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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

\_\_\_\_\_  
TIMOTHY JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000629

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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State of South Carolina)
County of Florence )

In Circuit Court of the
Fourth Judicial Circuit
2015-GS-47-21; 22

The State,
Plaintiff,
vs.
Timothy Johnson
Defendant.

Transcript of Record

Marlboro, South Carolina
August 2, 2016

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. David Fernandez, Esquire
Attorney for the Plaintiff

Mr. Brendan P. Barth, Esquire
Attorney for Defendant, Mr. Wilson

Lisa Carter
Circuit Court Reporter

I N D E X

WITNESSES

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(NO WITNESSES INTRODUCED DURING HEARING)

(NO EXHIBITS INTRODUCED DURING HEARING)

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1 MR. FERNANDEZ: We can do both, Your Honor, if Your  
2 Honor, wants to.

3 THE COURT: Yeah, if that's okay with you.

4 MR. FERNANDEZ: It's fine with us. Your Honor, David  
5 Fernandez for the Attorney Generals Office. We would call  
6 the following cases for pleas today. State v. Timothy  
7 Leverne Johnson and State v. Anthony Lamont Wilson. Your  
8 Honor, Timothy Johnson is charged under indictment 2015-GS-  
9 47-22, Count I. He's also charged under indictment 2015-  
10 GS-47-21, Counts I, II, III, IV, V, VI, VIII, XII and XIII.  
11 He'll be pleading to a number of charges today, ten total.  
12 Most of them -- two lesser included's of Count I on both  
13 indictments and then the remaining Counts on indictment 21,  
14 he'll be pleading as indicted. Those would be  
15 distributions and possessions with intent to distribute.  
16 I'll be more specific in a second. Now, I'll move to  
17 Anthony Wilson.

18 Mr. Wilson is charged under indictment 2015-GS-47-22.  
19 Under that indictment he's indicted under Counts, I, III,  
20 and IV. He'll be pleading to Count I, a lesser included of  
21 the trafficking by conspiracy of 28 grams or greater.  
22 He'll be pleading to the trafficking of heroine 4 to 14  
23 grams. Counts III and IV, are distribution of heroine  
24 which he'll be pleading to as well. I have for Mr. Wilson  
25 a copy, I'll pass up to, Your Honor, he had entered into a

1 plea agreement with the State and also signed sentencing  
2 sheets for Mr. Wilson. At the appropriate time, the State  
3 does have a recommendation for Mr. Wilson. I'll note for  
4 the record pursuant to the plea agreement requires a number  
5 of things including full cooperation with law enforcement.  
6 To include interviews, de-briefings and testimony at trial,  
7 if that becomes necessary. In addition, he waives certain  
8 rights such as direct appeal and PCR with the exception of  
9 PCR relief concerning your, the attorney's advise governing  
10 the signing of that agreement and entering into a plea.

11 Similarity, Mr. Johnson and I'm passing forward this  
12 as well, as entered into a plea agreement with the State as  
13 well as signed setencing sheets. Mr. Johnson's sentence is  
14 a little different than other and that is a negotiated  
15 sentence. So, Your Honor, would have to make a  
16 determination whether or not you're willing to accept that  
17 negotated range.

18 In addition, Mr. Johnson has entered into the same  
19 plea agreement with the exception of certain language  
20 struck from the, I believe, one of the end pages concerning  
21 forfeiture of assets. The State did seize a number of  
22 vehicles and firearms from Mr. Johnson and in addition to  
23 some cash money. The agreement that we have will be the  
24 return of vehicles that, I believe, Williamsburg County  
25 currently has and some firearms to his family. The State

1 will be seizing the cash money, I believe, it's about  
2 \$60,000 dollars and we will provide, Your Honor, at the  
3 appropriate time in sentencing, a consent order for that  
4 forfeiture, more specifically outlined the precise figures  
5 and the return of the vehicles. But that's why that  
6 portion is struck from the agreement.

7 Specifically, Mr. Johnson is pleading to Count I, the  
8 lesser included of Count I on indictment number 22, the  
9 trafficking heroine greater than 28 grams. He'll be  
10 pleading to the charge of trafficking heroin 4 to 14 grams  
11 by conspiracy. Count I of indictment number 21, is again a  
12 trafficking heroin greater than 28 grams and he'll be  
13 pleading to the lesser included charge of trafficking  
14 heroin 4 to 14 grams.

15 Of the remaining Counts on indictment 21, Count, II,  
16 III, IV, V, VI, VII, and XII are all distribution of heroin  
17 which he will be pleading to as indicted. Count XIII is  
18 possession with intent to distribute which he will also be  
19 pleading to as indicted. The State's negotiated range is 18  
20 to 22 years and the agreement would be that all sentences  
21 be, run current with each other within that range.

22 I would note for -- I would note for the record, Your  
23 Honor, also that these charges or, at least, the  
24 trafficking charges for both individuals are considered  
25 violent and serious. I would just ask, Your Honor, to

1 outline what that means to someone who is pleading under  
2 those terms. Also I've mentioned it's a negotiated  
3 sentence. And, in addition, once these pleas are taken, we  
4 would ask to lift the no contact order provisions of the  
5 bond for those that are housed in the Florence County Jail.  
6 It is a burden for the jail to constantly have to arrange  
7 people so they can not contact each other. And once Mr.  
8 Johnson has plead that largely remains the need for folks  
9 to be separated in the first place.

10 THE CLERK: Mr. Wilson and Mr. Johnson, if you  
11 would raise your right hand, I'm going to administer the  
12 oath. Do you solemnly swear to tell the truth, the whole  
13 truth, and nothing but so help you God. Mr. Wilson?

14 MR. WILSON: I do.

15 THE CLERK: Mr. Johnson?

16 MR. JOHNSON: I do.

17 THE CLERK: Thank you.

18 THE COURT: You said the range was from 18 to 22?

19 MR. FERNANDEZ: Correct, Your Honor,

20 THE COURT: Bear with me. We don't have much room  
21 to work with up here.

22 MR. FERNANDEZ: I know it's a lot of paperwork.

23 THE COURT: Mr. Fernandez, do either one of these  
24 gentlemen already have a violent, serious conviction or is  
25 this ---

1 MR. FERNANDEZ: This would be their first.

2 THE COURT: It would be their first. All right.  
3 Mr. Johnson and Mr. Wilson, let me make sure I've got the  
4 right one, this is Mr. Johnson?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: I'm going to ask you to move down a  
7 little bit. This lamp is in my way. I can't see Mr.  
8 Wilson. Thank you, gentlemen. And you're Mr. Kata?

9 MR. KATA: Yes, Your Honor.

10 THE COURT: We missed you the other day when I was  
11 in Florence. Your name was mentioned a couple of times.

12 MR. KATA: I heard.

13 THE COURT: All right. Mr. Wilson and Mr. Johnson,  
14 first thing I want to discuss with you is the fact that  
15 this matter is being heard today in Marlboro County and you  
16 have the right to have this heard in Florence County, do  
17 you understand that?

18 MR. WILSON: Yes, sir.

19 MR. JOHNSON: Yes, sir.

20 THE COURT: Are you telling me now that you are  
21 freely and voluntarily waiving venue and allow this matter  
22 to be taken up in Marlboro County?

23 MR. WILSON: Yes, sir.

24 MR. JOHNSON: Yes, sir.

25 THE COURT: You're doing this after consultation

1 with your attorney, correct?

2 MR. WILSON: Yes, sir.

3 MR. JOHNSON: Yes, sir.

4 THE COURT: I'm going to ask both of your gentlemen  
5 to please speak a little bit louder. My court reporter has  
6 got to take down everything that is being said and if you  
7 don't speak up she can't hear you, do you understand that?

8 MR. WILSON: Yes, sir.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: All right. That's a little bit better.  
11 Try to be better than that, if you would. All right. I  
12 think the way I want to handle this, is I'm going to  
13 explain each one of you, explain to each one of you at the  
14 same time, your rights to a jury trial and then I'll come  
15 back and sort of deal with the pleas individually with each  
16 one of you.

17 Mr. Wilson and Mr. Johnson, I want you both to  
18 understand that you have the right to a trial by a jury.  
19 I'm sure you've discussed some of these things with your  
20 attorney already but I want you to understand that. You do  
21 have the right to a trial by a jury. If you decide that  
22 you want to exercise that right to a jury trial, then you  
23 and your attorney will participate in the selection of that  
24 jury. In other words, you would have some say so in who  
25 sat in judgement of you as far as the trial of the case is

1 concerned. If you decide that you want to exercise your  
2 right to a jury trial, then the burden of proof would fall  
3 on the State of South Carolina to convince that jury of  
4 guilt beyond a reasonable doubt. The State would have to  
5 convince all twelve jurors of your guilty. In other words,  
6 the jury verdict would have to be unanimous one before you  
7 can be found guilty of any of these charges. Your attorney  
8 would have the right to confront any witnesses that testify  
9 against you at that trial. In other words, your lawyer can  
10 cross examine or ask questions of any witness that  
11 testifies during the course of a trial against you.  
12 Further, you have the right to put forth a defense on your  
13 own behalf if you so desire. Included in the defense is  
14 your right to testify on your own behalf. However, if you  
15 wish to remain silent throughout the entire trial, you  
16 have that right as well. If you exercise the right to  
17 remain silent that can not be held against you in anyway  
18 whatsoever. And, of course, at this stage I'm sure this  
19 has already been accomplished but for the record, you have  
20 the right to discover. Which means, you have right to  
21 obtain from the State any and all evidence that it has in  
22 it's possession that can benefit you in the preparation of  
23 your defense. Now, do you gentlemen understand this  
24 explanation of your rights?

25 MR. JOHNSON: Yes, sir.

1 THE COURT: All right. Let me get this straight  
2 for the court reporter. If you would answer first Mr.  
3 Wilson and you second and let's keep this orderly. You  
4 understand this explanation of your rights, Mr. Wilson?

5 MR. WILSON: Yes, sir.

6 THE COURT: Mr. Johnson?

7 MR. JOHNSON: Yes, sir.

8 THE COURT: Do you understand that by pleading  
9 guilty you give up all of these rights?

10 MR. WILSON: Yes, sir.

11 MR. JOHNSON: Yes, sir.

12 THE COURT: Do you have any questions about these  
13 rights that you need to ask me at this point in time?

14 MR. WILSON: No, sir.

15 MR. JOHNSON: No, sir.

16 THE COURT: All right. Now, Mr. Wilson I'm going  
17 to address you first. All right. In looking at the  
18 sentencing sheet, you're 38 years of age?

19 MR. WILSON: Yes, sir.

20 THE COURT: And you live in Hemmingway, South  
21 Carolina?

22 MR. WILSON: Yes, sir.

23 THE COURT: Is that in Williamsburg County?

24 MR. WILSON: Yes, sir.

25 THE COURT: Now, the offense that you are pleading

1 to it, offenses, excuse me, they took place in Florence  
2 County, is that correct?

3 MR. WILSON: Yes, sir.

4 THE COURT: Do you understand that the trafficking  
5 and heroin case, the conspiracy the first offense carries  
6 anywhere from 7 to 25 years in prison?

7 MR. WILSON: Yes, sir.

8 THE COURT: Do you understand that the distribution  
9 of heroine charges carry up to 15 years in prison?

10 MR. WILSON: Yes, sir.

11 THE COURT: Knowing the potential sentences in  
12 these matter, how do you wish to plea?

13 MR. WILSON: Guilty.

14 THE COURT: Now, has anyone promised you anything  
15 in order to get you to plea guilty?

16 MR. WILSON: No, sir.

17 THE COURT: Has anybody threaten you in anyway to  
18 get you to plea guilty?

19 MR. WILSON: No, sir.

20 THE COURT: Are you under the influence of any  
21 alcohol or drugs today?

22 MR. WILSON: No, sir.

23 THE COURT: Do you suffer from any kind of  
24 physical, mental or emotional problem that keep you from  
25 being able to understand things clearly?

1 MR. WILSON: No, sir.

2 THE COURT: Do you clearly understand what  
3 trafficking in heroine means?

4 MR. WILSON: Yes, sir.

5 THE COURT: Do you clearly understand what  
6 distribution of heroine means?

7 MR. WILSON: Yes, sir.

8 THE COURT: So you clearly udnerstand what it is  
9 you're pleading guilty to?

10 MR. WILSON: Yes, sir.

11 THE COURT: All right, sir. Now, you told me you  
12 understood the explanation of your rights a few moments  
13 ago, are you telling me that you are freely and voluntarily  
14 giving up all of yours rights in order to plea guilty to  
15 these charges?

16 MR. WILSON: Yes, sir.

17 THE COURT: All right. Your plea will have a  
18 recommended sentence by the State at a later point in time,  
19 do you understand that?

20 MR. WILSON: Yes, sir.

21 THE COURT: Do you understand that I'm not bound by  
22 any recommendation that's made by the State, that I can  
23 sentence you in my discretion at the point time of  
24 sentencing?

25 MR. WILSON: Yes, sir.

1 THE COURT: Okay. And you're represented by Mr.  
2 Kata?

3 MR. KATA: Yes, Your Honor.

4 THE COURT: Is that correct?

5 MR. WILSON: Yes, sir.

6 THE COURT: You had enough time to talk to him  
7 about all of this?

8 MR. WILSON: Yes, sir.

9 THE COURT: Has he answered all of your questions  
10 to your satisfaction?

11 MR. WILSON: Yes, sir.

12 THE COURT: Are you fully satisfied with his  
13 services on your behalf?

14 MR. WILSON: Yes, sir.

15 THE COURT: Do you agree he's done everything he  
16 possibly can for you under the circumstances as your  
17 attorney?

18 MR. WILSON: Yes, sir.

19 THE COURT: Okay. Now, I want you to listen  
20 carefully because I'm going to have Mr. Fernandez state for  
21 me the facts which support these charges. Once that  
22 statement of facts has been made I'll have a couple more  
23 questions for you. Mr. Fernandez?

24 MR. FERNANDEZ: Thank you, Your Honor. May it please,  
25 the Court?

1           The Count I in regarding the overall conspiracy  
2 located in Florence County but covering counties  
3 Darlington, Florence, and Williamsburg. This is the  
4 overall trafficking conspiracy stemming from Mr. Johnson  
5 who is also here today. Large amounts of heroin would be  
6 obtained from New York, a New York source where various  
7 individuals would travel to New York and traveled back to  
8 Williamsburg County and in an effort to then distributed  
9 the heroin to other dealers who would then deal in the  
10 other Tri-counties.

11           Mr. Wilson's role, his relation to Mr. Johnson, I  
12 believe, they are cousins and he would be a close confident  
13 of Mr. Johnson, obtain large quantities of heroin and then  
14 distributed throughout the counties. Numerous confidential  
15 informants as well as cooperating co-defendants identified  
16 Mr. Wilson's role in the overall scheme.

17           Count III is a substantive count distribution of  
18 heroin. On November 7, 2014, Florence County Sheriff's  
19 Department using a confidential informant met Mr. Wilson at  
20 Westover Street in Lake City, Florence County. The CI gave  
21 Wilson a \$180 and in turn was provided with seven packets  
22 of heroin stamped 'Safe House'. The heroin was tested by  
23 laboratory and bound to be heroin. 'Safe House' is a logo  
24 that was used on various heroin packets that Mr. Johnson  
25 was obtaining from New York City.

1           Count IV concerns November 19<sup>th</sup>, Lake City control  
2 purchased government provided a \$180 in funds and Wilson in  
3 turn provided a confidential informant with seven packets  
4 stamped 'Harlem Nights'. Again another logo that was used  
5 by Mr. Johnson in heroin that was provided from New York.  
6 Heroin was tested and found to be positive. This was  
7 captured on audio/video.

8           THE COURT:       All right. Mr. Wilson?

9           MR. WILSON:      Yes, sir.

10          THE COURT:      You heard the statements of the facts  
11 which support these charges, did you not?

12          MR. WILSON:      Yes, sir.

13          THE COURT:      Do you agree that, that statement of  
14 facts made by Mr. Fernandez is substantially correct  
15 concerning all of these charges?

16          MR. WILSON:      Yes, sir.

17          THE COURT:      After hearing that statement of the  
18 facts and after considering all of my other questions, is  
19 it still your desire to plead guilty to all three of these  
20 charges?

21          MR. WILSON:      Yes, sir.

22          THE COURT:      All right. Mr. Kata, do you believe  
23 that your client fully understands all of those rights?

24          MR. KATA:        Yes, Your Honor.

25          THE COURT:      Do you concur in his decision to plead

1 guilty based on the facts and circumstances presented?

2 MR. KATA: Yes, Your Honor.

3 THE COURT: All right. I find that the facts  
4 support the plea to all of these charges, these three  
5 charges.

6 I find that Mr. Wilson has freely, voluntarily and  
7 intelligently enter the plea. He has done so upon the  
8 advice of competent counsel with whom he indicates he is  
9 satisfied. Therefore, I'm going to accept his guilty plea  
10 to all three of these charges. It is my understanding that  
11 we are going to defer sentencing in this case?

12 MR. FERNANDEZ: Yes, Your Honor

13 THE COURT: Okay. As such time as the sentence is  
14 handed down in this case, Mr. Wilson, you understand you'll  
15 have ten days to appeal that decision?

16 MR. WILSON: Yes, sir.

17 MR. FERNANDEZ: And, Your Honor, and I don't know if  
18 you did it before but if there was some language about the  
19 fact that one of the charges that Mr. Wilson and Mr.  
20 Johnson, two charges are pleading to involves serious and  
21 violent offenses, I think that would be, this might be the  
22 appropriate time to advise them of that.

23 THE COURT: When I looked a while ago, I realized  
24 it was marked serious, but anyway. All right. Mr. Wilson,  
25 you understand that the trafficking heroin case and charge

1 considered under our law, a violent and serious offense, do  
2 you understand that?

3 MR. WILSON: Yes, sir.

4 THE COURT: Okay. You understand that in South  
5 Carolina if you are convicted of three serious offenses  
6 that you would be, in all likelihood, the third strike is  
7 what we call it, sentenced to life without parole, you  
8 understand that?

9 MR. WILSON: Yes, sir.

10 THE COURT: You understand it. So you understand  
11 the serious nature of these offenses ---

12 MR. WILSON: Yes ---

13 THE COURT: --- and this offense in which you are  
14 charged in which you are pleading?

15 MR. WILSON: Yes, sir.

16 THE COURT: I'm sure you've gone over this with  
17 your attorney, correct?

18 MR. WILSON: Yes, sir.

19 THE COURT: And you know this and knew this at the  
20 time you just entered your plea, correct?

21 MR. WILSON: Yes, sir.

22 THE COURT: Anything else from the State?

23 MR. FERNANDEZ: That's -- thank you, Your Honor.

24 THE COURT: I understand this is his first serious  
25 ---

1 MR. FERNANDEZ: It is.

2 THE COURT: --- serious offense ---

3 MR. FERNANDEZ: It would be, Your Honor.

4 THE COURT: Okay. Now, Mr. Johnson?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: You're 35 years of age?

7 MR. JOHNSON: Thirty-six.

8 THE COURT: Thirty-six, now, okay. All right, sir.

9 And you live in Nesmith, South Carolina?

10 MR. JOHNSON: Yes, ma'am. Yes, sir.

11 THE COURT: Where is that?

12 MR. JOHNSON: About fifteen minutes outside of  
13 Kingstree.

14 THE COURT: So it's in Williamsburg County?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: Okay. Now, these offenses that you're  
17 charged with took place in Williamsburg and in Florence  
18 County, is that correct?

19 MR. JOHNSON: Yes, sir.

20 THE COURT: And what he pleading to Mr. Fernandez,  
21 does cover those two counties?

22 MR. FERNANDEZ: That's correct. He is -- that's  
23 right. Not indicted in Darlington County indictment.

24 THE COURT: All right. Mr. Johnson, two of the  
25 charges that I understand you wish to plead to, are the

1 trafficking heroin charge and the conspiracy to trafficking  
2 heroin, both in which carry from 7 to 25 years in prison,  
3 you understand that?

4 MR. JOHNSON: Yes, sir.

5 THE COURT: Okay. The remaining charges I believe  
6 are all distribution of heroin charges, one, two, three,  
7 four, five, okay, distribution of heroin charges which  
8 carry up to 15 years in prison, you understand that?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: There's another possession with intent  
11 to distribute heroin charge, it carries up to 15 years in  
12 prison, do you understand that?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: And there still yet another, two  
15 distribution of heroin charges, which as I stated earlier  
16 carry up to 15 years in prison, do you understand that?

17 MR. JOHNSON: Yes, sir.

18 THE COURT: Understanding the potential sentences  
19 in these indictments, how do you wish to plea?

20 MR. JOHNSON: Guilty.

21 THE COURT: Do you understand what trafficking in  
22 heroin means?

23 MR. JOHNSON: Yes, sir.

24 THE COURT: Do you understand what distribution of  
25 heroin means?

1 MR. JOHNSON: Yes, sir.

2 THE COURT: You understand what possession of  
3 heroin with intent to distribute means?

4 MR. JOHNSON: Yes, sir.

5 THE COURT: So you clearly understand what it is  
6 you're charged with?

7 MR. JOHNSON: Yes, sir.

8 THE COURT: And you clearly understand what you're  
9 pleading guilty to?

10 MR. JOHNSON: Yes, sir.

11 THE COURT: Okay. Now, I understand that your plea  
12 and sentence is negotiated, is that correct?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: I will tell you, at this point time,  
15 that if for some reason I am unable to accept any  
16 negotiated plea, I will allow you to withdraw your plea, do  
17 you understand that?

18 MR. JOHNSON: Yes, sir.

19 THE COURT: Now, I'll go ahead and cover the  
20 serious nature of this charge in your case. You heard me  
21 explain to Mr. Wilson, did you not, the situation  
22 concerning the fact that you are pleading to a violent and  
23 serious offense with regards to the trafficking heroin, you  
24 understand that?

25 MR. JOHNSON: Yes, sir.

1           THE COURT:       All right.  You understand the  
2           significance of that?

3           MR. JOHNSON:     Yes, sir.

4           THE COURT:       You understand that if you are  
5           convicted or plea to three serious offenses that would be  
6           what we would consider three strikes and you could be faced  
7           with a sentence of life without parole?

8           MR. JOHNSON:     Yes, sir.

9           THE COURT:       Okay.  You clearly understand that?

10          MR. JOHNSON:     Yes, sir.

11          THE COURT:       Talked to your attorney about that ---

12          MR. JOHNSON:     Yes, sir.

13          THE COURT:       --- before you entered this plea?

14          MR. JOHNSON:     Yes, sir.

15          THE COURT:       Okay.  Has anybody threaten you in any  
16          way to get you to plead guilty, Mr. Johnson?

17          MR. JOHNSON:     No, sir.

18          THE COURT:       Has anybody promised you anything to  
19          get you to plead guilty?

20          MR. JOHNSON:     No, sir.

21          THE COURT:       Are you under the influence of alcohol  
22          or drugs today?

23          MR. JOHNSON:     No, sir.

24          THE COURT:       Do you suffer from any kind of  
25          physical, mental or emotional problems that keep you from

1           being able to understand things clearly?

2           MR. JOHNSON:    No, sir.

3           THE COURT:       All right.  You heard me explain your  
4 rights to you earlier, correct?

5           MR. JOHNSON:    Yes, sir.

6           THE COURT:       You tell me at that time you understood  
7 the explanation of your rights, is that correct?

8           MR. JOHNSON:    Yes, sir.

9           THE COURT:       Are you telling me now that you are  
10 freely and voluntarily giving up all of your rights in  
11 order to plead guilty to all of these indictments?

12          MR. JOHNSON:    Yes, sir.

13          THE COURT:       Okay.  Now, you're represented by Mr.  
14 Barth?

15          MR. JOHNSON:    Yes, sir.

16          THE COURT:       You had enough time to discuss all of  
17 these indictments with him?

18          MR. JOHNSON:    Yes, sir.

19          THE COURT:       Has he fully answered all of your  
20 questions?

21          MR. JOHNSON:    Yes, sir.

22          THE COURT:       Are you fully satisfied with his  
23 services on your behalf?

24          MR. JOHNSON:    Yes, sir.

25          THE COURT:       You agree that he's done everything he

1 possibly can for you under the circumstances as your  
2 attorney?

3 MR. JOHNSON: Yes, sir.

4 THE COURT: Can you think of anything that he  
5 should've done for you that he has not done for you?

6 MR. JOHNSON: No, sir.

7 THE COURT: You are completely satisfied with the  
8 services on your behalf?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: Okay. All right. At this time, I'm  
11 going to ask Mr. Fernandez, with the Attorney General's  
12 office, to give me any additional facts that I need to hear  
13 which support the charges to which you are pleading to.  
14 After he has stated the facts, I'll couple more questions  
15 for you so listen carefully.

16 MR. FERNANDEZ: Thank you, Your Honor. Count I of the  
17 indictment number 22 concerns the overall conspiracy. Your  
18 Honor, heard much about Mr. Johnson prior to today.

19 This is a conspiracy that began sometime in and around  
20 the end of 2011. It's an investigation that has been  
21 conducted continuously since then, ending in the  
22 indictments of 2015. It covered a vast network of heroin  
23 distributors, like I said before, the heroin was obtained  
24 from New York City through various carriers. Brought down  
25 to Williamsburg County at the residence of Mr. Johnson.

1 Mr. Johnson would then distribute that heroin which is  
2 already prepackaged to his various networks of dealers in  
3 the general area. He would sometimes distribute the heroin  
4 personally. However, when he became aware of law  
5 enforcement or somewhat aware of law enforcement  
6 investigating him, he decided to take a more approach where  
7 he would try to separate himself from the heroin by having  
8 other people directly deal to the users and the lower  
9 levels of drug dealers. That's what Count I covers of  
10 indictment 22.

11 The more substantive Counts are located in the  
12 Williamsburg County indictment that would be indictment 21.  
13 Count I, concerns a New York trip that sled conducted with  
14 confidential informants where they went to the residence of  
15 Dawn Marie Riley who share children in common with Mr.  
16 Johnson. He, at some point, used Ms. Riley as a drop off  
17 point for his heroin and she would also collect money and  
18 distribute the heroin on his behalf. She would also  
19 arrange for logistics for the trips to New York by renting  
20 vehicles and providing some spending cash for gas and food  
21 and some heroin to get the couriers to New York City  
22 because they were required heroin in order to not get sick.

23 The Count I, of this indictment, concerns a New York  
24 trip that was conducted by sled with assistance of  
25 confidential informants. That occurred back in February

1 17' 2015. The confidential informants went to Dawn Marie  
2 Riley's house, picked up the vehicle that had been rented  
3 by her, were given six packets of heroin for the trip and  
4 \$300 for spending money. The pair as well as the law  
5 enforcement went to New York City, obtain 120 bricks of  
6 heroin from New York City and then conducted a controlled  
7 delivery to Williamsburg, South Carolina within a twenty-  
8 four hour span.

9 After the controlled delivery, sled and other law  
10 enforcement executed a search warrant where the funds and  
11 the, where the, I'm sorry, the 120 bricks were located.  
12 They were all tested positive subsequent by the sled  
13 laboratory.

14 Count II, concerns on March 29, 2011, control  
15 purchased by sled utilizing a confidential informant at the  
16 residence of Timothy Johnson which is one Solomon  
17 Circle in Williamsburg County. Mr. Johnson was provide a  
18 \$185 in government documented funds. In exchange he was  
19 provided, the CI was provided with nine packets of heroin  
20 stamped 'Black Mafia Family' which is a a logo that was  
21 used by Mr. Johnson obtained by the New York City source.  
22 This was captured on audio/video and the heroin was tested  
23 positive in a lab.

24 Count III concerns on August 23, 2012, control  
25 purchased off of Mr. Johnson at his residence, same

1 residence, Solomon Circle. Confidential informants  
2 provided Mr. Johnson with \$900 in government funds. In  
3 turn, was provided with ninety packets of heroin stamped  
4 'Exxon'. Again another stamp that was traced to Mr.  
5 Johnson being in New York. This also tested positive for  
6 heroin.

7 Count IV, concerns on August 27<sup>th</sup>, control purchased of  
8 heroin utilizing a CI on Mr. Johnson at his same residence  
9 in Williamsburg County. Sled provided Mr. Johnson with  
10 \$1,100 in government funds. In exchange the CI was  
11 provided with the hundred and ten packets of heroin stamped  
12 'Sonoco'. Heroin was tested positive by the laboratory.

13 August -- April 3, 2014, sled conducted a controlled  
14 purchase of heroin utilizing a CI from Mr. Johnson at  
15 Henry Road which is in Williamsburg County also.  
16 Confidential informant provided Mr. Johnson with a \$100 in  
17 documented funds. In return was given ten packets of  
18 heroin stamped 'Fat Boy'. Heroin was later tested positive  
19 by laboratory.

20 Count VI, concerns April 8, 2014, controlled purchase  
21 by sled utilizing another CI from Mr. Johnson at his  
22 residence at Solomon Circle. The confidential  
23 informant provided a \$100 in government funds for ten  
24 packets of heroin stamped 'Hot Sauce'. Later tested  
25 positive for heroin.

1           Count VIII concerns a December 11, 2014, control  
2 purchased by the Williamsburg County Sheriff's office on  
3 Mr. Johnson utilizing a confidential informant at his  
4 residence       Solomon circle. Confidential informant  
5 provided Mr. Johnson \$100 in government funds in exchange  
6 for four packets of heroin stamped 'Safe House'. Tested  
7 positive for heroin at a later date.

8           Count XII concerns a September 9, 2015, control  
9 purchased by sled on Mr. Johnson at his residence  
10 Solomon circle, Williamsburg County. Confidential  
11 informant provided \$50 in government funds for five bags of  
12 heroin. This heroin was later tested positive.

13           Count XIII, finally, is the possession with intent to  
14 distribute. That concerns of February 19, 2015. A search  
15 warrant of Mr. Johnson's residence in Solomon circle. As a  
16 result of the search, a number of cash was discovered as  
17 well as twenty-five packets of heroin marked 'Safe House'  
18 at his residence. This was later tested positive for  
19 heroin.

20           That should govern all, I believe, ten charges, Your  
21 Honor. That should address all of them.

22           THE COURT:       Mr. Johnson?

23           MR. JOHNSON:     Yes, sir.

24           THE COURT:       Did you hear what Mr. Fernandez just  
25 stated to me concerning the facts that support all of these

1 charges?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: Do you agree that that statement of the  
4 facts is substantially correct?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: After hearing that statement of the  
7 facts and considering all of my other questions, is it  
8 still your desire to plead guilty to all of these  
9 indictments?

10 MR. JOHNSON: Yes, sir.

11 THE COURT: Mr. Barth, do you believe your client  
12 fully understands all of his rights?

13 MR. BARTH: Yes, sir, Your Honor.

14 THE COURT: Do you concur in his decision to plead  
15 guilty to all of these charges based on the facts and  
16 circumstances presented?

17 MR. BARTH: I do, Your Honor.

18 THE COURT: If my calculation is correct, and  
19 someone can correct me if I'm wrong, Mr. Johnson is  
20 pleading to offenses that could garner him 170 years in  
21 prison.

22 MR. FERNANDEZ: That sounds about right, Your Honor.

23 THE COURT: If I'm correct. I realize the work  
24 that has gone into this with law enforcement, the Attorney  
25 General's office and from the defendant's counsel, as well,

1 Mr. Barth. An 18 to 22 year range of sentencing is, quite  
2 frankly, quite a deal for Mr. Johnson, but -- so I commend  
3 your lawyer, Mr. Johnson, for a job he's done on your  
4 behalf.

5 MR. JOHNSON: Yes, sir.

6 THE COURT: And the Attorney General's office for  
7 the tremendous amount of work they've done in bringing you  
8 to justice, so to speak. All that being said, I do find,  
9 as I said, the facts support the plea. I'm going to accept  
10 the plea, I guess somewhat reluctantly based on what I see  
11 the number of years that he's faced with, but with that  
12 sentencing range we can get Mr. Johnson off the street for  
13 a considerable period of time. This will be, what, an  
14 eighty-five percent ---

15 MR. FERNANDEZ: Yes, Your Honor.

16 THE COURT: --- service of the sentence so that's a  
17 substantial amount of time. I find that Mr. Johnson's plea  
18 has been made freely, voluntarily, and intelligently. He's  
19 done so upon the advice of very competent counsel which  
20 whom he indicates he is satisfied. So as I said earlier, I  
21 am going to accept the plea based on the fact that it is  
22 supported by the facts. We will be deferring sentencing in  
23 his case as well?

24 MR. FERNANDEZ: We'd ask that, Your Honor. Yes, sir.

25 THE COURT: So we've got the range set so

1           sentencing will be deferred. Anything else?

2           MR. FERNANDEZ: I don't believe anything concerning  
3 these two defendants, Your Honor. Just a couple of other  
4 housekeeping measures for next week but nothing concerning  
5 these two folks.

6           THE COURT:       Thank you, gentlemen.

7           MR. KATA:        Thank you, Your Honor.

8           THE COURT:       Thank you.

9           (CONCLUSION OF THE HEARING ON AUGUST 2, 2016)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Marlboro County, South Carolina, on the 2nd day of August, 2016.

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

Lisa S. Carter

Lisa S. Carter  
Circuit Court Reporter

September 4, 2017

STATE OF SOUTH CAROLINA )  
 )  
 County of Lee )  
 )  
Timothy Johnson 370487 )  
 Full name and prison number (if any) of Applicant )

v.

State of South Carolina )  
 )  
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 )  
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IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
 APR 13 PM 1:12  
 CLERK OF COURT  
 FLORENCE COUNTY, SC

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee Correction Institution

---

2. Name and location of Court which imposed sentence Florence County  
General Sessions Court

---

3. Name(s) of co-defendant(s) (if any) 19 Coconspirers

---

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2015-GS-47-22 (Count 1) Trafficking Heroin, 4-Mg, Conspiracy
  - (b) 2015-GS-47-21 (Count 9) Trafficking Heroin, 4-Mg, First Offense

(c) \_\_\_\_\_  
5. The date upon which sentence was imposed and the terms of the sentence:

(a) 11-14-16, 19 yrs Concurrent

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

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

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

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

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

NO

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

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

i. NOT Applicable

ii. NOT Applicable

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

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

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

ii. NOT Applicable

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

(c) the date of each such result:

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

ii. NOT Applicable

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

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

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

ii. NOT Applicable

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

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

(a) Not Mandatory From Guilty Plea

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel
- (b) State Grand Jury Unconstitutional Assembled, evidence inadmissible
- (c) Conviction Obtain In Violation Of Constitutional Rights

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

- (a) Trial Counsel failed to conduct factual and legal investigation
- (b) Grand Jury lacked Probable Cause to Indict and violate fair Cross section
- (c) Rights were violated when no warrants were served for Arrest-Detention

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

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

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

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

*NOT Applicable*

*NOT Applicable*

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

*NOT Applicable*

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

*NOT Applicable*

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

*NOT Applicable*

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

*NO*

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

*Not Applicable*

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

*NOT Applicable*

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

*NOT Applicable*

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

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

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. Brendan P. Barth - 205 North Irby Street  
P.O. Box 107
  - ii. Florence, SC 29503
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea/Sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Vacate Plea

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

NO

STATE OF SOUTH CAROLINA )  
County of Lee )

VERIFICATION

I, Timothy Johnson, 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 at this time for vacating, setting aside or correcting the convictions and sentence attacked in this application; and that the matters and allegations therein set forth are true and correct.

Timothy L Johnson

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

J Diamond (L.S.)  
Notary Public

My Commission Expires: 2/1/2027

2017 APR 13 PM 1:12  
DUNN, J. LOS O'HARA  
CCJP & GS  
FLORENCE COUNTY, SC

FILED

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

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

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

Timothy L. Johnson  
Applicant

SWORN or affirmed to and subscribed before me this

22 day of March, 2017

Lee Corr., Inst.,  
990 Wisacky Highway  
Bishopville, SC 29010-1775

[Signature]

Notary Public

My Commission Expires: 2/1/2027

FILED

2017 APR 13 PM 1:12  
Doris JUDGE O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Timothy Johnson, SCDC #370487	)	Case No.: 2017-CP-21-0952
	)	
Applicant,	)	
	)	<b>RETURN AND PARTIAL</b>
	)	<b>MOTION TO DISMISS</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
<hr/>		

In response to the post-conviction relief application filed April 13, 2017, Respondent (“the State”) would show this Court:

I.

Timothy Johnson (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the State Grand Jury. On October 22, 2015, the State Grand Jury indicted Applicant for one count of trafficking in heroin greater than 28 grams, seven counts of distribution of heroin, one count of possession with intent to distribute heroin, and one count trafficking heroin greater than 28 grams (conspiracy) (2015-GS-47-0021, -0022). as part of a multi-count, multi-defendant indictments stemming from an investigation into a heroin trafficking ring. Brendan P. Barth, Esquire, represented Applicant. Assistant Attorney General David Fernandez, of the South Carolina Attorney General’s Office, prosecuted the case.

On August 1, 2016, Applicant entered into a written plea agreement, in which he agreed to “fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of importation,

possession, and distribution of controlled substances and related unlawful activities,” in exchange for a negotiated sentence range of an aggregate eighteen to twenty-two years imprisonment. As part of this plea agreement, Applicant expressly waived his right to both a direct appeal and post-conviction relief action. (“The Defendant, Timothy Leverne Johnson, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, Timothy Leverne Johnson, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, Timothy Leverne Johnson, understands that he has a right to file a post-conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post-conviction relief action except for claims that directly attack the effectiveness of advice to agree to this waiver.”) Applicant initialed each page of this written plea agreement and signed this plea agreement.

The following day (August 2, 2016), Applicant appeared in the Florence County Court of General Sessions before the Honorable Roger E. Henderson, circuit court judge, and pursuant to the signed plea agreement, pled guilty to seven counts of distribution of heroin and one count of possession with intent to distribute heroin as indicted, and to the lesser-included offenses of trafficking in heroin (4-14 grams) and trafficking in heroin (4-14 grams) (conspiracy). Judge Henderson accepted Applicant’s plea and deferred sentencing.

On November 14, 2016, Applicant again appeared before Judge Henderson for a sentencing proceeding. At this hearing, Judge Henderson sentenced Applicant to an aggregate nineteen years imprisonment. Applicant did not file a notice of appeal.

Attached herewith and incorporated herein by reference are the records of the South Carolina State Grand Jury Clerk of Court regarding the subject conviction, the transcript from Applicant's plea and sentencing hearings, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

## II.

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

1. Ineffective assistance of counsel: "Trial counsel failed to conduct factual and legal investigation"
2. "State Grand Jury unconstitutional assembled, evidence inadmissible: Grand Jury lacked probable cause to indict and violate fair cross section"
3. "Conviction obtained in violation of constitutional rights: rights were violated when no warrants were served for arrest-detention"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## III.

Respondent asserts Applicant's allegation that his attorney was ineffective is without merit. Respondent asserts Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney. Where ineffective assistance of counsel is alleged 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. 668).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. Furthermore, Respondent submits that this allegation should be summarily dismissed based on the reasons presented in subsection V below.

#### IV.

Respondent argues constitutional violations should result in the vacation of his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, an applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

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

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. Moreover, Respondent submits that this allegation should be summarily dismissed based on the reasons presented in subsection V below.

V.

Respondent asserts that each allegation in Applicant's application for post-conviction relief should be summarily dismissed based on Applicant's waiver of his right to collateral review of his conviction, including direct appeal and post-conviction relief review. See attached Plea Agreement. The record before this Court indicates that Applicant knowingly and voluntarily waived his right to collaterally attack his conviction, which includes his right to raise issues of ineffective assistance of counsel.

Under South Carolina law, a criminal defendant can choose to waive his right to collateral review of his conviction. Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008) (holding that a waiver of appellate rights is valid and enforceable as long as it is knowing and voluntary). Plea agreements in general operate under contractual principles, and are upheld when each party receives the benefit of the bargain. State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994). Here, Applicant chose to plead guilty and agreed to waive his appellate and post-conviction relief rights in exchange for a favorable negotiated sentence. Both parties received a benefit of the bargain, and this agreement is valid under contractual law.

However, recent South Carolina case law holds that, while appellate waivers are enforceable, a criminal defendant who has waived his appellate rights is still entitled to raise the very narrow issue of challenging his attorney's conduct in advising him to enter into the waiver. Sanders v. State, 412 S.C. 611, 617, 773 S.E.2d 580, 583 (2015) ("Consequently, we hold that although a defendant may waive his right to collateral review, he is nevertheless still entitled to

challenge whether the advice he received in agreeing to that waiver was constitutionally defective.”). Therefore, Respondent requests an evidentiary hearing be held for the sole purpose of determining whether Counsel was ineffective *only* in his representation surrounding his advice to waive Applicant’s appellate rights. All other allegations should be summarily dismissed.

VI.

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

VII.

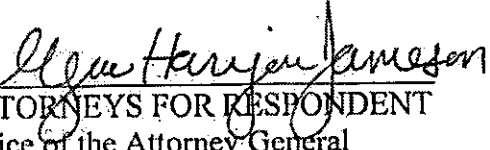
WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel for Plea Counsel’s representation surrounding his advice to waive Applicant’s appellate and collateral rights.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

By:   
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

10/6, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 )  
 )  
 TIMOTHY JOHNSON, #370487 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS


2017-CP-21-0952

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

**Jonathan D. Waller, Esquire**  
**Giese Law Firm**  
**1116 Blanding Street, Suite 2B**  
**Columbia, South Carolina 29201**

DATED this 6<sup>th</sup> day of October, 2017.

  
 Caroline Collins, Administrative Coordinator  
 For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2017-CP-21-00952
	)	
Timothy Leverne Johnson,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

February 2, 2018  
Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Jonathan Waller, Esquire  
Attorney for the Applicant

Megan H. Jameson, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 FEBRUARY 2, 2018

2 (WHEREUPON, the proceedings began at 11:13 a.m.)

3 MS. JAMESON: May I approach with the packet?

4 THE COURT: Yes.

5 MS. JAMESON: May it please the Court?

6 THE COURT: Ms. Jameson, you're recognized.

7 MS. JAMESON: This is the matter of Timothy Johnson  
8 versus the State of South Carolina, Docket No. 2017-CP-21-  
9 0925.

10 On October 25<sup>th</sup>, 2015, the state grand jury indicted Mr.  
11 Johnson for one count of conspiracy to traffic in heroin,  
12 greater than 28 grams, seven counts of distribution of  
13 heroin, one count of possession with the intent to distribute  
14 heroin, and one part of -- one count of trafficking heroin,  
15 greater than 28 grams, conspiracy, as part of a multi-count,  
16 multi-defendant indictment stemming into an investigation  
17 into a heroin trafficking ring throughout the state. Brendan  
18 Barth represented Mr. Johnson.

19 On August 1<sup>st</sup>, 2016, Mr. Johnson entered into a written  
20 plea agreement in which he agreed to fully and truthfully  
21 cooperate with the office of the Attorney General of South  
22 Carolina and any local, state, and federal law enforcement  
23 agents in their investigation of the importation, possession,  
24 and distribution of controlled substances and related  
25 activities in exchange for a negotiated sentence range of an

1 aggregate 18 to 22 years' imprisonment. As part of this plea  
2 agreement, Mr. Johnson expressly waived his right to both  
3 direct appeal and post-conviction relief. Mr. Johnson  
4 initialed each page of this plea agreement and signed the  
5 plea agreement.

6 On the following day, August 2<sup>nd</sup>, he appeared in the  
7 Florence County Court of General Sessions before Judge  
8 Henderson and pursuant -- pursuant to the signed plea  
9 agreement, pled guilty to seven counts of distribution of  
10 heroin and one count of possession with intent to distribute  
11 heroin as indicted and to the lesser-included offenses of  
12 trafficking in heroin, 4 to 14 grams, and conspiracy to  
13 traffic in heroin, 4 to 14 grams.

14 Judge Henderson accepted his guilty plea and deferred  
15 sentencing. He again appeared before Judge Henderson on  
16 November 14<sup>th</sup>, 2016, for sentencing and, at that time, Judge  
17 Henderson sentenced him to 19 years' imprisonment. He didn't  
18 file a notice of appeal. However, he did file a timely post-  
19 conviction relief action on April 13<sup>th</sup>, 2017, which the State  
20 alleges is in direct violation of his plea agreement.

21 In his application, he alleged ineffective assistance of  
22 counsel for failing to conduct factual and legal  
23 investigation into his case, that the state grand jury was  
24 unconstitutionally assembled and the evidence was  
25 inadmissible, and his conviction was obtained in violation of

1 his constitutional rights when no warrants were served for  
2 his arrest detention.

3 On October 6<sup>th</sup>, 2017, the State made its return and  
4 partial motion to dismiss, seeking summary dismissal of all  
5 claims beyond whether counsel was ineffective in advising him  
6 to enter into the written plea agreement pursuant to a 2015  
7 case of Sanders v. State and, at this time, the State would  
8 renew our motion to dismiss all claims beyond that limited  
9 ground.

10 THE COURT: All right. What do you have to say with  
11 regard to that motion? We'll deal with that initially.

12 MR. WALLER: Certainly, Your Honor, and I think that's  
13 appropriate. Your Honor, I think it's -- I sort of think  
14 it's something that is kind of a threshold, but we need to  
15 deal with that motion first to see if we're able to go  
16 forward.

17 Your Honor, it's my understanding from hearing what the  
18 AG just put on the record is that the -- what can be  
19 challenged at this stage is the entering into the overall  
20 plea agreement.

21 THE COURT: Whether the trial counsel was ineffective in  
22 allowing him to enter into the plea agreement.

23 MR. WALLER: And I'm just trying to make sure I --

24 THE COURT: Isn't that right?

25 MR. WALLER: Yes, sir. That's how I understand it. I'm

1 just making sure that everybody is on the same page, Your  
2 Honor.

3 THE COURT: Right. And --

4 MS. JAMESON: That is the State's position.

5 THE COURT: And do you agree with that?

6 MR. WALLER: I agree with that's what their motion is,  
7 Your Honor.

8 THE COURT: Okay. Do you agree that that's the state of  
9 the law as it applies to this case?

10 MR. WALLER: Unfortunately, I believe that it is.

11 THE COURT: Okay. Well, then, I will grant their motion  
12 in that regard.

13 MR. WALLER: Well --

14 THE COURT: But I'll be glad to hear from you, yes.  
15 That's why -- that's what I recognized you for.

16 MR. WALLER: Well, Your Honor, I think that -- I think  
17 that the state of the law is that Mr. Johnson can challenge  
18 the effectiveness of his attorney in entering into the plea  
19 agreement.

20 THE COURT: Right.

21 MR. WALLER: I think if we defeat that motion, that I  
22 think it opens up, so to speak, to having -- to be able to  
23 challenge the rest. If he was ineffective in entering into  
24 the plea agreement, then we wouldn't have a guilty plea.

25 THE COURT: Right.

1 MR. WALLER: So I think that Mr. -- Mr. Johnson  
2 certainly -- prior to dismissing all of the other  
3 allegations, certainly I think Your Honor needs to hear  
4 testimony and be able to rule on their motion.

5 MS. JAMESON: If I may respond, Your Honor? I believe  
6 that the -- pursuant to the plea agreement and the status of  
7 the law in South Carolina, he can only raise ineffective  
8 assistance of counsel on that limited issue of whether  
9 counsel was ineffective in advising him to enter into the  
10 plea agreement.

11 And if Your Honor finds counsel was ineffective, then  
12 PCR would be granted, and he would go back and be able to  
13 renegotiate a different plea agreement or proceed to trial,  
14 but that he wouldn't then be able to go forward and present  
15 additional claims of post-conviction relief because those  
16 claims are all waived, and Sanders is clear that that's the  
17 only issue we can bring before this Court at this time.

18 THE COURT: Okay. I understand your motion. You've  
19 articulated it very well, but the only matter -- all of the  
20 other requests for post-conviction relief other than the  
21 effectiveness of trial counsel in advising the applicant to  
22 enter into the plea agreement is the only matter that we're  
23 going to deal with here today.

24 MR. WALLER: Understood, Your Honor.

25 THE COURT: Very good. All right. You may call your

1 first witness.

2 MR. WALLER: Thank you, Your Honor. We would call  
3 Timothy Johnson.

4 THE COURT: Mr. Johnson, please come forward. I'm going  
5 to ask you, if you could, to place your left hand on the  
6 Bible and raise your right hand as the clerk administers the  
7 oath. And watch your step.

8 THE CLERK: Do you swear or affirm that the testimony  
9 you give will be the truth, the whole truth, and nothing but  
10 the truth, so help you God?

11 THE APPLICANT: Yes.

12 THE CLERK: Thank you.

13 THE COURT: Have a seat in the witness chair and pull up  
14 real close to that microphone and speak loudly, clearly, and  
15 slowly in order that we can hear everything that you have to  
16 say, and let's start with your full name, Mr. Johnson.

17 THE APPLICANT: Timothy Leverne Johnson.

18 THE COURT: And spell that last one?

19 THE APPLICANT: J-o-h-n-s-o-n.

20 THE COURT: Very good. Mr. Waller?

21 MR. WALLER: Thank you, Your Honor. May it please the  
22 Court.

23 TIMOTHY JOHNSON, being first  
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. WALLER:

2 Q: Good morning, Mr. Johnson. How are you today?

3 A: I'm fine. And yourself?

4 Q: I'm doing well. Thank you for asking.

5 All right. Mr. Johnson, you heard Judge Nettles' ruling  
6 just a second ago as to the issues we're dealing with this  
7 morning; is that right?

8 A: I hear -- I heard them, but I don't quite understand it.

9 Q: All right.

10 A: So I can --

11 Q: Well, if you can answer any questions that I have for  
12 you and that Ms. Jameson has for you, we'll -- we'll proceed  
13 in that fashion. Does that sound good?

14 A: Yes, sir.

15 Q: All right. Mr. Johnson, by way of background, when you  
16 were first charged with these allegations, who was your  
17 attorney?

18 A: When I was charged, I had -- Benjamin Stitely  
19 represented me on the distribution charge, but I got indicted  
20 a week later and I had no attorney. I filed for legal  
21 representation from the State, and they never assigned me  
22 anybody. They assigned Mr. Barth to me I think in June.

23 Q: Okay. And let me ask you this way. Were -- did you  
24 have some charges that were local charges? County charges?

25 A: All my charges was out of Williamsburg County. I had no

1 Florence County charges.

2 Q: Okay. And then after that, those charges were adopted  
3 by the state grand jury?

4 A: Yes, sir.

5 Q: Okay. And you were indicted on those charges by the  
6 state grand jury?

7 A: Yes, sir.

8 Q: Okay. And that's how you got Mr. Barth?

9 A: Yes, sir.

10 Q: Okay. How long after the state grand jury picked up the  
11 charges did Mr. Barth get appointed to represent you?

12 A: The state grand jury charged me the 11<sup>th</sup> or -- November  
13 11<sup>th</sup> or November 13<sup>th</sup> of 2015. I immediately requested  
14 representation the 18<sup>th</sup> of November. I wasn't assigned Mr.  
15 Barth until June 10<sup>th</sup> I believe.

16 Q: Okay.

17 A: At that time, he came and saw me right then.

18 Q: Okay. When you -- when the charges were adopted by the  
19 state grand jury, did you have a bond setting in Columbia?

20 A: No, sir. It was in Florence.

21 Q: It was in Florence?

22 A: Yes, sir.

23 Q: Okay. And what was your bond set at?

24 A: I was already on a \$500,000 cash for one distribution,  
25 and they added another 500,000 to that and gave it a million

1 dollar million cash bond.

2 Q: Okay. So this might seem like a silly question. Were  
3 you able to make that bond or were you incarcerated?

4 A: No, sir. I wasn't able to make the bond. I couldn't do  
5 anything because I didn't have any legal representation. I  
6 wrote Ms. Margaret Self requesting it. I wrote Judge Hood.  
7 I wrote David Fernandez. Nobody assigned me any legal  
8 representation until June.

9 Q: Okay. Because you didn't have a lawyer, did you have  
10 access to any discovery materials or anything like that?

11 A: No, sir.

12 Q: When Mr. Barth got appointed to represent you, you said  
13 it was June?

14 A: Yes, sir.

15 Q: Did he have any discovery materials?

16 Q: He came to see me that Saturday and informed me that he  
17 was assigned to me and he gave me, first, a notice from the  
18 judge saying that I could not keep the Rule 5, that he could  
19 only show it to me.

20 Q: Okay. Was that a protective order? Do you know? Is  
21 that how it was explained?

22 A: I don't know if it was a protective order. It was just  
23 the judge's order. He said the judge said I can't keep it.  
24 I could only see it.

25 Q: Okay. So you understood you could see it with him, but

1 you couldn't have a copy of it?

2 A: That's it. Yeah.

3 Q: Okay. How many times did you and Mr. Barth meet?

4 A: That one time, he met me -- I want to -- the 10<sup>th</sup> or  
5 11<sup>th</sup>. It was a Saturday morning. He came up there and we  
6 went through that, and they took me to a plea hearing that I  
7 know nothing about the end of July, and Mr. Barth wasn't  
8 present. I didn't know anything about a pre-hearing.

9 My family contacted him and the officers in the court  
10 that day contacted him too wanting to know what was going on.  
11 He came to see me after that and told me that he didn't know  
12 anything about that either. That's why he wasn't there.

13 He came to see me -- when he came to see me to explain  
14 that to me, at that time he told me they was ready to proceed  
15 to court, and I was, like, how can we proceed to court if you  
16 had not got any of the evidence that I told you would prove  
17 that I was innocent of the charge and you ain't had time to  
18 go over the case, period. I asked him to file a motion of  
19 continuance and he didn't.

20 Q: Okay. So let me see if I understand what you just  
21 testified to. You and Mr. Barth met on two separate  
22 occasions; is that right?

23 A: Yeah. The first time in June and the next time after a  
24 plea hearing.

25 Q: Okay. And the second one that he told you that y'all

1 were -- they were ready to get started with your case?

2 A: Yeah. He said the AG's office contacted him and said  
3 they were ready to proceed forward. Him and one of his  
4 colleagues came to see me. I don't know his name.

5 Q: Okay. And I know Ms. Jameson read into the record what  
6 charges you were facing, but, if you can, what -- what do you  
7 remember of the charges? How many charges and what they  
8 carried?

9 A: I want to say eleven charges.

10 Q: Okay. And how much time were you facing?

11 A: Twenty-five to 40.

12 Q: On each of them?

13 A: No. I think -- I'm not sure if it was a combination of  
14 all the charges or -- I'm not sure. I'm not -- I wasn't  
15 familiar with the legal system; so I didn't know.

16 Q: Okay.

17 A: And at the time, I explained to him these charges I  
18 didn't do and he was, like, there was nothing he could do for  
19 me.

20 Q: Okay. And just for clarification, does it sound right  
21 that the two trafficking charges would have been 25 to 40?

22 A: Yes, sir.

23 Q: Okay. And the other charges, the distribution charges,  
24 would have been less, but still substantially severe  
25 penalties?

1 A: Yes, sir.

2 Q: Okay. And you said you had eleven? Eleven total  
3 charges?

4 A: I believe so.

5 Q: Okay. You testified just a second ago that Mr. Barth  
6 told you there wasn't anything he could do for you. Okay.  
7 So at some point, you made the decision to enter into a plea?

8 A: At that time, he came -- when he came to see me, that's  
9 what he said. He had recommended to take a plea because all  
10 my co-defendants had already took a plea to testify against  
11 me, which I later found out was a lie, and he had not  
12 received -- tried to retrieve the evidence that I asked him  
13 to do or he didn't file any of the motions on my behalf,  
14 which he should've done which would have ultimately dismissed  
15 a majority of the charges. I asked to view the videos that  
16 were alleged that I did that they say they had of me making  
17 distribution sales, but I was told I wasn't allowed to see  
18 the video.

19 Q: Okay. When you decided -- understanding all of that  
20 that you just testified to, at some point though you did  
21 decide to plead guilty; right?

22 A: After him and the officers met with me and brought one  
23 video. And when I saw the video, I told him -- I said, well,  
24 this video a lie. I got evidence that prove I wasn't there  
25 that time and date. That video was reconstructed. If you

1 look at the video, it would show you that it was tampered  
2 with.

3 Mr. Barth told me, well, it's just one video. There's  
4 nothing we can do. Everybody already took a plea to tell  
5 against -- tell on you or say it was you. So just take the  
6 plea and salvage your life. Okay.

7 From that time, basically what you're telling me is I  
8 got a gun, I'm going to shoot you. It's your choice whether  
9 you get shoot in the head or the leg. You can get shoot in  
10 the head and you know it's over, which is the 40 years. You  
11 can get shoot in the leg, and salvage some of your life,  
12 which is the 18 to 22 years. I had no other option. He  
13 didn't do anything to defend me.

14 Q: And, Mr. Johnson, I certainly sympathize with that  
15 difficult decision. To use your example though, you chose to  
16 get shot in the leg; is that right?

17 A: Yes, sir.

18 Q: You said you didn't have any choice?

19 A: There's nothing -- nothing else he could do for me.

20 Q: Okay.

21 A: If I go to trial, he guarantee me -- I think the judge  
22 was Mr. Henderson at the time and he said he's a family court  
23 judge, he hate drug dealers, I'm getting the ultimate.

24 Q: Okay. When you agreed to plead guilty or when you  
25 decided to plead guilty, do you recall signing an eight-page

1 contract about a plea?

2 A: I was in handcuffs. Nothing was explained to me. They  
3 just said, well, you're going to take this plea, sign this  
4 and initial here, initial here.

5 Q: Okay.

6 A: Nothing was read. I didn't -- I don't know. My  
7 ignorance to the law played against me.

8 Q: Okay.

9 A: Nothing was explained to me.

10 Q: Did you read all eight pages of that contract?

11 A: No, sir.

12 Q: Okay. Did you and Mr. Barth discuss the contract  
13 itself?

14 A: No, sir. What we did was, he -- I was in handcuffs. He  
15 said put your initial here, put your initial here, flipped  
16 the page and tell me where to sign it. That's it.

17 Q: Okay. Did you -- do you recall any of the parts of the  
18 contract where you waived certain things?

19 A: I think forfeiture -- forfeiture of money.

20 Q: Okay. Do you recall that?

21 A: Yes. I remember it.

22 Q: Okay. Do you recall agreeing to submit to a polygraph  
23 examination?

24 A: No. We never talked about no polygraph.

25 Q: You never talked about it? Okay. Do you recall

1 agreeing to cooperate with the State?

2 A: That's a part of the plea. He said that I had to answer  
3 whatever questions they did. At the time, Mr. Ross came to  
4 see me after that and said I had -- it was -- being that I  
5 took the plea, I had to take the stand against the witnesses.

6 I said, well, if the plea said I've got to take the  
7 stand, I'm not going to get up here and lie because that was  
8 at that time he find out one of my co-defendants actually  
9 didn't take the plea and he wanted me to get up there and  
10 testify a lie and say that I was dealing with the man, but I  
11 couldn't say that because he was in prison.

12 Q: Okay. Did you -- do you recall agreeing to -- you  
13 talked about forfeiting cash. Do you recall agreeing to  
14 forfeit other property or anything like that?

15 A: No. There was no forfeiture of property, just  
16 forfeiture of the money, and the guns and the vehicles was  
17 supposed to be turned over to my family.

18 Q: Okay. All right. And finally, did you -- do you recall  
19 agreeing to not file an appeal or file a PCR?

20 A: I never know what a PCR or an appeal was until I got to  
21 prison, sir.

22 Q: Okay. Have you ever been in the Department of  
23 Corrections before?

24 A: No, sir.

25 Q: Have you ever filed a PCR on other charges?

1 A: No, sir. I've never been in no trouble.

2 Q: Okay.

3 A: Again, my -- my ignorance and knowledge to the law was  
4 used against me.

5 Q: Okay. Did you and Mr. Barth ever discuss paragraph 16  
6 on page 7 of this contract that you signed, the plea  
7 agreement, which was your waiving your rights to file a PCR?

8 A: No, sir. He just flipped the papers and said give your  
9 initials -- put your initial here, put your initial here.

10 This is the plea for the 18 to 22, and we're going to try to  
11 get you the lower end of the 18 to 22.

12 Q: Okay. And you did initial each page; is that right?

13 A: Yes, sir.

14 Q: Okay. Did you and Mr. Barth have any other chance to  
15 talk about this contract?

16 A: No, sir.

17 Q: Okay. Did you and Mr. Barth ever talk about an appeal?

18 A: No, sir.

19 Q: Did y'all ever talk about a PCR?

20 A: No, sir. I didn't -- I wasn't aware I could do any of  
21 those things until I got to prison and started going to the  
22 library. That's when I wrote Mr. Barth and asked. I didn't  
23 even know that the PCR would be against him because I wrote  
24 him and asked him to file it for me. I didn't know anything  
25 about the law.

1 Q: Okay. Did he respond when you asked him that?

2 A: Yes. He said he wouldn't. He don't recommend me to do  
3 it because I was facing the 40 years, and the judge told me  
4 he could have given me 150 years, something along that line.

5 Q: Okay. Did he tell you you had waived your ability to  
6 file one?

7 A: He mentioned that in that letter.

8 Q: Okay.

9 A: And I told -- I wrote him back, telling him that he  
10 never told me that then.

11 Q: Okay. And ultimately, you did -- you did file a PCR,  
12 obviously? That's why we're here.

13 A: Yes, sir. I didn't know anything about that.

14 Q: Okay. Mr. Johnson, right above where you -- you finally  
15 signed on August 1<sup>st</sup>, it again acknowledges that you're  
16 waiving your right to file an appeal or file a PCR?

17 A: Yes, sir.

18 Q: Did you have a chance to read that before you signed it?

19 A: No, sir. I was taken in the back right before I went  
20 up by Mr. Barth and Mr. Fernandez, and they went over this  
21 with me and said, well, if you say anything other than the  
22 lines what you're told, the judge is going to deny your plea  
23 and you will get the 40 years.

24 Q: Okay. Mr. Fernandez, for the record, is the assistant  
25 attorney general?

1 A: Yes, sir.

2 Q: Prosecuting the case?

3 A: Yes, sir.

4 Q: Okay. Mr. Johnson, I've asked you all the questions  
5 that I have. Is there anything else specifically about the  
6 contract only that I have left out that the judge needs to be  
7 aware of?

8 A: Just that I didn't know. Nothing was explained to me.  
9 I was just told to sign. I did as I was told.

10 Q: Okay.

11 MR. WALLER: Please answer any questions that Ms.  
12 Jameson has.

13 MS. JAMESON: May it please the Court.

14 THE COURT: Ms. Jameson, you're recognized for cross-  
15 examination.

16 MS. JAMESON: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. JAMESON:

19 Q: Mr. Johnson --

20 A: Yes, ma'am.

21 Q: I believe you testified that you met with your attorney  
22 the day you signed the plea agreement; correct?

23 A: My attorney and the officers.

24 Q: And the officers? What officers?

25 A: SLED agents.

1 Q: All right. So you didn't go over the plea agreement  
2 with him one-on-one with you and Mr. Barth?

3 A: No, sir. No, ma'am.

4 Q: Someone from the State was there the whole time?

5 A: They stepped out. The officers stepped out, and me and  
6 him was in there and he told me to sign the paperwork.

7 Q: How long did the officers step out for?

8 A: Until he finished the paperwork and left.

9 Q: How long was that?

10 A: I can't recall the exact time.

11 Q: Can you give us an approximation?

12 A: Maybe five or six minutes.

13 Q: And you testified he just told you to initial the bottom  
14 of each page and then sign?

15 A: Yes, sir. Yes, ma'am.

16 Q: But he didn't explain any of that to you?

17 A: No, ma'am. We didn't go over anything. He did that. I  
18 signed it. He walked out the door. Him and the officers was  
19 high-fiving.

20 Q: So your testimony is your attorney was high-fiving the  
21 SLED agents?

22 A: Yes.

23 Q: After the plea agreement?

24 A: Yes. They stepped out the door and, before the door  
25 slammed, I see them shaking hands and hugging each other.

1 Then the -- then the officer came in and said you should --  
2 he said I should be thankful for Mr. Barth.

3 Q: So your attorney was hugging the SLED agents after you  
4 entered into the plea?

5 A: After I entered the plea, like.

6 Q: What happened after you entered the plea agreement?

7 A: They took me back to my cell.

8 Q: When did you see your attorney again?

9 A: I'm not sure how long.

10 Q: Did you plead guilty immediately after you signed it?

11 A: I'm not sure if I went to court the next day or did it  
12 come on a weekend or something, but it wasn't long after  
13 that.

14 Q: Did you meet with Mr. Barth before you entered your  
15 plea?

16 A: In front of the judge?

17 Q: Yes.

18 A: Yes. Me and him and Mr. Fernandez was in the back.

19 Q: But did you get a chance to meet with him privately?

20 A: Yes. They sat us in the back before then, and then Mr.  
21 Fernandez came in.

22 Q: So how long did you get to meet with Mr. Barth privately  
23 on August 2<sup>nd</sup>?

24 A: I want to think the officer asked him to watch me or  
25 something. I'm not sure.

1 Q: So your testimony is that a law enforcement officer --

2 A: Asked him to sit with me because --

3 Q: -- asked your attorney to watch you?

4 A: To sit with me in that room right there because of the

5 place that we was at, they had a whole bunch of people

6 pleading that day.

7 Q: Did you discuss your case during this --

8 A: No.

9 Q: -- meeting?

10 A: No, we didn't.

11 Q: So you just sat there in silence?

12 A: We talked about general things going on in life. There

13 was nothing else to talk about with the case because --

14 Q: What general things did you discuss?

15 A: I can't go into -- I don't know. I can't remember

16 specifically. It wasn't nothing about the case.

17 Q: Was it about your sentence that you were going to --

18 A: No.

19 Q: -- possibly get?

20 A: No. It was along the lines of how was I doing, how were

21 they treating me in the county, just stuff like that.

22 Q: What was your understanding the day you pled guilty of

23 the amount of time you could get?

24 A: I had no understanding. I just did what I was told.

25 Q: Do you recall telling Judge Henderson you understood you

1 could get 18 to 22 years pursuant to the plea agreement?

2 A: I was instructed by Mr. Fernandez and Mr. Barth right  
3 before I went in to Judge Henderson that if I said anything  
4 along the lines that they did -- you know, that they didn't  
5 tell me, the judge was going to reject the plea and I was  
6 going to get the 40 years.

7 Q: So when you were before Judge Henderson, you did know  
8 you could get 18 to 22 years?

9 A: He told me I was getting 18 to 22 years.

10 Q: So you knew that?

11 A: Yeah. He told me that.

12 Q: What else did he tell you?

13 A: They went over things for me how to answer the judge and  
14 said if I said anything different, the 18 to 22 years was off  
15 the table and I was going to get the 40 years.

16 Q: What else did they tell you specifically how to answer  
17 the judge, other than that, yes, you knew you were going to  
18 get 18 to 22 years?

19 A: They went through the questions that the judge was going  
20 to ask me and told me what to say.

21 Q: What were these questions?

22 A: Answer yes to this if I understand. If they asked me  
23 something about did anybody force me or make me, say no.  
24 Those questions.

25 Q: What other ones?

1 A: I don't remember all the questions, ma'am.

2 Q: And you don't deny that you initialed each page of this  
3 plea agreement?

4 A: Yes, ma'am, I did.

5 Q: And you don't deny that you signed the end of it?

6 A: Yes, ma'am, I did.

7 Q: And your testimony is that you didn't read any of this?

8 A: It wasn't -- none of that -- no, we did not read any of  
9 them. He just flipped the pages and signed. Nothing was  
10 explained to me. Again, my lack of knowledge of the law was  
11 used against me.

12 Q: So in the five to six minutes you were in there, it took  
13 you five to six minutes to flip through eight pages and  
14 initial them and then sign it?

15 A: Yes, ma'am. I was in cuffs. They weren't these kind of  
16 cuffs. They were -- so.

17 Q: And I believe you answered this on direct from your  
18 attorney, but directly above your signature on the plea  
19 agreement, there's a paragraph where it says I have read this  
20 plea agreement carefully and reviewed each part of it with my  
21 attorney. I understand the terms of the plea and voluntary  
22 agree to it, including the waivers of direct appeal and post-  
23 conviction relief as set forth herein.

24 A: No.

25 Q: You signed right below that?

1 A: I signed where I was told to sign. Nothing was  
2 explained to me:

3 Q: So you didn't read that portion directly above your  
4 name?

5 A: No, ma'am, I did not.

6 Q: Do you recall telling Judge Henderson you had had plenty  
7 of time to speak with Mr. Barth?

8 A: Yes, ma'am, I did.

9 Q: Do you recall telling Judge Henderson you were satisfied  
10 with Mr. Barth's services?

11 A: Yes, ma'am. I told -- I told Judge Henderson everything  
12 that I was told to tell Judge Henderson.

13 Q: But you were under oath during your guilty plea;  
14 correct?

15 A: I was told -- I was told -- I told him what they told me  
16 to tell him, ma'am. Again, I don't know anything about the  
17 law. I was only doing as I was told.

18 Q: Did you know you were under oath during your guilty plea  
19 proceeding?

20 A: Yes, ma'am. I knew I was under oath. I did as I was  
21 told. At the same time -- like I explained to you earlier,  
22 my scenario of things, I was getting shot. I had a choice of  
23 where I was going to get shot, the head or the foot.

24 Q: I understand that, but you knew you were under oath  
25 before Judge Henderson; correct?

1 A: I was directed to answer the questions as they told me,  
2 and I did.

3 Q: But you knew you were under oath and had a duty to tell  
4 the truth during your guilty plea proceeding; correct?

5 A: I did what I was told as they told me to; so I figured  
6 them telling me to do that, it had to be okay. I don't know  
7 the law.

8 Q: So you're testifying now that you were lying when you  
9 were before Judge Henderson?

10 A: Yes. I was instructed to lie.

11 Q: But you were lying?

12 A: I was instructed to lie.

13 Q: But you lied to Judge Henderson?

14 A: I did what I was told, ma'am.

15 MS. JAMESON: No further questions, Your Honor.

16 THE COURT: Any -- any redirect?

17 MR. WALLER: Just briefly.

18 REDIRECT EXAMINATION

19 BY MR. WALLER:

20 Q: Mr. Johnson, what do you think would have happened if  
21 you had not answered the questions as you were instructed to?

22 A: I was told if I did not answer the questions as I was  
23 instructed to, the 18 to 22 years was off the table. Judge  
24 Henderson was a family court judge and they was going to see  
25 that I got the maximum.

1 Q: Okay. At the time -- at the time you entered into the  
2 plea agreement and also at the time you pled guilty, what did  
3 you understand -- or did you have any idea what the words  
4 post-conviction relief meant?

5 A: No, sir. None of that was ever explained to me. I  
6 didn't know anything about the law or any of that.

7 Q: Okay. So to you it was just three words put together?

8 A: That's it.

9 MR. WALLER: Nothing further, Your Honor.

10 THE COURT: All right. You may step down. Thank you.  
11 Watch your step. You may call your next witness.

12 MR. WALLER: Thank you, Your Honor. I would call  
13 Brendan Barth.

14 THE COURT: Mr. Barth, please come forward. I'm going  
15 to ask you, if you could, to put your paperwork down, place  
16 your left hand on the Bible, and raise your right hand as the  
17 clerk administers the oath.

18 THE CLERK: Do you swear or affirm that the testimony  
19 you give will be the truth, the whole truth, and nothing but  
20 the truth, so help you God?

21 THE WITNESS: I do.

22 THE COURT: Have a seat in the witness chair and pull up  
23 real close to that microphone and speak loudly, clearly, and  
24 slowly in order that we can hear everything that you have to  
25 say, and let's start with your full name.

1 THE WITNESS: Sure. It's Brendan Padgett -- P-a-d-g-e-  
2 t-t -- Barth.

3 DIRECT EXAMINATION

4 BY MR. WALLER:

5 Q: Good morning still I think by a few minutes, Mr. Barth.  
6 How are you today?

7 A: Doing okay.

8 Q: Mr. Barth, have you ever had a former client file a PCR  
9 alleging you were ineffective before?

10 A: I have not.

11 Q: Okay. Have you ever represented clients in PCR  
12 hearings?

13 A: I have.

14 Q: You have? What -- have you ever had a client enter into  
15 a written plea agreement such as the one in this case?

16 A: Can you -- when you say such as one in this case, what  
17 are you referencing? Just a written plea agreement in  
18 general?

19 Q: Have you ever had a state grand jury case before?

20 A: I have not.

21 Q: Okay. Have you ever had written plea agreements where  
22 clients agreed to forfeit assets and waive their appellate or  
23 post-conviction relief rights?

24 A: I have. I do a significant amount of federal criminal  
25 defense and, quite often, that same language is included in

1 each and every plea agreement that we get in federal court.

2 Q: Okay. What -- what conversations did you have with Mr.  
3 Johnson about those particular aspects of this plea  
4 agreement?

5 A: We met on August 1, the day the plea agreement was  
6 signed, and Mr. Johnson is correct that at portions of the  
7 time that we were there, SLED agents were there. They  
8 stepped out when we were able -- we were discussing potential  
9 years.

10 I believe the original plea offer was 20 to 25. We  
11 received this plea offer that was 18 to 22 in written plea  
12 agreement form. The officers or agents stepped out, and Mr.  
13 Johnson and I discussed the plea agreement, each and every  
14 page. At the negotiated sentence, we also talked through it.

15 Obviously, he was pleading to a significant number of  
16 counts. We talked about the forfeiture provisions themselves  
17 and what he would be giving up, what he could've possibly  
18 contested. I'm sure you have a copy of the plea agreement.  
19 We struck through a significant amount of the language  
20 regarding forfeiture that had to do with vehicles and some  
21 family guns that Mr. Johnson was requesting be returned to  
22 his family. That he would not plead and agree to forfeit  
23 those items.

24 You'll see I believe I struck through them. I wrote  
25 language out on the side that he and I reviewed and reviewed

1 again the waivers and the summations at the end of the  
2 agreement.

3 Q: Had you and Mr. Johnson discussed both appellate rights  
4 and PCR rights prior to this plea agreement?

5 A: Prior to the plea agreement?

6 A: Just in general or during the course of the plea  
7 agreement.

8 A: During the course of the plea agreement. I doubt we had  
9 discussed it prior to receiving the plea agreement.

10 Q: Okay. What -- during the course of going through the  
11 plea agreement, what did you all talk about?

12 A: Just generally that, you know, in any case you can have  
13 a direct appeal, which is where if Mr. Johnson wanted to  
14 accuse the Court of doing something wrong in its sentence  
15 during the process, or that there were PCR rights where if he  
16 was accusing me of being ineffective during the process, and  
17 that this was a general waiver of those rights.

18 Q: Okay.

19 A: And I -- go ahead.

20 Q: Please continue.

21 A: What his questions focused on and what our conversation  
22 focused on was that 18- to 22-year range. I mean we  
23 generally discussed this waiver, but what he was concerned  
24 about is that guaranteed range of 18 to 22 years.

25 Q: Okay. What advice or what did you tell him about the

1 post-conviction relief process, more than generally what you  
2 just testified to that it's saying that you had done  
3 something wrong?

4 A: I probably did not -- I mean I don't recall  
5 specifically, but I probably did not go into much more detail  
6 than he'd be waiving his right to accuse me of being  
7 ineffective if he was trying to set it aside.

8 Q: Okay. Did you discuss with him that there are other  
9 allegations he could raise in post-conviction relief, other  
10 than allegations of ineffective assistance of counsel?

11 A: I don't recall.

12 Q: Okay. Did you discuss with him that constitutional  
13 violations could also be raised?

14 A: Probably. I mean I discuss that with almost every  
15 client, Mr. Waller.

16 Q: Okay. In the post-conviction relief aspect?

17 A: Generally and, yeah, in both. Yes, sir.

18 MR. WALLER: I beg the Court's indulgence, please.

19 THE COURT: Mr. Barth, did you high-five and hug any of  
20 the SLED officers?

21 THE WITNESS: I did not, Your Honor.

22 THE COURT: Most of them are not very huggable people,  
23 are they?

24 THE WITNESS: They are not.

25 THE COURT: All right.

1 THE WITNESS: Especially when you're on the other side  
2 from them.

3 MR. WALLER: Nothing further. Thank you, Mr. Barth.

4 THE COURT: All right.

5 MS. JAMESON: Briefly, Your Honor.

6 THE COURT: Ms. Jameson.

7 CROSS-EXAMINATION

8 BY MS. JAMESON:

9 Q: Mr. Barth, how long have you been practicing law?

10 A: I passed the bar in 2009. I did a federal clerkship for  
11 2 ½ years and have been in private practice since May of  
12 2012.

13 Q: And I believe you testified previously that you  
14 primarily do federal criminal defense?

15 A: I'm in a general practice. So I certainly do family  
16 court and personal injury cases, criminal defense cases on  
17 both the state and federal level, but I'm on the CJA  
18 appointment list for federal criminal cases. So that makes  
19 up the majority of criminal representation in my practice.

20 Q: And you were appointed to this case?

21 A: That's correct.

22 Q: Do you recall how you were appointed?

23 A: Via an email.

24 Q: From the clerk's office? If you weren't on the -- were  
25 you on the appointment list for general sessions

1 appointments?

2 A: I was not.

3 Q: Did you feel prepared to represent a state grand jury  
4 defendant?

5 A: I did. I mean the allegations in this case, the  
6 conspiracy counts in this case, they are akin to what we see  
7 in federal court.

8 Q: And I believe you testified you've had clients before  
9 that have entered into similar plea agreements on the federal  
10 level?

11 A: That's correct.

12 Q: Including the waiver of federal direct and collateral  
13 attacks?

14 A: That's right.

15 Q: How many times did you meet with your client?

16 A: I believe it was five total over the -- over the course  
17 of four different days. I first met with him in June of  
18 2016. I met with him twice in July of 2016, I believe on  
19 back to back days, and then met with him on two different  
20 occasions on August 1<sup>st</sup>, which is the day that he signed this  
21 plea agreement.

22 Q: Did you -- when did you receive discovery in this case?

23 A: Either May or early June. We had a status conference in  
24 April I believe where Judge Henderson confirmed all the  
25 appointments, established a scheduling order. It was

1    sometime thereafter that we received the written rediscovery.

2    Q:    And this was a rather large heroin distribution ring  
3    that was subject of these state grand jury indictments;  
4    correct?

5    A:    I would agree.

6    Q:    Do you recall what the State was alleging was your  
7    client's role in this conspiracy?

8    A:    I do.  They alleged that he was the ringleader, so to  
9    speak, of this conspiracy.  I believe Judge Henderson even  
10   referenced a pyramid or chart that he had been provided to  
11   help his understanding of the case with Mr. Johnson's name at  
12   the top of it.  They were accusing Mr. Johnson of hiring  
13   individuals, whether you want to call them mules or runners,  
14   to bring this heroin in from New York City, distribute it to  
15   some of these other co-defendants in this case, who were then  
16   selling it on the streets in and around this area.

17   Q:    Do you recall what he was originally indicted for?

18   A:    It was a conspiracy to traffic, as well as a trafficking  
19   charge itself, 28 grams or greater, which would've carried  
20   that 25 to 40 range on both of those counts.

21   Q:    Did you explain to him that he was facing a mandatory  
22   minimum of 25 years?

23   A:    I did.

24   Q:    Do you recall what the potential top-end of his exposure  
25   was sentence-wise?

1 A: You know, obviously, that would depend on if a judge  
2 chose to run some of these counts consecutive or concurrent,  
3 but if the counts were added on top of each other, it would  
4 have been easily in excess of 100 years. I believe Judge  
5 Henderson referenced the number 170 during the guilty plea  
6 proceeding.

7 Q: Do you -- did you watch the videos in this case?

8 A: I did. I rode to the AG's office in Columbia July 18<sup>th</sup>  
9 of 2016 to watch the controlled-buy videos.

10 Q: Did you watch all of them?

11 A: I did. It took several hours to go through the videos.

12 Q: After you watched all these videos, did you discuss them  
13 with Mr. Johnson?

14 A: I did. Like I said, I reviewed the videos in y'all's  
15 office July 18<sup>th</sup>. Looking back through the file, I met with  
16 Mr. Johnson then on July 28<sup>th</sup> and again on July 29<sup>th</sup> to  
17 discuss the contents of the videos.

18 Q: What were the contents of the videos generally?

19 A: Sure. They were controlled-buy videos, some -- some  
20 with CIs and some I believe with known -- known individuals  
21 in there. I went through them. At least three or four of  
22 the videos, Mr. Johnson's face appeared on them. That was  
23 the main aspect that he and I discussed when I met with him  
24 about the videos.

25 Q: Prior to -- prior to viewing these videos, did you ever

1 have any discussions with Mr. Johnson about whether he wanted  
2 to plead guilty or proceed forward with the trial?

3 A: Sure. The first time I met with Mr. Johnson in June, he  
4 was -- and I'll confirm for what his testimony that he said  
5 he had been writing asking for an attorney and some of these  
6 other items. I think he was frustrated at where the process  
7 sat. He instructed me not to negotiate with your office, not  
8 to pursue a plea agreement, and let's dive into the  
9 discovery.

10 Q: And did you follow your client's wishes?

11 A: I did.

12 Q: At what point did he -- did he ever give you permission  
13 to enter into plea negotiations with the AG's office?

14 A: He did. It was -- it was in late July after either the  
15 28<sup>th</sup> or the 29<sup>th</sup>. As Mr. Johnson said, I met with him. He  
16 referenced one of my colleagues. That would be Nick Lewis,  
17 who is a partner of mine at my practice. He also does  
18 criminal defense at both the state and federal level.

19 I believe we had ridden out there maybe together and he  
20 sat in on part of it. Mr. Lewis, that is. And during that  
21 conversation, you know, we asked Mr. Johnson what would be  
22 the harm in at least letting me negotiate. Let me see what  
23 offer we can get on the table and go from there and, at that  
24 point, he said that I had authority to do that, which is when  
25 I reached out to David Fernandez.

1 Q: And I believe you testified the first offer was 20 to 25  
2 years?

3 A: Negotiated. That's correct.

4 MR. WALLER: Your Honor, I'm going to object. The  
5 State's motion to dismiss, as I read it, is concerning the  
6 waiver of post-conviction relief rights, not the  
7 ineffectiveness of agreeing to or of advice for the waiver of  
8 post-conviction relief rights, not the overall plea  
9 agreement.

10 MS. JAMESON: Your Honor, I would submit that this goes  
11 to his advice to enter into the plea agreement, but I can  
12 move along to those portions, if Your Honor would prefer.

13 THE COURT: Let's move along here.

14 BY MS. JAMESON:

15 Q: Eventually, you were able to get a plea agreement from  
16 the State for 18 to 22 years; correct?

17 A: Correct.

18 Q: Did you go over that with Mr. Johnson?

19 A: I did, on August 1<sup>st</sup>.

20 Q: Did you give him a copy of the plea agreement?

21 A: I don't recall if I gave him a copy that day or not. It  
22 had not been signed by David Fernandez at that time.

23 Q: And I believe you testified on direct that you reviewed  
24 every page and every paragraph of the plea agreement with  
25 him?

1 A: As we went through the pages and initialed the bottom.

2 Q: And I believe you testified, at least regarding the  
3 forfeiture aspects, there were several portions that Mr.  
4 Johnson indicated he would not agree to and you struck  
5 through those and wrote separate things on the side; correct?

6 A: That's correct.

7 Q: We're really here about paragraph 16, which is where he  
8 waived his right to direct appeal or post-conviction relief  
9 collateral attack. Did you discuss this? I believe you  
10 testified you did discuss it with him, but generally?

11 A: Correct.

12 Q: And you told him what a post-conviction relief action  
13 was, that it was ineffective assistance of counsel I believe  
14 you testified, which was that you had done something wrong in  
15 the case?

16 A: Correct.

17 Q: And you generally discussed constitutional claims with  
18 him that can be raised either through direct appeal or post-  
19 conviction relief?

20 A: Correct.

21 Q: Did he appear to understand these conversations with  
22 you?

23 A: He did.

24 Q: Did he ever ask you to remove this portion like he did  
25 with other portions of the plea agreement?

1 A: He had no questions about paragraph 16.

2 Q: And paragraph 16 doesn't prohibit him from filing a PCR  
3 action? It only limits the issues on which he can raise;  
4 correct?

5 A: That's my understanding, yes.

6 Q: Did he ever indicate to you he didn't want to waive his  
7 right to post-conviction relief?

8 A: He did not.

9 Q: And I believe you were questioned by the Court, but  
10 after the plea agreement, you didn't high-five SLED agents?

11 A: I did not.

12 Q: Or hug them?

13 A: I did not.

14 Q: Or do any of that with anyone from our office?

15 A: I did not.

16 MS. JAMESON: A moment's indulgence, Your Honor. No  
17 further questions.

18 THE COURT: Redirect?

19 MR. WALLER: I don't have any further questions for this  
20 witness, Your Honor.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Any objection to Mr. Barth being excused?

24 MR. WALLER: No objection.

25 MS. JAMESON: Do you have any further witnesses?

1 MR. WALLER: No.

2 MS. JAMESON: No objection, Your Honor.

3 THE COURT: You're free to leave.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Very good. Mr. Waller, I'll be glad to hear  
6 from you.

7 MR. WALLER: Your Honor, I believe this is the State's  
8 motion, but I'll be happy to address it first, if you would  
9 like.

10 THE COURT: Okay. All right. Well, let's do it that  
11 way. That's the way I like to do it.

12 MS. JAMESON: I believe the State's motion was granted  
13 on everything other than that ground. So I think our motion  
14 has been addressed.

15 THE COURT: It's your burden on whether or not I'm going  
16 to grant the post-conviction relief on his ineffectiveness.

17 MR. WALLER: Okay.

18 THE COURT: So -- but if there's any question in  
19 anybody's mind about that, I'm going to let you go and I'm  
20 going to let her go and I'm going to let you go and then I'll  
21 let her go, if the spirit moves you in such a way.

22 MR. WALLER: I appreciate that, Your Honor. I apologize  
23 for the confusion.

24 THE COURT: All right.

25 MR. WALLER: Your Honor, there's obviously conflicting

1 testimony as to whether the plea agreement was thoroughly  
2 reviewed with Mr. Johnson. Mr. Barth testified that while  
3 they did go over it, that most of Mr. Johnson's questions  
4 concerned the amount of time he was going to receive. That  
5 they would have generally discussed the post-conviction  
6 relief waiver, but that Mr. Johnson was not focused on that.

7 I asked Mr. Barth on direct if he had a chance to  
8 discuss other aspects that are not ineffective assistance of  
9 counsel that could potentially be raised through the PCR  
10 process, and he said he did not recall. He did testify that  
11 he counsels his clients about constitutional issues that  
12 could be waived, but, Your Honor, PCR can address more than  
13 just ineffective assistance of counsel.

14 In Mr. Barth's explanation of both appellate rights and  
15 post-conviction relief rights, he explained to the Court that  
16 he explained to Mr. Johnson, as he does all of his clients,  
17 that appellate rights are saying the Court did something  
18 wrong and PCR is saying that the lawyer did something wrong.  
19 Your Honor, I think that's an incomplete explanation.

20 Your Honor, based on that, I think that Mr. Barth did  
21 not go over all the aspects with the waiver. This is a very  
22 serious waiver, Your Honor, because essentially it denies or  
23 it doesn't allow a person who has entered into the waiver, if  
24 it's unknowing, to continue to have their constitutional  
25 rights protected and addressed.

1 Plus, Your Honor, I think that based on that, the  
2 applicant has met his burden and that Mr. Barth was  
3 ineffective for -- excuse me -- allowing Mr. Johnson to enter  
4 into this unknowing waiver.

5 THE COURT: Very good. Ms. Jameson?

6 MS. JAMESON: Thank you, Your Honor. The State would  
7 submit that the testimony from the two witnesses here today  
8 is inconsistent, but that Mr. Barth's testimony is credible  
9 and what the Court should rely on in denying this  
10 application, not Mr. Johnson's.

11 Mr. Johnson admitted on the stand that he lied to the  
12 plea court for his own benefit to get the 18- to 22-year plea  
13 agreement. He also provided incredible testimony about his  
14 attorney high-fiving and hugging SLED agents after the plea  
15 agreement.

16 On the other hand, we have Mr. Barth's credible  
17 testimony that he advised Mr. Johnson of his post-conviction  
18 relief rights, including ineffective assistance of counsel  
19 and constitutional rights generally, that he explained all  
20 aspects of the plea agreement to him and removed other  
21 portions regarding forfeiture, but that his client never  
22 asked him to remove any portions regarding his waiver of PCR  
23 or direct appeal claims, and knowingly entered into this plea  
24 agreement with an understanding that he was going to waive  
25 these grounds and that his application should be denied and

1 dismissed.

2 RULING

3 THE COURT: Under these circumstances, I am going to  
4 deny the motion for post-conviction relief.

5 The issue with regard to the limitation of the hearing  
6 itself -- you're protected on the record in that regard for  
7 appellate review.

8 And I do specifically find that Mr. Barth -- there was  
9 some question about his experience, but he spent 2 ½ years in  
10 federal court, and the statewide grand jury system is  
11 actually modeled after the federal court system. They have a  
12 grand jury. They have a lot of transcripts. They use the  
13 method by which they have one co-defendant cooperate against  
14 the other.

15 But it's the exact same thing. He spent 2 ½ years doing  
16 nothing but that with the federal court, and he's done that  
17 after -- after his clerkship and throughout his private  
18 practice. He's very experienced in that field. I find that  
19 he made adequate preparation. He met with the defendant on  
20 four or five times. He viewed the video prior to entering  
21 into the plea negotiations.

22 There was some allegation that he -- the applicant was  
23 not allowed to see the videos. However, I anticipate that  
24 they would have been provided to him if he elected to go to  
25 trial.

1 I do specifically find based on the testimony as  
2 presented here that the waiver of the post-conviction relief  
3 and appellate review was adequately covered in his -- in Mr.  
4 Barth's conversations with Mr. Johnson.

5 Just as a matter of law in the facts that have been  
6 presented here today, the motion for post-conviction relief  
7 is denied, but as an aside, probably the very worst thing  
8 that could happen to Mr. Johnson would be that post-  
9 conviction relief be granted, given the circumstance that he  
10 finds himself in.

11 So good luck to you.

12 MR. WALLER: Thank you, Your Honor.

13 MS. JAMESON: Thank you, Your Honor.

14 (WHEREUPON, the proceedings ended at 12:05 p.m.)  
15  
16  
17  
18  
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25

1 State of South Carolina )  
 2 ) Certificate  
 3 County of Florence )  
 4

5 I, the undersigned, Krystal J. Smith, Notary Public and  
 6 Official Court Reporter for the Twelfth Judicial Circuit of  
 7 the State of South Carolina, do hereby certify that the  
 8 foregoing pages, numbered 1 through 46; constitute a true,  
 9 accurate, and complete Transcript of Record of all the  
 10 proceedings had and evidence introduced in the hearing of the  
 11 above captioned case, relative to appeal, in the Court of  
 12 Common Pleas for Florence County, South Carolina, on the 2<sup>nd</sup>  
 13 day of February, 2018.

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

17 s/Krystal J. Smith

18 Court Reporter

19  
 20 Florence, South Carolina

21 June 18, 2018

22  
 23  
 24  
 25

**FILED**

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

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

2018 MAR 20 PM 3:35

Timothy Johnson, SCDC #370487

DORIS PAULGS O'HARA Case No.: 2017-CP-21-0952  
COCP & GS  
FLORENCE COUNTY, SC

Applicant,

**ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed April 13, 2017, by Timothy Johnson (Applicant). On October 6, 2017, the State (Respondent) made its return and partial motion to dismiss, seeking summary dismissal of all claims beyond whether counsel was ineffective for advising him to enter the written plea agreement waiving his rights to challenge his conviction through post-conviction relief pursuant to the written plea agreement. An evidentiary hearing into the matter was convened February 2, 2018, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. Following the hearing, this Court denied the application from the bench. This order follows.

**PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the South Carolina State Grand Jury. On October 22, 2015, the State Grand Jury indicted Applicant for one count of trafficking in heroin greater than 28 grams, seven counts of

CERTIFIED: A TRUE COPY  
*Doris Paulgs O'Hara*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

distribution of heroin, one count of possession with intent to distribute heroin, and one count trafficking heroin greater than 28 grams (conspiracy) (2015-GS-47-0021, -0022), as part of a multi-count, multi-defendant indictments stemming from an investigation into a heroin trafficking ring. Brendan P. Barth, Esquire, represented Applicant. Assistant Attorney General David Fernandez, of the South Carolina Attorney General's Office, prosecuted the case.

On August 1, 2016, Applicant entered into a written plea agreement, in which he agreed to "fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of importation, possession, and distribution of controlled substances and related unlawful activities," in exchange for a negotiated sentence range of an aggregate eighteen to twenty-two years imprisonment. As part of this plea agreement, Applicant expressly waived his right to both a direct appeal and post-conviction relief action. ("The Defendant, Timothy Leverne Johnson, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, Timothy Leverne Johnson, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, Timothy Leverne Johnson, understands that he has a right to file a post-conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post-conviction relief action except for claims that directly attack the effectiveness of advice to agree to this waiver.") Applicant initialed each page of this written plea agreement and signed this plea agreement.

The following day (August 2, 2016), Applicant appeared in the Florence County Court of General Sessions before the Honorable Roger E. Henderson, circuit court judge, and pursuant to the signed plea agreement, pled guilty to seven counts of distribution of heroin and one count of possession with intent to distribute heroin as indicted, and to the lesser-included offenses of trafficking in heroin (4-14 grams) and trafficking in heroin (4-14 grams) (conspiracy). Judge Henderson accepted Applicant's plea and deferred sentencing.

On November 14, 2016, Applicant again appeared before Judge Henderson for a sentencing proceeding. At this hearing, Judge Henderson sentenced Applicant to an aggregate nineteen years imprisonment. Applicant did not file a notice of appeal.

#### **ALLEGATIONS RAISED**

In his application, Applicant alleged the following allegations:

1. Ineffective assistance of counsel: "Trial counsel failed to conduct factual and legal investigation"
2. "State Grand Jury unconstitutional assembled, evidence inadmissible: Grand Jury lacked probable cause to indict and violate fair cross section"
3. "Conviction obtained in violation of constitutional rights: rights were violated when no warrants were served for arrest-detention"

On January 25, 2018, Applicant, through his counsel, amended his application to include the following additional allegations:

1. Counsel was ineffective for failing to properly advise Applicant regarding entry into a plea agreement that would constitute a waiver of Applicant's appellate and post-conviction relief rights.
2. Counsel was ineffective for failure to meet with Applicant in a sufficient amount for Applicant to understand the nature of the allegations against him, any potential defenses he may have had, and the State's burden of proof with respect to his charges, thus rendering Applicant's plea involuntarily entered into. Counsel was ineffective for misleading and misinforming Applicant that all other defendants alleged in the indictment had agreed to cooperate against Applicant and that Applicant was the final remaining defendant, thus rendering Applicant's plea involuntarily entered into.
3. Counsel was ineffective for failure to investigate the facts and circumstances of alleged

video and photographic evidence.

### **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 hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient

performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.

***Dismissal of All Other Allegations Beyond Whether Counsel was Ineffective for Advising Applicant to Waive his Right to Post-Conviction Relief***

At the start of the evidentiary hearing, Respondent renewed its motion to dismiss all allegations beyond whether counsel was ineffective for advising Applicant to enter into the portion of the plea agreement waiving his rights to challenge counsel’s representation in a post-conviction relief action. Respondent argued that Applicant’s plea agreement was valid and enforceable, but that pursuant to Sanders v. State, 412 S.C. 611, 617, 773 S.E.2d 580, 583 (2015), Applicant was entitled to raise the narrow issue as to whether counsel was ineffective for advising him to enter into the plea agreement waiving his right to pursue post-conviction relief. In response, Applicant argued dismissal of all claims beyond this limited issue was improper and asked the Court to reserve ruling on the dismissal of all other claims until after the hearing on the limited issue as set forth in Sanders.

Under South Carolina law, a criminal defendant can choose to waive his right to collateral review of his conviction. Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008) (holding that a waiver of appellate rights is valid and enforceable as long as it is knowing and voluntary). Plea agreements in general operate under contractual principles, and are upheld when each party receives the benefit of the bargain. State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994). Here, Applicant chose to plead guilty and agreed to waive his appellate and collateral rights in exchange for a favorable negotiated sentence. Both parties received a benefit of the bargain, and this Court finds Applicant's plea agreement is valid under contractual law.

However, recent South Carolina case law holds that, while appellate waivers are enforceable, a criminal defendant who has waived his appellate and collateral rights is still entitled to raise the very narrow issue of challenging his attorney's conduct in advising him to enter into the waiver. Sanders v. State, 412 S.C. 611, 617, 773 S.E.2d 580, 583 (2015) ("Consequently, we hold that although a defendant may waive his right to collateral review, he is nevertheless still entitled to challenge whether the advice he received in agreeing to that waiver was constitutionally defective."). Therefore, this Court granted Respondent's motion to dismiss all allegations beyond the constricted issue as to whether counsel was ineffective for advising him to waive his right to post-conviction relief and allowed him to proceed forward only on that limited issue.

***Whether Counsel was Ineffective for Advising Applicant to Waive his Right to Post-Conviction Relief***

As this Court granted Respondent's motion to dismiss all other allegations pursuant to Sanders, Applicant proceeded forward at the evidentiary hearing on the claim of whether counsel was ineffective for advising him to waive collateral review of his convictions through post-

conviction relief in exchange for the favorable terms as set forth in the signed plea agreement. In support of this allegation, Applicant testified on his own behalf. Applicant testified Brendan Barth (counsel) was his second attorney and was appointed to represent him on his State Grand Jury Charges on June 10, 2016. He testified counsel came to see him at the detention center as soon as he was appointed and reviewed discovery with him but did not allow him to keep a copy pursuant to a protective order in place. He testified this was his only meeting with counsel aside from when he met with him briefly before his plea proceeding. He testified counsel would not do anything to assist him and refused to file any motions on his behalf, and therefore, he felt forced to accept the State's terms and plead guilty. Applicant testified he remembered signing the plea agreement, but stated that counsel did not explain any portion of the plea agreement to him, including the waiver of his right to post-conviction relief, and merely told him to sign. Applicant then changed his testimony, stating counsel did explain the cooperation agreement and forfeiture provisions to him, which he and counsel edited prior to signing. He elaborated that he met with counsel and a SLED agent immediately before the plea to discuss the plea agreement, and the SLED agent stepped outside long enough for counsel to instruct Applicant where to sign the plea agreement. He testified that after the plea agreement was signed, counsel immediately met with the SLED agent and the prosecutor, and the three were high-fiving and hugging each other.

Applicant testified he did not recall agreeing to waive his right to a direct appeal or post-conviction relief and never discussed these topics with counsel. He testified counsel never explained what a post-conviction relief action was or how to file one. He testified he had first learned that he waived these rights when he got to prison. He testified he then contacted counsel, who advised him against filing a post-conviction relief application because he expressly waived

his right to file one pursuant to his plea agreement and he was facing a mandatory minimum sentence of twenty-five years imprisonment if the plea agreement was invalidated.

Applicant testified he lied to the plea court, including saying he was satisfied with counsel's services and that he understood what he was doing, because he had been instructed to do so by counsel and the State. He further testified he lied under oath because he wanted the court to sentence him in accordance with the favorable terms set forth in the plea agreement.

Counsel testified next. He testified he was appointed to represent Applicant and this is the first State Grand Jury case he has handled, but that he had represented numerous clients on federal charges, which are handled in a similar manner. He testified he had also clerked with a federal judge and very familiar with the federal criminal system. He testified that the federal cases often have similar cooperation and plea agreements and he has handled these numerous times with prior clients. He testified he met with Applicant on a Saturday soon after he was appointed and at that time, Applicant explicitly instructed him not to enter into any plea negotiations with the State. He testified that he met with Applicant an additional four times, including a meeting where they reviewed discovery including videos of controlled drug buys that clearly showed Applicant. He testified that after viewing these videos, Applicant gave him permission to enter into plea negotiations with the State. He testified the State's initial offer was for twenty to twenty-five years imprisonment, but he was eventually able to negotiate a plea agreement for eighteen to twenty-two years imprisonment. He testified Applicant was facing a mandatory minimum sentence of twenty-five years imprisonment up to a sentence of one-hundred-and-seventy years and that this plea agreement was very favorable. He testified he met with Applicant to review the plea agreement and that he explained every term of the agreement,

including the waiver of direct and post-conviction relief. Counsel testified he explained what post-conviction relief was to Applicant and Applicant appeared to understand. He testified Applicant was not concerned with this portion of the plea agreement and never requested counsel ask the State to remove this portion of the agreement or otherwise edit it. Counsel testified Applicant's primary concern with the plea agreement was the recommended sentence and what he would be required to forfeit. He testified Applicant did request he edit the forfeiture requirements of the plea agreement, for which he was able to get the State to agree. He testified these conversations were in private with Applicant and no SLED agents, prosecutors, or other persons were present. He testified he never high-fived or hugged anyone involved in this case.

After reviewing the record and listening to the testimony presented, this Court finds counsel performed competently in advising Applicant to enter into the plea agreement including the waiver of post-conviction relief. This Court finds that counsel's testimony is credible and finds that Applicant's testimony is not credible. Counsel was very experienced with handling similar cooperation and plea agreements based on his significant federal criminal defense experience. Counsel's credible testimony establishes that counsel adequately and fully explained all portions of the plea agreement to Applicant including the waiver of post-conviction relief remedies and that Applicant knowingly and voluntarily waived his rights after these conversations with counsel. This Court also finds that counsel was thoroughly prepared and competent in his representation of Applicant generally. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

**CONCLUSION**

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record 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 post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 20 day of March, 2018.

France, South Carolina

Michael G. Nettles  
MICHAEL G. NETTLES  
Presiding Judge-Twelfth Judicial Circuit

CERTIFIED: A TRUE COPY  
Doris Poulos O'Hara  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

**FILED**

2018 MAR 20 PM 3:35  
DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

AUG 08 2016

STATE GRAND JURY OF SOUTH CAROLINA

JAMES R. PARKS  
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 State of South Carolina, )  
 )  
 v. )  
 )  
 Timothy Lerverne Johnson, )  
 (A/K/A "Timmy"), )  
 (A/K/A "Fat Boy"), )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS  
FOR THE TWELFTH JUDICIAL CIRCUIT

**PLEA AGREEMENT**

Indictment No.: 2015-GS-47-22  
(Count 1)

Indictment No.: 2015-GS-47-21  
(Counts 1, 2, 3, 4, 5, 6, 8, 12 & 13)

AGREEMENT made this 1<sup>ST</sup> day of AUGUST, 2016, between and among the State of South Carolina, as represented by Attorney General Alan Wilson and Assistant Attorney General David A. Fernandez, the Defendant, and his attorney, Brendan P. Barth, Esquire.

1. The Defendant, Timothy Lerverne Johnson, agrees to plead guilty to the offense of Trafficking in Heroin 4-14 grams (Conspiracy), first offense, a violation of S.C. Code Ann. §44-53-370(e)(3)(a)(1), a lesser included offense as alleged in Indictment Number 2015-GS-47-22, Count 1, which carries a sentence range from seven (7) years to twenty-five (25) years, and a fine of fifty thousand dollars (\$50,000.00). The State will allow the Defendant to plead to a negotiated sentence range of eighteen (18) to twenty-two (22) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement. This is considered a violent, serious, and no-parole offense.

2. The Defendant, Timothy Lerverne Johnson, agrees to plead guilty to the offense of Trafficking in Heroin 4-14 grams, first offense, a violation of S.C. Code Ann. §44-53-370(e)(3)(a)(1), a lesser included offense as alleged in Indictment Number 2015-GS-47-21, Count 1,

which carries a sentence range from seven (7) years to twenty-five (25) years, and a fine of fifty thousand dollars (\$50,000.00). The State will allow the Defendant to plead to a negotiated sentence range of eighteen (18) to twenty-two (22) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement. This is considered a violent, serious, and no-parole offense.

3. The Defendant, Timothy Lerverne Johnson, agrees to plead guilty to the offense of Distribution of Heroin, first offense, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-21, Count 2, which carries a sentence range of up to fifteen (15) years, and a fine of up to twenty-five thousand dollars (\$25,000.00). The State will allow the Defendant to plead to a negotiated sentence of fifteen (15) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

4. The Defendant, Timothy Lerverne Johnson, agrees to plead guilty to the offense of Distribution of Heroin, first offense, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-21, Count 3, which carries a sentence range of up to fifteen (15) years, and a fine of up to twenty-five thousand dollars (\$25,000.00). The State will allow the Defendant to plead to a negotiated sentence of fifteen (15) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

5. The Defendant, Timothy Lerverne Johnson, agrees to plead guilty to the offense of Distribution of Heroin, first offense, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-21, Count 4, which carries a sentence range of up to fifteen (15) years, and a fine of up to twenty-five thousand dollars (\$25,000.00). The State will allow the

Def.'s Initials: TJ Attorney's Initials: BFB Prosecutor: DF




Defendant to plead to a negotiated sentence of fifteen (15) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

6. The Defendant, Timothy Lerverne Johnson, agrees to plead guilty to the offense of Distribution of Heroin, first offense, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-21, Count 5, which carries a sentence range of up to fifteen (15) years, and a fine of up to twenty-five thousand dollars (\$25,000.00). The State will allow the Defendant to plead to a negotiated sentence of fifteen (15) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

7. The Defendant, Timothy Lerverne Johnson, agrees to plead guilty to the offense of Distribution of Heroin, first offense, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-21, Count 6, which carries a sentence range of up to fifteen (15) years, and a fine of up to twenty-five thousand dollars (\$25,000.00). The State will allow the Defendant to plead to a negotiated sentence of fifteen (15) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

8. The Defendant, Timothy Lerverne Johnson, agrees to plead guilty to the offense of Distribution of Heroin, first offense, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-21, Count 8, which carries a sentence range of up to fifteen (15) years, and a fine of up to twenty-five thousand dollars (\$25,000.00). The State will allow the Defendant to plead to a negotiated sentence of fifteen (15) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

9. The Defendant, Timothy Lerverne Johnson, agrees to plead guilty to the offense of

Def.'s Initials:  Attorney's Initials:  Prosecutor: 

Distribution of Heroin, first offense, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-21, Count 12, which carries a sentence range of up to fifteen (15) years, and a fine of up to twenty-five thousand dollars (\$25,000.00). The State will allow the Defendant to plead to a negotiated sentence of fifteen (15) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

10. The Defendant, Timothy Leverne Johnson, agrees to plead guilty to the offense of Possession With Intent to Distribute Heroin, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-23, Count 13, which carries a sentence range of up to fifteen (15) years, and a fine of up to twenty-five thousand dollars (\$25,000.00). The State will allow the Defendant to plead to a negotiated sentence of fifteen (15) years, to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

11. The Defendant, Timothy Leverne Johnson, agrees to fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of the importation, possession, and distribution of controlled substances and related unlawful activities. This cooperation is to include, but is not limited to, truthful and complete debriefings of the Defendant's knowledge concerning unlawful drug activities and related unlawful activities. Also, the Defendant understands that he must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be

Def.'s Initials:



Attorney's Initials:



Prosecutor:



truthful or to cooperate at any stage can cause the obligations of the State of South Carolina under this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the State under this Agreement become null and void due to the lack of truthfulness or cooperation on the part of the Defendant, the Defendant understands that: (1) the Defendant will not be permitted to withdraw his plea of guilty to the offenses described above; (2) any and all additional charges known to the State may be filed in the appropriate county; (3) the State may argue for a maximum sentence for the offenses to which the Defendant has pled guilty; (4) the State may use any and all information and testimony provided by the Defendant in the prosecution of the Defendant for all charges; and, (5) the State may advise the Department of Corrections of the Defendant's status as an uncooperative defendant and may accordingly recommend redesignation of the Defendant to a higher custodial level.

12. The Defendant, Timothy Leverne Johnson, understands and agrees that any and all

*exception  
which  
this aid  
Blanes.*

assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated by the South Carolina Attorney General, in portions to be determined by the South Carolina Attorney General. The assets so surrendered to South Carolina authorities will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, and real estate. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement agencies in South Carolina of any drug-related assets or portions thereof, either domestic or foreign,

Def.'s Initials: *[Signature]*

Attorney's Initials: *BAZ*

Prosecutor: *[Signature]*

which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, all other domestic and foreign assets in which he has any direct or indirect interest or control, if the assets are the proceeds of unlawful drug activities or are directly or indirectly related to the unlawful drug activities. The Defendant further agrees to immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, in portions to be determined by the South Carolina Attorney General, all conveyances, including but not limited to, aircraft, vehicles, or vessels, which have been used or were intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of controlled substances. By signing this Agreement, the Defendant consents to civil forfeiture of all assets currently in the possession of the government and further consents to civil forfeiture of all drug related assets seized by law enforcement agents in connection with this investigation.

13. The Defendant, Timothy Leverne Johnson, further agrees to submit to polygraph examination(s) by any qualified state polygraph examiner should he be requested to do so regarding his knowledge of and involvement in drug-related activities, other related unlawful activities, and any and all assets and conveyances acquired and/or used by the Defendant or others, whether drug-related or not. This Plea Agreement is expressly contingent upon successful completion, to the satisfaction of the State, of the polygraph examination(s).

14. The Attorneys for the State reserve the right to summarize all evidence, which would

Def.'s Initials: *TJ* Attorney's Initials: *BRS* Prosecutor: *DA*

*DA*  
*BRS*

*and further  
with the exception of  
vehicles,  
guns and  
jewelry.*

have been presented at trial to establish a factual basis for the plea.

15. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation if called upon to do so by the Defendant.

16. The Defendant, Timothy Leverne Johnson, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, Timothy Leverne Johnson, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, Timothy Leverne Johnson, understands that he has a right to file a post-conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post-conviction relief action except for claims that directly attack the effectiveness of advice to agree to this waiver.

17. The Defendant, Timothy Leverne Johnson, understands that the State's obligations under this Plea Agreement are expressly contingent upon the Defendant's abiding by state and federal laws, and complying with the terms and conditions of this Agreement, both before and after sentencing, and any bond executed in this case. This Agreement in no way limits or affects the Defendant's potential exposure to further prosecution by any Solicitor's Office in the State of South Carolina or the United States Attorney for conduct which is not a basis for his indictment and prosecution by the State Grand Jury of South Carolina.

Def.'s Initials:



Attorney's Initials:

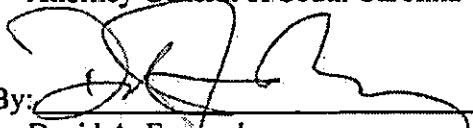


Prosecutor:



18. The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void.


Alan Wilson  
Attorney General of South Carolina

By:   
David A. Fernandez  
Assistant Attorney General

8/2/16  
DATE

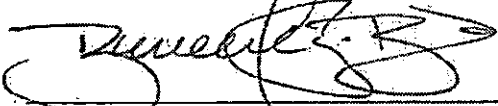
I have read this plea agreement carefully and reviewed each part of it with my attorney. I understand the terms of the plea and voluntarily agree to it, including the waivers of direct appeal and post-conviction relief as set forth herein.

8-1-16  
DATE

  
Timothy Leverne Johnson  
Defendant

I represent Timothy Leverne Johnson as legal counsel. I have carefully reviewed every part of this plea agreement with him. To my knowledge, the decision to make this plea agreement is informed and voluntary, including the waivers of direct appeal and post-conviction relief as set forth herein.

8/1/16  
DATE

  
Brendan P. Barth, Esquire  
Attorney for the Defendant

Def.'s Initials:   *TF*  

Attorney's Initials:   *BB*  

Prosecutor:   *DA*

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VS.

TIMOTHY LEVERNE JOHNSON (A/K/A "TIMMY", "FAT BOY"),  
WILLIE JAMES WILSON (A/K/A "FAT DADDY", "FATS"),  
DANIEL MARQUIS BARR (A/K/A "BLACK"),  
DAWN MARIE RILEY,

DEFENDANTS.

CASE NO.: **2015GS 47**

**217**

**INDICTMENT FOR UNLAWFUL DRUGS**

- ) Trafficking Heroin Greater Than 28 grams
- ) S.C. Code Ann. § 44-53-370 (e)(3)(c)
- ) (1 Count)
- ) Distribution of Heroin
- ) S.C. Code Ann. § 44-53-370 (b)(1)
- ) (11 Counts)
- ) Possession with Intent to Distribute
- ) Heroin
- ) S.C. Code Ann. § 44-53-370 (b)(1)
- ) (1 Count)

**FILED**

OCT 22 2015

JAMES R. PARKS  
CLERK, STATE GRAND JURY

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on October 22, 2015, the State Grand Jurors present upon their oath:

**COUNT ONE  
TRAFFICKING HEROIN GREATER THAN 28 GRAMS  
S.C. Code Ann. § 44-53-370 (e)(3)(c)**

That TIMOTHY LEVERNE JOHNSON (A/K/A "TIMMY", "FAT BOY") and DAWN MARIE RILEY, did in Williamsburg County, on or about February 17 through February 19, 2015, knowingly, willfully and intentionally sell, manufacture, cultivate, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or was knowingly and intentionally in actual or constructive possession; or did knowingly and intentionally attempt to become in actual or constructive possession of

twenty-eight (28) grams or more of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT TWO**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That TIMOTHY LEVERNE JOHNSON (A/K/A "TIMMY", "FAT BOY") and WILLIE JAMES WILSON (A/K/A "FAT DADDY", "FATS"), did in Williamsburg County, on or about March 29, 2011, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT THREE**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That TIMOTHY LEVERNE JOHNSON (A/K/A "TIMMY", "FAT BOY"), did in Williamsburg County, on or about August 23, 2012, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*,

Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT FOUR  
DISTRIBUTION OF HEROIN  
S.C. Code Ann. § 44-53-370 (b)(1)**

That TIMOTHY LEVERNE JOHNSON (A/K/A“TIMMY”, “FAT BOY”), did in Williamsburg County, on or about August 27, 2012, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT FIVE  
DISTRIBUTION OF HEROIN  
S.C. Code Ann. § 44-53-370 (b)(1)**

That TIMOTHY LEVERNE JOHNSON (A/K/A“TIMMY”, “FAT BOY”), did in Williamsburg County, on or about April 3, 2014, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this

State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT SIX**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That TIMOTHY LEVERNE JOHNSON (A/K/A "TIMMY", "FAT BOY"), did in Williamsburg County, on or about April 8, 2014, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT SEVEN**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That DANIEL MARQUIS BARR (A/K/A "BLACK"), did in Williamsburg County, on or about October 14, 2014, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT EIGHT  
DISTRIBUTION OF HEROIN  
S.C. Code Ann. § 44-53-370 (b)(1)**

That TIMOTHY LEVERNE JOHNSON (A/K/A "TIMMY", "FAT BOY"), did in Williamsburg County, on or about December 11, 2014, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT NINE  
DISTRIBUTION OF HEROIN  
S.C. Code Ann. § 44-53-370 (b)(1)**

That DAWN MARIE RILEY, did in Williamsburg County, on or about February 11, 2015, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT TEN**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That DAWN MARIE RILEY, did in Williamsburg County, on or about February 13, 2015, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT ELEVEN**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That DAWN MARIE RILEY, did in Williamsburg County, on or about February 18, 2015, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT TWELVE  
DISTRIBUTION OF HEROIN  
S.C. Code Ann. § 44-53-370 (b)(1)**

That TIMOTHY LEVERNE JOHNSON (A/K/A“TIMMY”, “FAT BOY”), did in Williamsburg County, on or about September 9, 2015, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT THIRTEEN  
POSSESSION WITH INTENT TO DISTRIBUTE HEROIN  
S.C. Code Ann. § 44-53-370 (b)(1)**

That TIMOTHY LEVERNE JOHNSON (A/K/A“TIMMY”, “FAT BOY”), did in Williamsburg County, on or about February 19, 2015, knowingly, willfully, and intentionally possess with the intent to distribute a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

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

A True Bill

John Miller  
FOREMAN

Alan Wilson  
ALAN WILSON (daf)  
ATTORNEY GENERAL

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
 )  
 VS. )  
 )  
 TIMOTHY LEVERNE JOHNSON (A/K/A )  
 "TIMMY", "FAT BOY"), )  
 WILLIE JAMES WILSON (A/K/A "FAT )  
 DADDY", "FATS"), )  
 ANTHONY LEMONT WILSON (A/K/A )  
 "PETER RABBIT", "RABBIT"), )  
 ANDERSON COOPER, JR. (A/K/A )  
 "STINKY"), )  
 ERIC HOLMES, JR. (A/K/A "E"), )  
 ROBERT EARL DAVIS (A/K/A )  
 "BOBBY"), )  
 DANIEL MARQUIS BARR (A/K/A )  
 "BLACK"), )  
 JOSEPH WILLIAM COKER (A/K/A )  
 "JOE BRICKS"), )  
 ASHLEY BROOK COKER, )  
 GEORGE SKINNER, )  
 BRANDON GERALD MORRIS, )  
 KARLA OLIVIA PROSSER, )  
 ARKELIOUS DWAYNE ADAMS (A/K/A )  
 "SLIM"), )  
 DAWN MARIE RILEY, )  
 SHEILA RENEE WEBB, )  
 CRAIG SHAWN AVANT (A/K/A )  
 "BOOGER"), )  
 JEFFREY WITHERSPOON, )  
 NICHOLAS WILSON (A/K/A "LURCH"), )  
 ROY DAVIS DRAUGHN, JR. (A/K/A )  
 "SNOWMAN", "LITTLE ROY"), )  
 TRAVILLE CHAVIS WATERMAN )  
 (A/K/A "VELLIE"), )  
 )  
 DEFENDANTS. )  
 )

CASE NO.: ~~2015GS 47 22~~

INDICTMENT FOR UNLAWFUL DRUGS

) Trafficking Heroin (Conspiracy)  
 ) Greater Than 28 grams  
 ) S.C. Code Ann. § 44-53-370 (e)(3)(c)  
 ) (1 Count)  
 )  
 ) Distribution of Heroin  
 ) S.C. Code Ann. § 44-53-370 (b)(1)  
 ) (7 Counts)

**FILED**  
 OCT 22 2015  
 JAMES R. PARKS  
 CLERK, STATE GRAND JURY

At a session of the State Grand Jury of South Carolina, convened in Columbia,  
 South Carolina, on October 22, 2015, the State Grand Jurors present upon their oath:

**COUNT ONE**  
**TRAFFICKING HEROIN GREATER THAN 28 GRAMS (CONSPIRACY)**  
**S.C. Code Ann. § 44-53-370 (e)(3)(c)**

That TIMOTHY LEVERNE JOHNSON (A/K/A "TIMMY", "FAT BOY"), WILLIE JAMES WILSON (A/K/A "FAT DADDY", "FATS"), ANTHONY LEMONT WILSON (A/K/A "PETER RABBIT", "RABBIT"), ANDERSON COOPER, JR. (A/K/A "STINKY"), ERIC HOLMES, JR. (A/K/A "E"), ROBERT EARL DAVIS (A/K/A "BOBBY"), DANIEL MARQUIS BARR (A/K/A "BLACK"), JOSEPH WILLIAM COKER (A/K/A "JOE BRICKS"), ASHLEY BROOK COKER, GEORGE SKINNER, BRANDON GERALD MORRIS, KARLA OLIVIA PROSSER, ARKELIOUS DWAYNE ADAMS (A/K/A "SLIM"), DAWN MARIE RILEY, SHEILA RENEE WEBB, CRAIG SHAWN AVANT (A/K/A "BOOGER"), JEFFREY WITHERSPOON, NICHOLAS WILSON (A/K/A "LURCH"), ROY DAVIS DRAUGHN, JR. (A/K/A "SNOWMAN", "LITTLE ROY"), TRAVILLE CHAVIS WATERMAN (A/K/A "VELLIE"), and other persons whose names are both known and unknown to the State Grand Jury, did in Florence County, Williamsburg County and Darlington County, South Carolina, from January 1, 2011, to the present, knowingly and intentionally provide financial assistance or otherwise aid, abet, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State twenty eight (28) grams or more of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT TWO**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That DANIEL MARQUIS BARR (A/K/A "BLACK"), did in Florence County, on or about October 28, 2014, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT THREE**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That ANTHONY LEMONT WILSON (A/K/A "PETER RABBIT", "RABBIT"), did in Florence County, on or about November 7, 2014, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT FOUR**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That ANTHONY LEMONT WILSON (A/K/A "PETER RABBIT", "RABBIT"), did in Florence County, on or about November 19, 2014, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT FIVE**  
**DISTRIBUTION OF HEROIN**  
**S.C. Code Ann. § 44-53-370 (b)(1)**

That BRANDON GERALD MORRIS and KARLA OLIVIA PROSSER, did in Florence County, on or about December 3, 2014, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT SIX  
DISTRIBUTION OF HEROIN  
S.C. Code Ann. § 44-53-370 (b)(1)**

That JEFFREY WITHERSPOON, did in Florence County, on or about January 7, 2015, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT SEVEN  
DISTRIBUTION OF HEROIN  
S.C. Code Ann. § 44-53-370 (b)(1)**

That ARKELIOUS DWAYNE ADAMS (A/K/A“SLIM”), did in Florence County, on or about January 28, 2015, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT EIGHT  
DISTRIBUTION OF HEROIN  
S.C. Code Ann. § 44-53-370 (b)(1)**

That SHEILA RENEE WEBB and CRAIG SHAWN AVANT (A/K/A "BOOGER"), did in Florence County, on or about August 27, 2015, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

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

A True Bill

T. H. McJ...  
FOREMAN

Alan Wilson  
ALAN WILSON (daf)  
ATTORNEY GENERAL