior charges had no impact on the sentence he received because it was a negotiated sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. 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. 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, the applicant has the burden of proving the allegations in the application. Rule 71:1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, Petitioner must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Petitioner 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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 32, 106 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed

to carry his burden in this action in regards to his allegations of ineffective assistance of counsel. The Court finds plea counsel adequately conferred with Applicant (including meeting with him several times), reviewed all pertinent discovery materials with Applicant (including viewing the video surveillance tape)) was prepared for trial when Applicant elected to forgo trial and enter a guilty plea, and fully advised Applicant of all aspects of his guilty plea. Ultimately, this Court finds plea counsel was thoroughly competent in his representation of Applicant and in his advice to Applicant that a guilty plea was in his best interest.

Subject-matter jurisdiction

This Court finds Applicant's claim that the circuit court lacked subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 321 S.C. 75, 472 S.E.2d 38 (Ct. App. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. Therefore, this allegation is summarily dismissed as a matter of law pursuant to South Carolina Code Ann. §17-27-70.

Double Jeopardy

Similarly, this Court finds Applicant's allegation that he was subjected to double jeopardy is not one that can be raised in a post-conviction relief proceeding. PCR is not a substitute for a direct appeal. Claims that could or should have been raised in a direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); Sellers v. Boone, 261 S.C. 462, 200 S.E.2d 686 (1973) (double jeopardy). Therefore, this allegation is summarily dismissed as a matter of law pursuant to South Carolina Code Ann. §17-27-70.

CONCLUSION

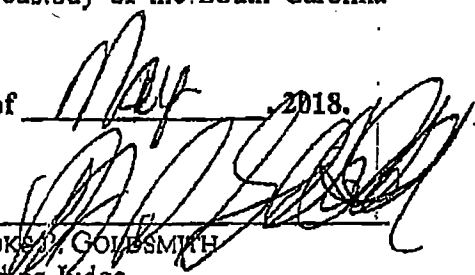
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

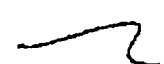
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 7 day of May, 2018.


 BROOKS D. GOLDSMITH
 Presiding Judge
 Fifth Judicial Circuit


 _____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

TRAVIS WALTERS, #293999,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

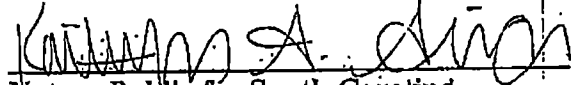
The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Ms. Leah B. Moody
Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, South Carolina 29730

This 23rd day of May, 2018.


MEGAN HARRIGAN JAMESON
Attorney for Respondent

SWORN to before me this 23rd day of May, 2018.


Notary Public for South Carolina
My Commission Expires: 10/1/2025

DOCKET NO. 2016GS4001311**The State of South Carolina****County of****Richland****COURT OF GENERAL SESSIONS****MARCH TERM 2016****105****THE STATE
vs.****Travis Kenard Walters****Indictment for
DRUGS / MANUFACTURE, DISTRIBUTION,
ETC. OF COCAINE BASE, 3RD OFFENSE****SC Code: 44-53-0375(B)(1)
CDR Code: 3039**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

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16 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 16, 2016, the
 Grand Jurors of Richland County present upon their oath:

**DISTRIBUTION OF CRACK COCAINE – 3RD OFFENSE &
 SUBSEQUENT**

That Travis Kenard Walters did in Richland County, on or about September 11, 2015, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Crack Cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law [and such being the defendant's second or subsequent offense], and being in violation of Section 44-53-375(B), S. C. 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.



DAN JOHNSON, SOLICITOR

DOCKET NO. 2016GS4001309**The State of South Carolina****County of****Richland****COURT OF GENERAL SESSIONS****MARCH TERM 2016****105****THE STATE
vs.****Travis Kenard Walters****Indictment for
DRUGS / MANUFACTURE, DISTRIBUTION,
ETC. OF COCAINE BASE, 3RD OFFENSE****SC Code: 44-53-0375(B)
CDR Code: 3039**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within Indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 16, 2016, the
Grand Jurors of Richland County present upon their oath:

**DISTRIBUTION OF CRACK COCAINE – 3RD OFFENSE &
SUBSEQUENT**

That Travis Kenard Walters did in Richland County, on or about August 21, 2015,
distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute,
dispense or deliver a quantity of Crack Cocaine, a controlled substance under
provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976,
as amended, such distribution not having been authorized by law [and such being
the defendant's second or subsequent offense], and being in violation of Section
44-53-375(B), S. C. 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.



DAN JOHNSON, SOLICITOR

DOCKET NO. 2016GS4001308

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2016

105

**THE STATE
vs.**

Travis Kenard Walters

**Indictment for
DRUGS / MANUFACTURE, DISTRIBUTION,
ETC. OF COCAINE BASE, 3RD OFFENSE**

**SC Code: 44-53-0375(B)(1)
CDR Code: 3039**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 16, 2016, the
Grand Jurors of Richland County present upon their oath:

DISTRIBUTION OF COCAINE – 3RD OFFENSE & SUBSEQUENT

That Travis Kenard Walters did in Richland County, on or about July 29, 2015, distribute, dispense or aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law [and such being the defendant's third or subsequent offense], and being in violation of Section 44-53-370(b)(1), S. C. 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.



DAN JOHNSON, SOLICITOR