

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

TIMOTHY LEVERNE JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000629

SUPPLEMENTAL APPENDIX

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)	Twelfth Judicial Circuit
County of Florence)	Case No. 2015-GS-47-00022
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
)	
Timothy Johnson,)	
)	
Defendant.)	
)	

November 14, 2016
 Florence, South Carolina

B E F O R E:

The Honorable Roger E. Henderson, Judge

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

David Fernandez, Esquire
 Attorney for the Plaintiff

Brendan Barth, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

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(No Exhibits Presented)

1 NOVEMBER 14, 2016

2 (WHEREUPON, the proceedings began at 12:04 p.m.)

3 MR. HERNANDEZ: Your Honor, this would be State versus
4 Timothy Johnson. Your Honor, Mr. Johnson had previously pled
5 under Indictment 2015-GS-47-22, Count I of that indictment.
6 That would be the conspiracy.

7 And then under Indictment Number 21, Mr. Johnson pled
8 under Counts I, II, III, IV, V, VI, VIII, XII, and XIII to
9 charges ranging from -- with the most significant being
10 trafficking heroin, 4 to 14 grams, both by conspiracy and as a
11 substantive count, and then a -- the rest remaining would be
12 distribution of heroins with one -- with one possession with
13 intent to distribute heroin of those remaining counts.

14 Your Honor, Mr. Johnson was identified early into this
15 investigation as the head of the trafficking network in
16 Florence and Williamsburg and then Darlington Counties. The
17 evidence against Mr. Johnson was significant and substantial
18 with a number of controlled purchases utilizing confidential
19 informants, as well as other cooperating co-defendants who
20 identified Mr. Johnson as the head of the ring.

21 Essentially what Mr. Johnson would do -- he had a source
22 in New York where he would obtain his heroin through various
23 means, either -- typically by having someone or someones drive
24 up to New York, retrieve the -- the big bundle of heroin, for
25 lack of a better term, and then drive it back to South

1 Carolina in the span of about 48 hours, where then he would
2 distribute it to his network of folks.

3 Mr. Johnson is the head of this conspiracy and his plea
4 does reflect that. The State has the -- part of the sentence
5 -- I mean part of the plea was a negotiated 18 to 22 years,
6 Your Honor, which Your Honor did accept back when pleas
7 occurred.

8 To give Your Honor a little bit of history about Mr.
9 Johnson also, he does have no record. There is nothing, no
10 prior convictions.

11 He -- up until about the 11th hour, we believed we would
12 be trying Mr. Johnson and we did have the witnesses, both
13 confidential informants, as well as cooperating co-defendants
14 prepped and ready for trial. Mr. Johnson had a change of
15 heart at some point and we were able to negotiate a little bit
16 further with he and his attorney, where he did enter the plea.

17 Mr. Johnson then did cooperate with the State. He
18 provided cooperation in the form of his plea agreement, as
19 well as interviews with law enforcement. We will -- should a
20 trial be necessary for Mr. Skinner, Mr. Johnson will be a
21 State's witness against him.

22 I believe Mr. Johnson -- Mr. Johnson's main or one of his
23 main dealers in his network was a gentleman named Anthony
24 Wilson. That was -- is kin to him. I believe it's a cousin
25 or a relative of some sort. That is -- he also is responsible

1 for bringing in Dawn Marie Riley into the conspiracy. She
2 essentially was as close to a right-hand woman as you can
3 have. Her plea will be later in a few moments also.

4 Mr. Johnson is responsible for bringing in most of the
5 people. In this particular conspiracy, it's a combination of
6 folks who were addicts and some weren't. Mr. Johnson is not
7 an addict. He -- we don't believe that he used the drugs that
8 he was dealing. Some other folks, obviously as Your Honor has
9 heard, were addicts and did it as a matter of obtaining the
10 drug. However, Mr. Johnson did it purely for profit.

11 I believe I've covered all the bases. If there's any
12 other information Your Honor would like to know, I'm happy to
13 provide it.

14 There also is three consent orders for forfeiture of
15 seized funds in the amounts of \$8,290, \$6,224, and \$45,350.
16 Counsel has signed it and so has the defendant. And
17 permission to file this with the clerk?

18 THE COURT: Yes, sir.

19 MR. HERNANDEZ: And for Your Honor to review then in good
20 time.

21 THE COURT: All right.

22 THE CLERK: Mr. Johnson, can you raise your right hand as
23 best you can? Do you swear to tell the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE DEFENDANT: I do.

1 THE CLERK: Thank you.

2 THE COURT: All right. Mr. Barth?

3 MR. BARTH: Yes, sir. Before I get into mitigation, Your
4 Honor, in regards to those forfeiture orders, I just wanted to
5 put this on the record, and it's part of the plea agreement
6 that was previously accepted.

7 There were two vehicles that were seized also, as well as
8 I believe two hunting rifles that belonged to his children.
9 Those are excluded from any forfeiture and they're not
10 included in those orders. It's my understanding from talking
11 to the agents today that those are going to be returned to
12 family members of Mr. Johnson. We just wanted to clarify that
13 for the record as a matter of housekeeping.

14 THE COURT: Okay.

15 MR. BARTH: And for Your Honor's consideration.

16 MR. HERNANDEZ: That's my -- that's my understanding as
17 well, Your Honor.

18 THE COURT: Okay.

19 MR. BARTH: Thank you.

20 THE COURT: Thank you, Mr. Barth.

21 MR. BARTH: As far as Mr. Johnson goes, he's currently 37
22 years old, Your Honor. Just a little bit by way of
23 background, he's the father of seven little girls, three boys,
24 six of which were residing with him at the time he was
25 arrested on -- on these charges.

1 At the time he was arrested, he was self-employed as a
2 car salesman and car repairman and lawn care business, along
3 with two of his sons. He had assisted with Hemingway Middle
4 School football team in the past, the Hemingway varsity
5 football team in the past, and I believe was still involved
6 with that at the time of his arrest for these charges.

7 You know, as far as Mr. Johnson's role in this offense, I
8 certainly can't stand up here today and defend his role in
9 this conspiracy, nor can my client. I think he'd be the first
10 to admit this was serious illegal drug activity. He knows it
11 was wrong. He knows he shouldn't have been involved in it. I
12 think he may tell you the same when -- when I'm done here in a
13 few moments, Your Honor.

14 You know, I've had the occasion through representing Mr.
15 Johnson to talk with him on a number of occasions. I think
16 he's truly sorry for what he was involved in. He apologizes
17 to the Court. Most of all, he apologizes to his family.
18 Obviously, the ripple effects of the sentence that he's about
19 to receive are going to be immense with that many children in
20 the area and other family members of his involved in this --
21 this same conspiracy.

22 With all that being said, Your Honor, he understands he's
23 pled guilty to a negotiated agreement, the 18 to 22 years.
24 Regardless of where this sentence falls today, he's looking at
25 significant time. I believe he's already been incarcerated

1 about a year and a half or a little in excess of a year and a
 2 half between some of the substantive counts and the
 3 conspiracy, most of which has been done at Effingham, and I
 4 know you've heard numerous times today how difficult they all
 5 contend time is at Effingham as far as the little bit of free
 6 time that they do get during the day.

7 You know, he recognizes and he's phrased with me he's
 8 going to be an old man when he gets out. His youngest two
 9 children I confirmed with him today are around two years old.
 10 He recognizes the fact he's not going to see either one of
 11 them graduate high school. He's not going to see either one
 12 of them go to college. He's going to be incarcerated for the
 13 better part of two decades, if not more.

14 The bottom line is, Your Honor, we're asking you today to
 15 respectfully consider giving him the bottom end of that range,
 16 which I believe would be 18 years. I don't make the request
 17 lightly. Again, I understand what Mr. Johnson was involved in
 18 in this case, but I do want to note a few things for the
 19 record.

20 One, you know, while the trafficking offense I know is
 21 considered violent under the state statutes, out of all the
 22 co-defendants in this case, all the discovery in this case,
 23 there's no allegations that he's a violent individual. No
 24 threats of violence. No bodily injury occurred to anybody in
 25 this. I don't believe he ran from law enforcement or resisted

1 arrest.

2 Again, just our position that he's a non-violent
3 individual. I certainly think if he was violent, we'd have
4 just heard that a few moments ago from Mr. Hernandez.

5 Number two and most notably -- and I think this is the
6 fourth or fifth co-defendant to come before you today and I've
7 been here for all of them so far and what I believe makes Mr.
8 Johnson unique -- and Mr. Hernandez just touched on this. He
9 has zero criminal history. For somebody so involved, this is
10 the first time that he's been arrested, the first time
11 certainly that he's pled guilty to any charges, and the first
12 time he's going to do any time in any prison anywhere in the
13 state or the federal system, for that matter. I do think that
14 puts him in a little unique posture from some of the other co-
15 defendants in this case.

16 I would submit to the Court that 18 years -- 19 years --
17 22 years, somewhere in that range, is even more significant to
18 somebody who has never done a day in prison before. I do
19 believe the low end of that range would be just punishment for
20 his conduct in this case. I also think 18 years is going to
21 give Mr. Johnson plenty of time to sit there and reflect on
22 what he was involved in.

23 And certainly and hopefully, when he's released from
24 incarceration, that lengthy period of incarceration is going
25 to serve as a deterrent to any future criminal conduct. This

1 isn't somebody who dealt drugs in the past, caught a slap on
2 the wrist, dealt again, caught a year, dealt again, and here
3 we are. This is his first time standing before a judge of
4 this magnitude other than the guilty plea a few months ago
5 before Your Honor.

6 Lastly, Judge, without going into too much, you know, he
7 has cooperated, as Mr. Hernandez just put on the record. He
8 continues to cooperate. It's my understanding he was meeting
9 with agents as recent as last week and certainly remains
10 ready, willing, and able to continue to cooperate as part of
11 his plea agreement moving forward.

12 Again, you know, we're asking the Court to consider a
13 sentence on the bottom end of that plea agreement range based
14 on the fact that it's our position that this individual
15 standing next to me is a non-violent first offender who is
16 trying to cooperate at this time.

17 I do believe Mr. Johnson would like to address the Court,
18 if you're willing to hear from him.

19 THE COURT: Certainly. Mr. Johnson?

20 THE DEFENDANT: I apologize for all the trouble. I
21 didn't -- I have a good heart. I didn't force anybody to do
22 anything. I helped them the wrong way. It was wrong. I sold
23 my own drugs. I didn't make anybody sell drugs. It was just
24 wrong. I didn't mean to hurt all these people. Again, I just
25 found my own way to help them and helping myself. It was

1 wrong.

2 I didn't -- I definitely didn't mean to hurt anybody. I
3 love my kids. My life revolves around my kids. I have ten
4 kids, active and present in their life their entire lives up
5 until now. I love everybody else's kids.

6 My heart put me in a bad situation. I did right, but
7 from my perspective. From the outside world, my right was
8 wrong, but I didn't see it because I was living in the world
9 at the time and it was okay to me because that's what I saw.
10 But it was wrong and it was illegal and I should have left it
11 alone.

12 I'm sorry. I'm sorry for everybody that got involved and
13 everybody that got in trouble behind me. I just ask you to be
14 lenient on me and others as well. A few of my co-defendants
15 -- they really got caught in it wrong, being there at the
16 wrong time.

17 They're not no dealers. For one, Ms. Riley. She didn't
18 -- she wasn't selling any drugs. I used her to rent a car for
19 me. She's not a drug dealer. I tried to keep her out of my
20 business as much as possible. I was a very secretive person,
21 but I trust people a lot. That was my downfall. My downfall
22 was getting involved with drugs period, and I'm just sorry and
23 I just pray that you be as lenient as possible.

24 THE COURT: Thank you, Mr. Johnson. Anybody else wish to
25 speak on his behalf, Mr. Barth?

1 MR. BARTH: I don't believe so, Your Honor. With that
2 said, Your Honor, if I may, his family has stayed in contact
3 with me throughout my representation. He said his mother just
4 had surgery, but I've been in contact with his sisters and
5 other siblings, and they have stayed in contact but were
6 unable to make it here this morning for court.

7 THE COURT: Thank you, Mr. Barth. Anything else from the
8 State?

9 MR. HERNANDEZ: Just to point out -- Mr. Barth touched on
10 it. This is an 85 percent time charge, violent and serious.
11 I know Your Honor likely did it at the plea. I just wanted to
12 make sure that was on the record as well again.

13 (WHEREUPON, there was a pause in the proceedings, after
14 which the proceedings resumed as follows.)

15 THE COURT: All right. Mr. Johnson, when all of this
16 started, the State gave me a chart, sort of like a pyramid.
17 Of course, you were the top man at the top of that pyramid and
18 you sucked in a lot of other people, whether they were addicts
19 or whatever.

20 You know, you caused a lot of pain to them and, in
21 distributing all these drugs, you caused a lot of pain to
22 other people as well. You brought this poison down here from
23 New York and poisoned a lot of the citizens of this state, all
24 to make a profit for yourself. There's no getting around
25 that, particularly since you aren't an addict. Everybody says

1 you aren't an addict. I mean we got a seizure of what? Close
2 to \$60,000 here. You were making big money off of other
3 people, using other people.

4 I'm glad that you have finally begun to cooperate in this
5 situation, but I certainly can't ignore all that you have done
6 in the past and the harm that you've caused a lot of people.

7 I do take into consideration when I sentence you the fact
8 that you have no criminal record whatsoever. I believe you'll
9 be the only one I could hear that from probably, according to
10 your attorney and Mr. Fernandez. And you have begun to -- to
11 help and I take that into consideration as I sentence you.

12 SENTENCE

13 THE COURT: With regards to -- and you've got a number of
14 indictments, but with regards to Indictment 2015-GS-47-21,
15 Count I, trafficking heroin, first offense, the sentence of
16 the Court is you be committed to the State Department of
17 Corrections for a term of 19 years.

18 With regards to the Indictment 2015-GS-47-22, Count I,
19 trafficking heroin conspiracy, the sentence of the Court is
20 you be committed to the State Department of Corrections for a
21 term of 19 years.

22 There are seven indictments with regards to the
23 distribution of heroin: 2015-GS-47-21, Count II; 2015-GS-47-
24 21, Count V; 2015-GS-47-21, Count VI; 2015-GS-47-21, Count
25 III, 2015-GS-47-21, Count IV; 2015-GS-47-21, Count XII; and

1 2015-GS-47-21, Count VIII.

2 With regards to each and every one of these indictments,
3 the sentence of the Court is you be committed to the State
4 Department of Corrections for a term of 15 years.

5 And lastly with regards to Indictment 2015-GS-47-21,
6 Count XIII, possession with intent to distribute heroin, the
7 sentence of the Court is you be committed to the State
8 Department of Corrections for a term of 15 years.

9 All of these sentences will run concurrently. So it will
10 be 19 years and that'll give you a long time to stop and think
11 about what you did and the hurt and harm you've caused.

12 Thank you.

13 MR. HERNANDEZ: Thank you, Your Honor.

14 (WHEREUPON, the proceedings ended at 12:24 p.m.)

15

16 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)
) Certificate
County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 15, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 14th day of November, 2016.

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

Krystal J. Smith
Court Reporter

Florence, South Carolina
June 7, 2017