

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

William H. Seals, Circuit Court Judge

GAFASKIE D. RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000569

APPENDIX

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

RECEIVED

Nov 09 2020

S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO: 2017-GS-26-4406
3 PLEA 2017-GS-26-3556

4 -----
5 B E F O R E: The Honorable Larry Hyman
6 March 12, 2018
7 -----

8 STATE OF SOUTH CAROLINA,
9 Plaintiff,
10 vs.

 ORIGINAL

11 GAFASKIE RICHARDSON,
12 Defendant.
13 -----

14 APPEARANCES:

15 W. Grayson Ervin, Esq.
16 For the State of South Carolina.

17 Linward Edwards, Esq.
18 For the Defendant.

19
20
21 Court Reporter:
22 Natalie Dahl, RPR
23
24
25

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

(GAFASKIE RICHARDSON, having been duly sworn,
testified as follows:)

MR. ERVIN: This is State versus Gafaskie
Richardson, Indictment 2017-GS-26-4406, trafficking
methamphetamine 28 to 100 grams, first offense. True
Bill Indictment 2017-GS-26-3556, possession with
intent to distribute cocaine, first offense. This is
a negotiated sentence for 10 years concurrent on both
charges

THE COURT: Mr. Edwards?

MR. EDWARDS: Yes, sir.

THE COURT: Have we met?

MR. EDWARDS: We have not, Your Honor -- I think
maybe briefly once or twice.

THE COURT: And who are you with?

MR. EDWARDS: My own firm in Florence County.

THE COURT: How long have you been out?

MR. EDWARDS: I've been practicing now for about
seven years, Your Honor.

THE COURT: Good for you. Good for you,
Mr. Richardson. Are you a local Florence County boy?

MR. EDWARDS: Born and raised, yes, sir.

THE COURT: Well, it is good to have you before
me. I look forward to seeing you again.

EXAMINATION

1
2 BY THE COURT:

3 Q Now, Mr. Richardson, you are here with
4 Mr. Edwards today? He is your attorney; is that right?

5 A Yes, sir.

6 Q And have you had an opportunity to discuss this
7 case with him, trafficking in crack cocaine -- or is it
8 meth?

9 MR. ERVIN: Methamphetamine.

10 Q You understand that? You know what your charge
11 means?

12 A Yes, sir.

13 Q And do you realize that that carries from 7 to 25
14 years?

15 A Yes, sir.

16 Q Now, Mr. Edwards negotiated a sentence in this
17 matter and that is a 10-year sentence. Has Mr. Edwards
18 explained what a negotiated sentence means?

19 A Yes, sir.

20 Q I think you also are here with possession with
21 intent to distribute cocaine; is that right?

22 A Yes, sir.

23 Q You understand that charge?

24 A Yes, sir.

25 Q And that carries up to 15 years; you understand?

1 A Yes, sir.

2 Q Now, he has negotiated 10 years on each offense
3 to run concurrent. Did Mr. Edwards explain what a
4 negotiated sentence means?

5 A Yes, sir.

6 Q Let me make sure that you and I understand it.
7 It means I have two choices: I can either reject your
8 plea, and in that case you are back to where you
9 started. Or I can accept your plea, and if I do so, I
10 must impose the negotiated sentence of 10 years on each
11 offense running concurrent. Is that what Mr. Edwards
12 has told you?

13 A Yes, sir.

14 THE COURT: And, Mr. Edwards, that your
15 understanding as well?

16 MR. EDWARDS: Yes, sir.

17 Q So in your conversations with Mr. Edwards, did he
18 explain to you that you have an absolute right to a
19 jury trial?

20 A Yes, sir.

21 Q On any of these charges?

22 A Yes, sir.

23 Q And did he talk with you about how a jury trial
24 works, what it means?

25 A Yes, sir.

1 Q Do you understand that?

2 A Yes, sir.

3 Q Do you have any questions for me concerning the
4 procedure and your right to a jury trial?

5 A No, sir.

6 Q Now, Mr. Richardson, if you plead guilty, which
7 you do not have to do, you waive your right to a jury
8 trial. In doing so, you waive, give up, forfeit many,
9 many other rights that go along with a jury trial.
10 There are things like your Fifth Amendment, right to
11 remain silent. Most people think of that in the
12 context of being arrested and not speaking to law
13 enforcement, but it also carries over to a trial. It
14 means that no one could make you testify. No one could
15 make you say a word unless you wanted to. You could if
16 you wanted to, but no one could make you.

17 During that trial, Mr. Edwards would have an
18 opportunity to cross-examine all the State's evidence
19 against you. He could even put up evidence, if you
20 had any, and I don't know, but if he did, he could put
21 up evidence that might be helpful to your case. Also
22 in a jury trial, the State could not convict you of
23 anything unless they proved to a jury of 12 people you
24 are guilty beyond a reasonable doubt; you understand
25 that?

1 A Yes, sir.

2 Q There are many rights like this, but if you plead
3 guilty, you give them up; is that what you want to do?

4 A Yes, sir.

5 Q Mr. Richardson, are you satisfied with
6 Mr. Edwards' representation?

7 A Yes, sir.

8 Q Do you think that he has done everything he could
9 to help you?

10 A Yes, sir.

11 Q Fully and completely satisfied with him?

12 A Yes, sir.

13 Q Do you need to discuss this further with
14 Mr. Edwards?

15 A The way I see it now, they -- he has it set that
16 way, it is set. It has me set where I'm at, got that
17 plea.

18 Q No, Mr. Richardson. My job here is to make sure
19 that you've had all the time you need to talk with your
20 lawyer, that you understand what you are doing here
21 today. I have to make a determination whether your
22 plea is made freely and voluntarily. That's what I'm
23 here for. If you haven't had enough time to talk to
24 Mr. Edwards, I will not take your plea. Do you need to
25 discuss this further with Mr. Edwards?

1 A Yes, sir.

2 THE COURT: Okay. Go ahead. You can retire to
3 the room back there.

4 (A recess was taken.)

5 THE COURT: What about Mr. Richardson? All
6 right. Mr. Richardson, now have you had ample
7 opportunity to discuss your case with Mr. Edwards?

8 A Yes, sir.

9 Q Do you need to ask me anything? I can't give you
10 legal advice, but I'll answer any questions you might
11 have about this process, procedure, we're going
12 through. Any questions for me?

13 A I was wondering -- I got like five businesses
14 studio, music, and manager of a club and bar and have
15 my own restaurant, and I feel like if I could get a day
16 or two to get everything --

17 Q No, sir. This is a sentencing. Anything
18 further?

19 A No, sir.

20 Q You are 44?

21 A Yes, sir.

22 Q Are you married?

23 A I have a fiancée.

24 Q And do you have any kids?

25 A Yes, sir. Seven kids, five grandkids.

1 Q How many?

2 A Seven, five grands.

3 Q Your kids are grown?

4 A Yes, sir. My oldest is 27.

5 Q And your youngest?

6 A He's ten.

7 Q Mr. Richardson, as you said, you are sort of an
8 entrepreneur; do you have a job you work anywhere else
9 other than your own businesses?

10 A I worked for Chili's for five years. I worked
11 various restaurants to get the restaurant I have.

12 Q What restaurant do you have?

13 A West Coast Kitchen at Coyote Saloon.

14 Q Mr. Richardson, how far did you go in school?

15 A Graduated.

16 Q Have you ever had any mental health or addiction
17 issues that would make it difficult for you to
18 understand what we're doing?

19 A I mean, I don't have --

20 Q The reason I ask that is I want to know if there
21 is anything that would make it so you wouldn't
22 understand why we are here or what we're doing?

23 A Oh, no, sir. No, sir. No, sir.

24 Q Have you taken anything of an intoxicating nature
25 in the last 24 hours?

1 A Yes, sir.

2 THE COURT: Mr. Richardson, I want you to listen
3 to Mr. Ervin. Mr. Ervin is going to tell me why you
4 are here before me.

5 MR. ERVIN: Thank you. In April and May of 2017,
6 agents with 15th Circuit Drug Enforcement Unit
7 conducted two controlled buys at his residence from
8 this defendant in the Socastee section in Horry
9 County. Those buys led to the obtaining and execution
10 of a search warrant at that residence. May 10, 2017
11 is when the agents did execute that search warrant of
12 this defendant's house. He was the only one present
13 when the agents arrived. Upon searching the house,
14 there was 33-and-a-half grams of methamphetamine in
15 the form of tablets, and 6.8 grams of cocaine that
16 were found.

17 THE COURT: Okay. So you are dismissing the
18 earlier distributions?

19 MR. ERVIN: Yes, sir. And the tablets originally
20 field tested for Molly, MDMA, and obviously
21 Mr. Edwards and I have gone back and forth about the
22 legal implications of that, but we will be dismissing
23 the PWID MDMA, trafficking cocaine, distribution
24 cocaine and a marijuana charge.

25 THE COURT: Basically, you are dismissing every

1 other pending and known charge in this circuit.

2 MR. ERVIN: Yes, sir.

3 THE COURT: Is that right, Mr. Edwards?

4 MR. EDWARDS: Yes, Your Honor.

5 Q Mr. Richardson, is that what happened?

6 A Well, yes, sir. It's, like I say, I be doing
7 music, a lot of partying.

8 Q Mr. Richardson, all I need to know is were the
9 facts concerning the drugs -- did you have possession
10 of these drugs?

11 A Yes, sir.

12 Q All right. And are you guilty of these offenses?

13 A Yes, sir.

14 Q Speak up.

15 A Yes, sir.

16 Q Mr. Richardson, anyone promise you anything,
17 threatened you in any way, done anything inappropriate
18 or improper to make you enter this plea against your
19 will?

20 A No, sir.

21 Q Are you pleading freely and voluntarily?

22 A Yes, sir.

23 Q Have you had plenty of time to think about it?

24 A Honestly, sir -- yes, sir. Yes, sir.

25 Q Mr. Richardson, do you need to discuss it again

1 further with Mr. Edwards?

2 A No, sir.

3 Q Do you need to discuss it with anyone else?

4 A No, sir.

5 THE COURT: I find there is a substantial factual
6 basis for this plea, and it is made freely,
7 voluntarily, knowingly and intelligently and after the
8 advice of a very competent attorney with whom he says
9 he's satisfied, and I'll accept the plea.

10 Mr. Edwards, it is negotiated; do you need to add
11 anything to it?

12 MR. EDWARDS: No, sir. I would like to say for
13 the record, Mr. Richardson is an author of 11 books as
14 well, he has two books that are actually published.
15 The reason for his plea, Your Honor, I think the State
16 would prove beyond a reasonable doubt the charges as
17 far as the quantity and the weight of the
18 methamphetamine, but the one fact that was omitted --
19 it's not a fact, more of a circumstances, which is the
20 reason why the State went a little lower in the
21 sentencing, is the fact that Mr. Richardson didn't
22 have knowledge that the MDMA pills were, in fact, I
23 guess a composite of methamphetamine. But that is not
24 an argument we can make in court of law, but wanted
25 the Court aware. Mr. Richardson was not a target. In

1 fact, the investigators didn't even have him on their
2 radar. He is accepting responsibility here today for
3 everything and every crime he's committed, Your Honor.
4 His record is sort of the reason we were kind of
5 forced into this plea -- the record and the facts. We
6 just want to put on the record that he has strong
7 family support. He has his fiancée here along with
8 her sister and mother as well. We know it is a
9 negotiated sentence, but if the Court would allow, I
10 would want them to say something for the record.

11 THE COURT: What is his record?

12 MR. ERVIN: Your Honor, relevant convictions are
13 2001, conspiracy to distribute cocaine with the
14 federal system, 150 months active time. Then there
15 was a 2010 violation of the supervised release.

16 THE COURT: Now, Mr. Edwards, I'll hear from
17 them, but the only thing that it can accomplish is me
18 refusing to take the plea. I don't think that is what
19 you want to do. It is negotiated. I will follow the
20 negotiations and impose the sentence of 10 years on
21 each offense concurrent with each other. I will
22 acknowledge that there is a dismissal of all other
23 pending charges. Thank you.

24 (Whereupon, the proceedings concluded.)

25

1 CERTIFICATE OF REPORTER

2
3 State of South Carolina)

4 County of Horry)

5
6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the matter of the captioned case,
11 relative to appeal, in the Court of General Sessions
12 for Horry County, South Carolina, on the 12th day of
13 March, 2018.

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

16
17 July 22, 2018

18
19
20 

21 Natalie Dahl, RPR

22 Court Reporter
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gafaskie Danyel Richardson 256102)
 Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 18 CP26 4099

APPLICATION FOR

POST-CONVICTION REVIEW

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Kirkland Correctional Institution
2. Name and location of Court which imposed sentence Horry County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Possession of Cocaine with the intent to distribute - 17652603556
 - (b) Trafficking Methamphetamine 28-100grams 1st offense - 176526044
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 12th, 2018 10 yrs PWID Cocaine 1st offense
 - (b) March 12, 2018 10 yrs Trafficking Methamphetamine 1st offense

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial Counsel informed the Applicant that
- (b) he would not be filing notice of appeal
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Attachment A -

- ⑩ a - Ineffective assistance of counsel for not challenging the drug amount or weight

- (a) Trial counsel failed to review and discuss all discovery information and evidence
 (b) Trial counsel was ineffective in that he did unfairly and improperly pressure and
coerce me into giving up my rights in accepting a plea offer.
 (c) Trial counsel was ineffective in that he should have been able to
negotiate a better plea deal on my behalf.

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

- (a) As stated above
 (b) As stated above
 (c) As stated above

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

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

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

- (a) the specific nature thereof:
 i. N/A
 ii. N/A
 iii. N/A
 iv. N/A
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. N/A
 iii. N/A
 iv. N/A
 (c) the disposition thereof:
 i. N/A
 ii. N/A
 iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

NO

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

- (a) which grounds have been presented:

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

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

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

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) Issues were not properly preserved by trial counsel
- (b) and are reflective of ineffective assistance of counsel
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Linward Edwards III, 301 South Trbyst
- ii. Florence, S.C. 29505
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Conviction reversed with remand for new trial
20. Are you now under sentence from any other court that you have not challenged?
NO

2018 CP26 4099

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Horry)

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

Gabriel Richardson

SWORN to and subscribed before me this 12
day of July, 2018.

Melissa Dugan (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2025

HORRY COUNTY
2018 JUL 16 PM 4:23
RENEE N. EVANS
CLERK OF COURT
HORRY COUNTY, SC

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

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

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

Gataskie Richardson
Applicant

SWORN or affirmed to and subscribed before me this

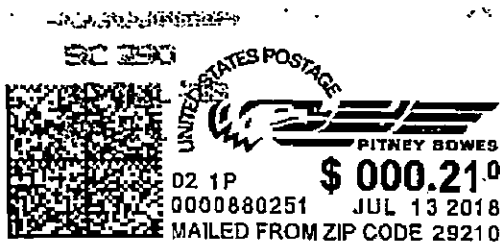
12 day of July, 2018.

Melissa Opitz
Notary Public

My Commission Expires: Dec. 1, 2025

HORRY COUNTY
2018 JUL 16 PM 4:23
RENEE B. ALVIS
CLERK OF COURT
HORRY COUNTY, SC.

Graskie Richardson - 25610215
 KCI
 4344 Broad River Rd.
 Columbia, S.C. 29210



Renee W. Elvis
 Clerk of Court of Horry County
 P.O. BOX 677
 Conway, S.C. 29526-0677

29528-067777



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Gafaskie D. Richardson,) Case No.: 2018-CP-26-04099
S.C.D.C. No. 256102,)

Applicant,)

RETURN

v.)

State of South Carolina,)

Respondent.)

2018 SEP 20 PM 12:51
Horry County
Clerk of Court
Horry County, SC

In response to the application for post-conviction relief filed by Gafaskie D. Richardson (Applicant) on July 16, 2018, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the July 2017 term of the Horry County Grand Jury for possession with intent to distribute cocaine (2017-GS-26-03556), and trafficking methamphetamine (2017-GS-26-04406). The underlying facts, as affirmed by Applicant in his plea, are as follows:

In April and May of 2017, agents with 15th Circuit Drug Enforcement Unit conducted two controlled buys at his residence from this defendant in the Socastee section in Horry County. Those buys led to the obtaining and execution of a search warrant at that residence. May 10, 2017, is when the agents did execute that search warrant of this defendant's house. He was the only one present when the agents arrived. Upon searching the house, there was 33-and-a-half grams of methamphetamine in the form of tablets, and 6.8 grams of cocaine that were found.

...

And the tablets originally field tested for Molly, MDMA, and obviously Mr. Edwards and I have gone back and forth about the legal implications of that, but

we will be dismissing the PWID MDMA, trafficking cocaine, distribution cocaine and a marijuana charge.

(Tr. 9, ll. 5-24). Linward Edwards, Esq. represented Applicant, and W. Grayson Ervin, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On March 12, 2018, Applicant pled guilty to the above listed charges as indicted. The Honorable Larry B. Hyman, Jr. sentenced Applicant to imprisonment for concurrent terms of 10 years on each charge. Applicant did not appeal his plea or sentence.

II.

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

1. Ineffective assistance of counsel, in that:
 - a. Counsel was ineffective "for not challenging the drug amount or weight";
 - b. "Trial counsel failed to review and discuss all discovery information and evidence";
 - c. "Trial counsel was ineffective in that he did unlawfully and improperly pressure and coerce me into giving up my rights in accepting a plea offer";
 - d. "Trial counsel was ineffective in that he should have been able to negotiate a better plea deal on my behalf."

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the

proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced 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, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not

conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

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

V.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VI.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

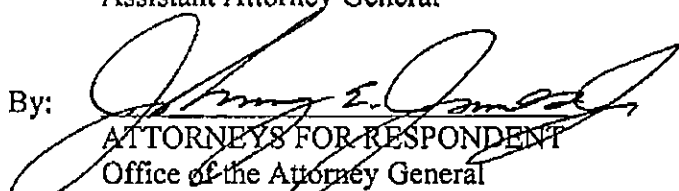
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By:


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17 Sept. 2018

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

GAFASKIE D. RICHARDSON, #256102,)

2018-CP-26-4099

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

2018 SEP 20 PM 12:51
 HORRY COUNTY, SC
 CLERK OF COURT

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

James K. Falk, Esquire
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this 17th day of September, 2018.


 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2018-CP-26-04099

GAFASKIE D. RICHARDSON,)

Applicant,)

Transcript of Record

vs.)

OCTOBER 8, 2019

STATE OF SOUTH CAROLINA,)

Respondent.)

B E F O R E:

Honorable William H. Seals, Jr.
Horry County Courthouse
Conway, South Carolina

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

James K. Falk, Esquire
Attorney for Plaintiff

Johnny E. James, Jr., Esquire
Attorney for Defendant

Sallie Beth Todd
Circuit Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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GAFASKIE RICHARDSON

By Mr. Falk	4		34	
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By Mr. James		18		38
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LINWARD EDWARDS

By Mr. Falk	23		32	
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By Mr. James		26		
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By Mr. James	41			
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By Mr. Falk		43		
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Certificate of Court Reporter	45
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E X H I B I T S

NO.	DESCRIPTION	ID	EV	PAGE
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A1	Letter to Plaintiff dated 7/19/2017		X	36
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1 **THE COURT:** Yes, sir.

2 **MR. JAMES:** If it may please the Court?

3 **THE COURT:** Yes, sir.

4 **MR. JAMES:** This is the matter of Gafaskie D. Richardson
5 versus State of South Carolina, docket number 2018-CP-26-
6 04099. Mr. Richardson is present here in the courtroom today
7 and is represented by Mr. Jim Falk, Esquire. Mr. Richardson
8 was indicted at the July 2017 term of the Horry County Grand
9 Jury for possession with intent to distribute cocaine and
10 trafficking methamphetamine. He was represented on that
11 charge by the Honorable Linward Edwards, Esquire who is
12 present here in the courtroom today; and that case was
13 prosecuted by W. Grayson Ervin of the 15th Circuit Solicitor's
14 Office. On March 12th, 2018 Mr. Richardson plead guilty to the
15 above listed charges as indicted. The Honorable Larry B.
16 Hyman, Junior sentenced him to concurrent terms of 10 years on
17 each charge and he did not appeal his plea or his sentence.
18 Your Honor, the State's understanding of the allegations as we
19 are proceeding forward today are as set forth in the State's
20 Return. I do not believe I have been notified of any intended
21 amendments; is that correct, Mr. Falk? Mr. Falk is nodding.
22 And with that stated, I will give the floor to Mr. Falk to
23 proceed with his case.

24 **THE COURT:** Alright. Yes, sir, Mr. Falk.

25 **MR. FALK:** I call Mr. Richardson.

1 **THE COURT:** Alright. Come on around.

2 **GAFASKIE RICHARDSON, HAVING BEEN FIRST**
3 **DULY SWORN, TESTIFIED AS FOLLOWS:**

4 **CLERK:** Please have a seat and state your name for the
5 court reporter.

6 **MR. RICHARDSON:** My name is Gafaskie Danielle Richardson.

7 **THE COURT:** Mr. Falk, have you explained to him that if
8 he wins this Post Conviction Relief that he could possibly get
9 more time?

10 **MR. FALK:** Yes, Your Honor.

11 **DIRECT EXAMINATION OF MR. RICHARDSON BY MR. FALK:**

12 Q: Could you just go ahead and spell your name for the
13 record?

14 A: Gafaskie, G-A-F-A-S-K-I-E. Richardson, R-I-C-H-A-R-D-S-
15 O-N.

16 Q: Alright. And Mr. Richardson, who represented you on your
17 plea?

18 A: Mr. Linward Edwards.

19 Q: Okay. And how did you -- did you retain him or was he
20 appointed to you?

21 A: I retained him.

22 Q: Okay. And how long had you -- were you on the street or
23 were you in custody?

24 A: I bonded out and I was on house arrest. I violated my
25 house arrest July 10th and I been incarcerated from July the

1 10th to August 11th and Mr. Edwards got a consent to get the
2 leg monitor off my ankle and I was out ever since then.

3 Q: When you say August the 10th, what year?

4 A: August the 10th, 2017.

5 Q: Okay. Alright. Because your plea -- you plead guilty on
6 March 12th, 2018.

7 A: Yes, sir.

8 Q: Okay. What are your concerns about pleading guilty in
9 this case and his representation?

10 A: My concerning was about the indictment from the
11 trafficking methamphetamines 28 - 100 grams, something I never
12 been arrested for.

13 Q: Okay. So, and you got a copy of the true bill ---

14 A: Yes.

15 Q: --- the true bill indictment?

16 A: Yes.

17 Q: But you were never arrested for that?

18 A: No. They said I was arrested August 24th, 2017. I never
19 been arrested on that date at all.

20 Q: Now, did you have some concerns about the indictment
21 alleging methamphetamine?

22 A: Yes, sir.

23 Q: And why was that?

24 A: Because they said that I when I got arrested, I got
25 arrested for 79 Ecstasy pills, which it was two different

1 sets of pills. The State claimed that there was
2 methamphetamines inside the pills, but therefore I never seen
3 a drug analysis and I never known about this indictment until
4 December when I been indicted for possession of cocaine in
5 July 17th. That was my true bill indictment for the possession
6 of cocaine, not knowing that I was indicted in September for
7 trafficking meth. If I had known that four of my charges had
8 been dropped back in July and I only had one charge that I was
9 indicted for, I would have took that plea. I would have never
10 let this case go on further for them to find the trafficking
11 methamphetamines charge on me I never committed.

12 Q: Now, what plea are you talking about?

13 A: The methamphetamines, I mean, well first July 17th I been
14 indicted ---

15 Q: Yes.

16 A: --- for possession of cocaine.

17 Q: Okay.

18 A: The four charges I had along with that possession of
19 cocaine been dismissed.

20 Q: Okay.

21 A: Knowingly, if I would have known that I only had that
22 charge back in September before September first term, I would
23 have plead guilty to that charge alone. But by me not
24 pleading to that charge alone, it carried on to December and
25 then that's when I was told that they was trying to put a

1 trafficking methamphetamines charge on me. And I told them I
2 did sell methamphetamines, I never sold methamphetamines.
3 Yes, I take Ecstasy pills, but I never sold methamphetamines.
4 So, as we was going on to the court case that morning, I was
5 told that if I help myself I can get off of it. I said no I
6 wasn't going to do that.

7 Q: And just for the record, what does help myself mean?

8 A: If I snitch.

9 Q: Okay. Did that mean that they want you to work?

10 A: Yes. They want me to work for them.

11 Q: And working means go on a controlled buy?

12 A: Yes, sir.

13 Q: Okay. Or just get names?

14 A: Yes.

15 Q: Okay. So that's what help myself means?

16 A: Yes.

17 Q: And, I'm sorry, I interrupted you. What was your
18 response to that?

19 A: I wasn't going to do it. Not at that time, I wasn't
20 going to do it. So Mr. Edwards explained to me and tell me
21 well don't worry about it, we're just going to go in front of
22 the Judge today and plead not guilty just to get you on the
23 docket, not knowing that by getting me on the docket that I
24 was going to court sooner than I expected.

25 Q: What was your understanding of the go ahead and plead

1 today just to get you on the docket? What did you think that
2 meant?

3 A: I didn't, I didn't even know because therefore I never
4 seen no paperwork or anything until now being incarcerated.
5 Now, when I been incarcerated and I'm getting the paperwork
6 that I received from the clerk of court I see that by me
7 pleading guilty that day was getting me on the docket back in
8 February instead of December.

9 Q: Okay. So, let me just back up. You plead guilty on
10 March 12th, 2018.

11 A: Yes, sir.

12 Q: And is that the day, is that the day that your lawyer
13 said let's just go ahead and plead and get you on the docket?

14 A: No. That was back in December. Excuse me for a second.
15 That was back on December 14th, 2017.

16 Q: What page are you looking at right now?

17 A: I'm looking at in court South Carolina versus ---

18 **MR. FALK:** May I approach, Your Honor?

19 **BY MR. FALK:**

20 A: --- arraignment findings.

21 Q: So that was December 14th?

22 A: Yes, sir.

23 Q: But you didn't go before the Judge and plead guilty that
24 day, did you?

25 A: No. I plead not guilty.

1 Q: Okay. Okay. So that's what your lawyer was saying,
2 let's go ahead and enter a plea of not guilty and get on the
3 plea docket for sometime in the future.

4 A: Yes, but not me knowing, if I would have seen my Rule 5
5 or I would have seen my motion I would have noticed that I
6 would have been going to court on February term in 2018.

7 Q: So, you're looking at the plea findings?

8 A: Yes.

9 Q: Excuse me, the arraignment findings. Paragraph six of
10 that says what?

11 A: The State and the defense have indicted (sic) both parties
12 intend to be ready for trial during the February 2018 terms of
13 court.

14 Q: Okay. And is there anything on that sheet that tells you
15 that you're going forward on the methamphetamine charges?

16 A: Well, the Judge read out a lot of charges, my first
17 previous five charges along with that trafficking meth,
18 telling me I was facing 75 years.

19 Q: So, when did you find out about the methamphetamine; what
20 day?

21 A: That day.

22 Q: And that's December 14th?

23 A: Yes, sir.

24 Q: And you're saying the methamphetamine finding is on that
25 sheet of paper right there?

1 A: No, sir. I mean I don't see it. No, sir. I don't see
2 it on here.

3 Q: Okay. But it's your recollection that on the 14th -- now,
4 had you seen a lab on that day?

5 A: I had never seen a laboratory report neither for the
6 methamphetamine, I mean for the trafficking, I mean for the
7 Ecstasy pills nor for the methamphetamine. I have a
8 laboratory report from the Horry County drug analysis. I have
9 a laboratory report for the possession of cocaine and the
10 possession of marijuana. I never seen no laboratory report
11 for the possession, I mean for the trafficking
12 methamphetamines because back in ---

13 Q: But you've got some other sheets from your Rule 5; don't
14 you?

15 A: Yes, sir. Yes, sir.

16 Q: And are any of those sheets on the Rule 5 say that you're
17 charged with methamphetamines?

18 A: No, sir. All of my charges said that on May 10th, 2017
19 they execute a search warrant to my -- to 400 Hallow Court.
20 During the search the agents located 79 Ecstasy pills of
21 MDMA, 54.9 grams of marijuana, and 8.1 grams of cocaine that
22 was located in my house. So, therefore that's what I was
23 charged with. I was indicted for the 8.1 grams of cocaine.
24 Back in July 19th all those charges were nolle processed except
25 the possession of cocaine, so they didn't have no

1 methamphetamines.

2 Q: Okay. So, that was July 19th of?

3 A: 2017.

4 Q: 2017. Now, on December 14th, 2017 was it explained to you
5 were the methamphetamines came from?

6 A: They said that it came out of the Ecstasy pills, but I
7 never seen no drug laboratory report or analysis.

8 Q: Were you aware that the Ecstasy pills that you had were
9 -- had methamphetamine in them?

10 A: No, sir, because I was taking the meth -- I mean, I was
11 taking the Ecstasy pills.

12 Q: So, there was a controlled buy in this case; was there
13 not?

14 A: Yes, sir.

15 Q: But were you actually selling pills?

16 A: No, sir. I was using them

17 Q: So, what you're -- it's your belief, it's your position
18 that you were never trafficking. You just had the pills for
19 your personal consumption.

20 A: Yes. The pills was my own personal consumptions.

21 Q: Okay. So, now when you got to the sentencing hearing, I
22 mean, when you got to your plea hearing ---

23 A: Yes, sir.

24 Q: --- they talked to you about the methamphetamine; did
25 they not?

1 A: Yes, sir. I asked Mr. Edwards could he get the
2 solicitor, Ervin Gray to come in the conference room with me,
3 my fiancé, her mom, her sister, and Mr. Edwards. So, I asked,
4 I asked the solicitor I was like I am willing to take my five
5 charges that I committed, but I'm not willing to take this
6 with the methamphetamines. He said he up for no negotiations.
7 Either that or they had the jury downstairs along with six
8 agents ready to go to trial.

9 Q: So, you were going to wind up going to trial on the
10 methamphetamines?

11 A: Yes, sir.

12 Q: But you were willing to plead to all of the cocaine
13 related charges?

14 A: I was willing to plead to all five of my charges because
15 Mr. Edwards explained to me that all of my charges was 44-53-
16 370, which is all non-violent offences.

17 Q: Okay. When did you realize that this was going to be a
18 plea and you had to serve 85 percent of it?

19 A: Say that again?

20 Q: When did you realize that this was a violent offense?

21 A: When the solicitor explained to me that it was a ten 85
22 percent. And I told him why should I take a ten 85 percent
23 charge when I'm guilty of the other charges that I committed?
24 He said he wasn't up for no negotiations, either that or we're
25 going to trial.

1 Q: I'm going to just head off some of the questions that I
2 anticipate Mr. James is going to ask you. When you went in
3 there that day why did you go ahead and plead?

4 A: Honestly, I was pressured.

5 Q: And how did you feel that you were pressured?

6 A: I felt that I had no choice but to plead or go to trial
7 without even, without even being in the position to be ready
8 to go to trial that day.

9 Q: So, you thought that they were going to pick a jury that
10 day?

11 A: Yes, sir.

12 Q: And part of the charge was going to be this
13 methamphetamine?

14 A: That was going to be the main charge. He said he was
15 going to seven to 25 years, no open plea.

16 Q: And you hadn't seen any of the discovery on the
17 methamphetamine charge?

18 A: No discovery at all. No, sir.

19 Q: You were -- you had seen all of the discovery on all of
20 the cocaine related charges?

21 A: I ain't seen none of the charges. I ain't seen my
22 charges until I got to prison.

23 Q: Okay. But you were saying that you were willing to admit
24 as to the cocaine related charges?

25 A: Yes. I wanted to admit to the possession of cocaine, the

1 possession of MD -- the possession of Ecstasy , the possession
2 of marijuana, and the two distributions of cocaine. Yes, I
3 was willing to take my charges because that's what I got
4 caught with.

5 Q: So, you didn't really need to see the rule 5 for that.

6 A: No.

7 Q: You knew about those.

8 A: I knew about that.

9 Q: Well what did your lawyer tell you?

10 A: Well, I mean, he already knew, I told him already who I
11 knew that set me up and I was willing to take my charges and
12 he explained to me that everything was not my offense, but he
13 said it was my record. I was like what record do I have? I
14 don't have a record since dating from 1999, 2000. And I said
15 most of my charges was first offense, then I asked him and the
16 DA could I plead to a lesser included offense. They told me
17 no I couldn't plead to a lesser included offense.

18 Q: So, I think what you're saying is you either took the
19 deal or get ready for trial?

20 A: Yes, sir.

21 Q: And is that why you entered the plea of guilty?

22 A: Honestly, I didn't want to enter it, but I felt like I
23 had no choice but to enter it.

24 Q: I'm sure that Mr. James is going to suggest that you were
25 under oath and you said that you were pleading guilty because

1 you are guilty to the charge.

2 A: Yes, sir.

3 Q: They probably asked you if you were satisfied with the
4 services of you lawyers and you probably said that you were.

5 A: Yes, sir. We had a recess and during that recess we
6 still had a little argument about it, and he explained to me
7 that he could fight for me and everything about the charge.
8 But, I mean, I still went along with it, you know, because I
9 feel like I had no choice. By him telling me he could fight
10 for the charge was like telling me just go ahead and plead
11 guilty to it and just get it over with.

12 Q: What did you think he meant by he would fight for you on
13 the charge?

14 A: He said he will fight for me. He said he will fight for
15 me against the charge.

16 Q: He said he was ready to go to trial?

17 A: I don't know if he was ready to go to trial or not
18 because we was pressured by the DA. They said they was ready
19 already, but I knew we didn't have a defense ready. So, he
20 said he was willing to fight for me, but why you want to fight
21 for me on a charge I never committed when you can fight for me
22 on the charge I did committed. That's my argument.

23 Q: You later found out that the MDMA pills, the Ecstasy
24 pills contained methamphetamine.

25 A: That was just hearsay. I never seen anything. They

1 never produce anything.

2 Q: But that's your understanding of what the evidence would
3 be; is that correct?

4 A: Yes, sir.

5 Q: And when you're saying you didn't commit the charge
6 because you didn't know those pills contained methamphetamine?

7 A: Yes, sir. Yes, sir.

8 Q: So, you're saying you were knowingly in possession of
9 methamphetamine because you were in possession of ---

10 A: Ecstasy pills. Yes, sir. I mean, the report states it
11 itself.

12 Q: The report states what?

13 A: That it was 79 tablets of MDMA pills.

14 Q: Okay. Do you understand what will happen today if the
15 PCR Judge grants your PCR relief?

16 A: Yes.

17 Q: And what is that?

18 A: Then the charges will be brought back up and I'll have to
19 go back to court again for these same charges plus the
20 trafficking meth.

21 Q: Okay. And if you were convicted, you'd face
22 substantially more time?

23 A: Yes.

24 Q: Than the ten years?

25 A: Yes.

1 Q: So, just if you could summarize, knowing that you run the
2 risk of facing more time, why you want this Court to grant
3 your PCR relief.

4 A: Because I wouldn't be here today if I was guilty of that
5 charge. If I committed that crime, I wouldn't be wasting my
6 time or the Court's time, I would have been doing my time for
7 the charge I committed. But I know I committed those five
8 other offenses; I know I committed that. But the trafficking
9 meth, no I know I didn't commit it.

10 Q: And your point is, you had no idea the pills contained
11 methamphetamines?

12 A: I had no idea the pills contained meth after I even took
13 them.

14 Q: At the time ---

15 A: At the time, yes, because I was using the pills. If I
16 was using the pills and knew they had meth in them, I would
17 have never took them myself.

18 Q: How long had you been using the pills?

19 A: Two years.

20 Q: When did they start -- how did you get to that point?

21 A: Doing music, partying.

22 Q: Anything else you want to say about your lawyer?

23 A: I mean, I just feel if he would have investigated my case
24 more thoroughly, we wouldn't be at this point today. We
25 wouldn't be at this point today.

1 Q: What did you want him to investigate?

2 A: I mean, I wanted him to investigate that trafficking meth
3 charge against me, knowing that I didn't never traffic meth.
4 Or at least show me a drug analysis stating that I had 33 and
5 a half grams of methamphetamines out of 79 Ecstasy pills, but
6 I had two different types of pills also.

7 Q: Oh, I'm sorry. So, you're saying you had two different
8 lots of pills?

9 A: I had two different pills. I had 59 pills -- in the
10 statement I had 59 pills of UPS, then I 20 pills of Don
11 Perignon. So, I know both of those pills didn't have the same
12 ingredients but yet they still come up with 33 and a half
13 grams of meth.

14 MR. FALK: I have no further questions, Your Honor.

15 BY MR. FALK:

16 Q: Please answer any questions Mr. James has.

17 THE COURT: Alright. Cross examination?

18 MR. JAMES: I beg a moments indulgence, Your Honor.

19 CROSS EXAMINATION OF MR. RICHARDSON BY MR. JAMES:

20 Q: Mr. Richardson, your testimony leaves me a little bit
21 confused. Are you contesting all of your convictions or just
22 the methamphetamine conviction today?

23 A: I'm contesting the methamphetamine conviction, but I'm
24 willing to take my time for the conviction -- for the charges
25 that I did commit.

1 Q: Okay. Let's be procedurally clear here because my
2 understanding on your application for Post Conviction Relief
3 was that you were also challenging the conviction for PWID
4 cocaine. Is it, is it your position here today that you don't
5 take issue with the conviction for PWID cocaine?

6 A: On what? On the PCR?

7 Q: On the PCR.

8 A: Yes. Okay. For the possession of cocaine, yes. I know
9 I was guilty of that.

10 Q: Okay.

11 A: I know I was guilty of that.

12 Q: Okay. And you didn't want to go to trial for that. You
13 were willing to plead guilty for that.

14 A: Oh, yeah. I was willing to plead guilty for the cocaine
15 and the other charges, not trafficking meth.

16 Q: I think your issue with the meth was you didn't know that
17 was in the pills?

18 A: No, sir, at all.

19 Q: You weren't manufacturing those pills?

20 A: No, sir. I was using them.

21 Q: Okay. Purchasing them from somebody else?

22 A: Yes. And I was using them myself.

23 Q: Alright. And I assume since you indicated that you
24 didn't want to rat anybody out, that you're wouldn't tell us
25 today who you were buying those pills from?

1 A: And I'm not going to tell you.

2 Q: I understand. And is it your position here today that
3 you want to go to trial on the methamphetamine charge?

4 A: If I have to.

5 Q: Is it your position here today that but for the
6 ineffectiveness of your attorney, you would have gone to trial
7 on the methamphetamine?

8 A: If I would have known what I know now, yes. I would have
9 took that change. Yes, sir.

10 Q: You indicated in your testimony that you told your
11 attorney you had no prior record; is that correct?

12 A: Not saying I have no prior record.

13 Q: Oh, okay.

14 A: I was saying at the time, my record stems back for about
15 19 years of course. But at the time I know the Court's
16 couldn't use that after 10 years or 20 years ago. So, the
17 only thing the solicitor asked me was what did you violate
18 your probation for; and I said DUS and he said well that's
19 enough for me to convict you then.

20 Q: But you understood that the State -- your understanding
21 was that the State couldn't use those prior convictions as
22 evidence in a trial; correct?

23 A: I mean, I have a paper, the paperwork -- yeah, that's my
24 understanding. Yes.

25 Q: Okay. Was it your understanding that they also could not

1 rely upon that in making their decision of what sentence to
2 offer?

3 A: What do you mean?

4 Q: Did you think that they couldn't look at that prior
5 record and think about that when they were deciding what kind
6 of sentence or plea offer they wanted to extend to you?

7 A: The last time I had a felony was 2000.

8 Q: Okay.

9 A: That's when I was doing federal time. That's my last
10 felony. I haven't had a felony in 17 years.

11 Q: And that was a conspiracy to distribute cocaine.

12 A: Yes, sir.

13 Q: Okay. Do you recall about how many times you met with
14 your attorney prior to pleading guilty?

15 A: I met with Mr. Edwards September 29th. I think that's the
16 first General Sessions court. He told me don't come back in
17 two weeks. I think they had another one in October. He told
18 me we didn't have to come back until December. And that was
19 the first time meeting him and after that I met him once more
20 the week before being sentenced. Have I seen anything, you
21 know, relying to my case? No, I haven't.

22 Q: And all of that would have been in 2017?

23 A: 2018.

24 Q: 2017 to 2018?

25 A: Yeah, 2017 to 2018. Yes, sir.

1 Q: And you never saw your discovery?

2 A: No, sir.

3 Q: Did Mr. Edwards ever explain to you what the contents of
4 the discovery was?

5 A: No, sir. I mean, I knew about, basically I knew about
6 who set me up already, so we already discussed that. I
7 already knew that. But other than that, seeing anything else,
8 no, I haven't seen it.

9 Q: So, you knew your personal knowledge, but not what was in
10 the paperwork?

11 A: Yeah. I mean, my personal knowledge I just know the
12 charges that I had, that I committed, the five charges that I
13 had that was my knowledge.

14 Q: And just to be perfectly clear on the record, you
15 explained to Mr. Edwards your version of events and that you
16 were set up; correct?

17 A: Yes, sir.

18 Q: And you indicated that you ultimately plead guilty
19 because you were worried that you were about to go to trial on
20 that charge?

21 A: I was worried about facing 75 years when the Judge told
22 me back in December. Yes, that's what I was worried about.

23 Q: So, you were worried about the total size of the
24 potential sentence?

25 A: I was worried about the total size of the sentence and

1 plus I was worried about why I was taking a charge I never
2 committed.

3 **MR. JAMES:** I have no further questions for this witness,
4 Your Honor.

5 **THE COURT:** Thank you. Anything further?

6 **MR. FALK:** No redirect.

7 **THE COURT:** Alright. You may step down. Thank you.
8 Call your next witness.

9 **LINWARD EDWARDS, HAVING BEEN FIRST**
10 **DULY SWORN, TESTIFIED AS FOLLOWS:**

11 **CLERK:** Please have a seat and state your name for the
12 Court, please. Thank you.

13 **MR. EDWARDS:** Linward Edwards.

14 **DIRECT EXAMINATION OF MR. EDWARDS BY MR. FALK:**

15 Q: Mr. Edwards, the indictment for the trafficking
16 methamphetamine, was that a direct indictment?

17 A: I'm not sure.

18 Q: Was there ever a preliminary hearing on that indictment?

19 A: There wasn't a preliminary hearing on it.

20 Q: Because he was never arrested on that charge; is that
21 correct?

22 A: That's correct.

23 Q: And the only way the methamphetamine came up was based on
24 the search of his house I guess.

25 A: That's correct.

1 Q: Okay. How many -- when did you get the lab report about
2 the methamphetamine?

3 A: I can't remember the date. What happened is first they
4 did a field test. They got the search warrants to the house
5 due to two independent buys. They got the search warrant.
6 Once they got the search warrant, they found numerous drugs
7 along with the pills. Once they got the pills, they did a
8 field test on it. The field test came back MDMA, but they
9 sent everything into SLED for the analysis and that's when you
10 got the results of the composition of the pills. That's when
11 the charge then came for the trafficking methamphetamine.

12 Q: When did you see the SLED report for the pills?

13 A: I can't remember an exact date, but it came in discovery.

14 Q: When did you share the discovery with Mr. Richardson?

15 A: I don't remember the date, but he knew it before the
16 arraignment in December.

17 Q: Did the SLED report make a differentiation between which
18 pills had the MDMA and which ones did not?

19 A: No. They tested the pills and they did -- what they did
20 was I believe they found two different sets totaling two
21 different amounts and so I believe one was about .6 grams
22 another one come back to be 28 point some odd grams. They
23 just totaled it all.

24 Q: Is that gross weight 28 grams? That's how much all of
25 the pills weighed or how much the methamphetamine ---

1 A: How much of it was methamphetamine because they had a
2 large amount of pills.

3 Q: What discussion did you have with him? Were you ready to
4 go to trial on the methamphetamine charge that day?

5 A: I was, yes. As he explained, I was ready to fight for
6 him. But as I told him, I believe that the solicitor had an
7 airtight case because they had two independent buys along with
8 a valid search warrant. And also, when they executed the
9 search warrant Mr. Richardson told them that there was drugs
10 on the premises and actually lead them to where the drugs
11 were. So, I didn't believe that we had, you know, a very good
12 defense but I was ready if we had to.

13 Q: What about his defense that he didn't know the pills had
14 methamphetamine in them?

15 A: Well I believe that's a valid -- that's why we're here
16 today. He does not sell, he did not sell methamphetamine, but
17 that's what the composition of those pills were so said the
18 SLED report. Therefore, not knowing what you possess, even
19 though you possess it, I don't think that would be a valid
20 defense. And that's why I went over that with him and told
21 him based on the time he was facing that I believe that the
22 plea offer was a good offer. Because along with the plea
23 offer what wasn't said was the other charges were then nolle
24 prosed at that point in time. They weren't nolle prosed
25 earlier, they were nolle prosed as part of that negotiated

1 plea.

2 Q: Because his understanding was that the charges were nolle
3 prosed back in 2017.

4 A: No. That's not correct. They were nolle prosed as part
5 of the plea negotiations. I believe that was put on the
6 record during the plea as well by the solicitor.

7 MR. FALK: I have no further questions.

8 THE COURT: Alright.

9 CROSS EXAMINATION OF MR. EDWARDS BY MR. JAMES:

10 Q: Good morning, Mr. Edwards.

11 A: Good morning, sir.

12 Q: Just barely, but it is still morning. You are an
13 attorney licensed to practice in this state; correct?

14 A: Yes, sir.

15 Q: And how long have you been licensed?

16 A: Since 2012.

17 Q: Alright. And what part of your practice has been
18 criminal law?

19 A: What do you mean what part?

20 Q: Have you dedicated the entirety of your legal practice to
21 criminal adjudication or has it been divided between that and
22 civil practice or ---

23 A: Exactly, I practice primarily criminal defense as well as
24 personal injury.

25 Q: Okay. Was this your first drug case?

1 A: It was not.

2 Q: Okay. Do you recall about how many times you met with
3 your client prior to his pleading guilty?

4 A: I would say around 10 times.

5 Q: And did you file motions pursuant to Rule 5 and Brady?

6 A: I did.

7 Q: Did you receive materials responsive to those motions?

8 A: I did.

9 Q: And did you review those materials?

10 A: I did.

11 Q: And did you review those materials with your client?

12 A: Yes. In fact, I provided him a direct copy at my office
13 as well as his fiancé, I gave her about two copies, one before
14 we did the plea and one after.

15 Q: And those materials that you reviewed with him included
16 the lab report showing that heroine was found in the MDMA?

17 A: Well that methamphetamine ---

18 Q: I'm sorry meth. I apologize.

19 A: Yes, sir.

20 Q: I get all of these drugs confused in my own head. And he
21 told you his version of events; correct?

22 A: He did.

23 Q: And that he didn't know those pills had other drugs in
24 them?

25 A: He did.

1 Q: And you explained to him that that wasn't a valid trial
2 defense; correct?

3 A: Yes.

4 Q: Did you conduct any sort of independent investigation
5 into this case?

6 A: Well, we looked at the discovery and talked about it with
7 the defendant. And as I said, he admitted everything to me.
8 In fact, I recall one time when he said I don't need to see
9 the discovery, I know exactly who set me up. I know exactly
10 who the CI is, so yeah, they got me on that one. As he
11 indicated earlier, he did not deny what happened and I do
12 understand his confusion.

13 Q: But despite his statement that he did not need to see the
14 discovery, you did review it with him?

15 A: Yes. Yes, of course.

16 Q: Did you see any basis on which you could potentially
17 challenge the weight of the drugs for which he was being
18 charged?

19 A: I did not.

20 Q: Did you perceive any basis to challenge the type of drugs
21 for which he was being charged?

22 A: I did not.

23 Q: Did you see any viable defenses at all for your client?

24 A: I did not.

25 Q: What would your strategy have been if you had proceeded

1 to trial in this case?

2 A: It would have been to just defend him as best we could.

3 As I said, I thought this was an airtight case due to the
4 circumstances that lead to them finding the drugs.

5 Q: Put the state to its burden so to speak?

6 A: Exactly.

7 Q: You entered into plead negotiations with the State;
8 correct?

9 A: That's correct.

10 Q: And how did those plea negotiations play out? When did
11 you begin?

12 A: Very early on in the case, once we reviewed the discovery
13 I was talking with Solicitor Gray about the case. Initially I
14 believe he was seeking 12, I believe he went down to 11 years
15 and nolle prosing the rest of the charges. We had an
16 arraignment that December with a trial certain date I believe
17 that February. The defendant was aware and his only plea to
18 me at the time was to delay it, delay the inevitable. Even on
19 the day that we came to do the actual sentencing the only
20 concern at that time was to delay it, delay trial another term
21 or two and I believe that was on the record as well.

22 Q: If I recall correctly, he indicated to the Court that he
23 wanted just a little bit more time to attend to personal
24 business matters?

25 A: Exactly.

1 Q: And the Court wouldn't have any of it?

2 A: No. No, sir.

3 Q: When did you all ultimately reach the 10-year offer to
4 which he plead?

5 A: Actually, the day that he actually accepted the deal, the
6 day that he plead. And as he indicated, we actually did meet
7 with the solicitor, just he and I. And the solicitor
8 indicated that he would go down from 11 years to 10 years at
9 that point in time.

10 Q: And was it after your client's conversation directly with
11 the solicitor?

12 A: I don't want to say that he had a conversation directly
13 with the solicitor, we were all present in the room. He just
14 had his concerns as he does today as to the composition of the
15 pills.

16 Q: But it was communicated to the State that he didn't know
17 that the pills were anything other than MDMA?

18 A: Well, what was actually communicated to the State was why
19 10 years? We were just trying to wrap our mind around that,
20 that's what he was trying to do.

21 Q: Alright.

22 A: At that point in time.

23 Q: Why was it 10 years?

24 A: Well, it was 10 years due to the fact that I believe he
25 had just served eight or nine years in a federal system from

1 2001 to about 2009 or '10, somewhere around there. So, he had
2 a drug background and then he had those two controlled buys
3 and this amount of drugs. But I would like to say for the
4 record that the sentencing range for the trafficking
5 methamphetamine was no less than 7, no more than 25 years.

6 Alright, so we believed at the time that it was a good deal,
7 that it was a favorable deal considering the circumstances.

8 Q: Sorry to cut you off, but he could have gotten less but
9 he also could have gotten more; correct?

10 A: Considerably more. Yes.

11 Q: Certainly more if he had proceeded to trial.

12 A: Yes.

13 Q: And you explained to your client that he had a right to a
14 jury trial; correct?

15 A: Yes.

16 Q: And that he had a right to remain silent?

17 A: Yes.

18 Q: And he had a right to confront the witnesses against him?

19 A: Yes.

20 Q: And ultimately, he decided that he wanted to plead
21 guilty?

22 A: That's correct.

23 Q: And you were prepared to proceed to trial that day;
24 correct?

25 A: Correct.

1 Q: Were you aware of any further basis on which to try and
2 argue his case to the solicitor to try and get anything better
3 than the 10 years that he ultimately got?

4 A: No, sir. We went round and round.

5 Q: But the State wouldn't go under 10?

6 A: No, sir.

7 Q: Did you and your client discuss his parole eligibility?

8 A: We did.

9 Q: Okay. And what did y'all discuss?

10 A: To be honest with you I can't remember at this point in
11 time.

12 Q: Did you tell him that he could expect to serve day for
13 day or 85 percent or ---

14 A: Yes. I'm sorry.

15 Q: --- or some amount less than that?

16 A: Yes. He was aware that trafficking methamphetamine was
17 considered a violent offense.

18 **MR. JAMES:** I have no further questions for this witness,
19 Your Honor.

20 **THE COURT:** Alright.

21 **MR. FALK:** Just briefly.

22 **REDIRECT EXAMINATION OF MR. EDWARDS BY MR. FALK:**

23 Q: You had testified that he said he knew what he was
24 charged with and he knew who set him up and that's why he
25 didn't want to see the discovery.

1 A: No, sir. I'm sorry. I didn't say that's why he didn't
2 want to see the discovery. He saw the discovery. In fact,
3 after he saw the discovery that's when he told me he knew
4 exactly who the confidential informant was.

5 Q: And you're saying that part of the discovery contained
6 the lab reports of the methamphetamine?

7 A: Yes, sir.

8 Q: And when about -- when in the course of this did you --
9 from when you represented him -- well, I mean, December 2017
10 had he seen the lab report?

11 A: He had seen the lab report in December. With the
12 discovery, you have to understand, we go the initial discovery
13 first.

14 Q: Right.

15 A: Alright. And that's when the pills were sent off to SLED
16 for the analysis.

17 Q: Right.

18 A: So, the analysis came separate at a later time, but he
19 saw those results. He saw those results before the
20 arraignment.

21 Q: Okay.

22 **MR. FALK:** No further questions.

23 **THE COURT:** Alright.

24 **MR. JAMES:** Nothing further from the State, Your Honor.

25 **THE COURT:** Alright. You may step down.

1 Any other witnesses?

2 **MR. FALK:** I just have one rebuttal witness.

3 **THE COURT:** Alright.

4 **MR. JAMES:** Well the State has no witnesses. Mr. Edwards
5 was the State's only witness.

6 **MR. FALK:** Okay. I'll call Mr. Richardson.

7 **THE COURT:** Okay.

8 **MR. JAMES:** Is he calling him a second time as his own
9 witness in his case in chief or as a rebuttal witness because
10 the State hasn't presented a case to rebut.

11 **MR. FALK:** He's rebutting the testimony of the other
12 witness.

13 **MR. JAMES:** Procedurally the case hasn't presented any
14 witnesses to rebut. All the witnesses presented have been the
15 applicant's and so I'm not sure it's appropriate for him to
16 take the stand as a rebuttal witness.

17 **THE COURT:** And it's true, that may be a technicality.
18 I'll let him go ahead and testify.

19 **MR. FALK:** I'll just recall him in my case in chief.

20 **MR. JAMES:** And my main concern is the opportunity to
21 potentially recall Mr. Edwards of anything new comes up.

22 **REDIRECT EXAMINATION OF MR. RICHARDSON BY MR. FALK:**

23 Q: You were just in the courtroom when Mr. Edwards was
24 testifying?

25 A: Yes, sir.

1 Q: He said that he saw you nine or 10 times?

2 A: No, sir.

3 Q: He did say that though?

4 A: Yes, he said that. Yes.

5 Q: And how many times did you see him?

6 A: Like I told you, I seen him September, the week of court
7 term. I seen him October. I seen him December. I seen him
8 February.

9 Q: And when you saw him in December, that was around the
10 date -- that was around that December 14th date; is that
11 correct?

12 A: Yes, sir.

13 Q: Had you seen the drug report, the lab report?

14 A: I had never seen a drug laboratory report, if I did it
15 would have been in my Rule 5.

16 Q: Okay.

17 A: I don't have any. The only drug laboratory report in my
18 Rule 5 that I received from him was the cocaine from the Horry
19 County drug analysis division. That's the only one I got in
20 my Rule 5.

21 Q: Now, when you talk about -- he had said that you were
22 mistaken, that your charges weren't nolle prossed earlier in
23 2017.

24 A: Yes.

25 Q: Why did you think that they were nolle prossed earlier?

1 A: Why did I think they were?

2 Q: Yes.

3 A: Because I got a paper receive that they was ---

4 **MR. FALK:** May I approach, Your Honor?

5 **BY MR. FALK:**

6 Q: What document are you looking at?

7 A: I'm looking at the State of South Carolina, Office of the
8 15th Judicial Circuit, Dismissal Nolle Pros Form.

9 Q: Okay. And you received that as part of your discovery?

10 A: Yes, sir.

11 **MR. FALK:** Your Honor, we would like to make this, I
12 guess, applicant's exhibit number one.

13 **THE COURT:** Any objection?

14 **MR. JAMES:** If I may see it briefly? No objection, Your
15 Honor.

16 **THE COURT:** Alright.

17 **MR. FALK:** Could we get this marked?

18 **THE COURT:** That will be applicant's one, in evidence
19 without objection.

20 **(APPLICANT'S EXHIBIT NUMBER ONE**
21 **IS ADMITTED INTO EVIDENCE.)**

22 **BY MR. FALK:**

23 Q: So, you're looking at what we've now labeled as
24 applicant's exhibit number one?

25 A: Yes, sir,

1 Q: Okay. And based on that report, you're saying that you
2 believed that your cases were dismissed earlier in the year;
3 is that right?

4 A: That's the same day I got indicted for the possession of
5 cocaine.

6 Q: Okay. And what date was that?

7 A: July 19th.

8 Q: Okay. Is there anything else about your lawyer's
9 testimony that you don't agree with, that's not the same as
10 your recollection?

11 A: No. First of all, the charge of the trafficking
12 methamphetamines, I never seen a drug laboratory report. I
13 feel as though it was also explained to me if I was in
14 Florence, I would have got drug court or probation, my
15 understanding is. Well, if you could fight for me in Florence
16 for drug court or probation, why couldn't you fight for me
17 here for drug court or probation. I even asked the solicitor
18 for drug court, that I was a user of the Extasy pills, and he
19 also explained to me it wasn't up for no negotiations. And
20 then during my sentencing, well before my sentencing, before
21 we was in the room they was already aware and known that I was
22 under the use of Extasy pills prior to that date of going to
23 court because I wasn't sleeping and I wasn't believing that I
24 was being sentenced that day. So, when the Judge asked me was
25 I under any intoxicants in the last 24 hours, I explained to

1 him yes, even though I was aware. And I wasn't aware, you
2 know, I was there, and I wasn't there. But trafficking meth
3 is not me, that's not me. I mean, that's all I can say.

4 **MR. FALK:** Your Honor, I have nothing further.

5 **THE COURT:** Alright. State?

6 **MR. JAMES:** Very briefly, Your Honor. If I may approach
7 the witness?

8 **THE COURT:** Yes, sir.

9 **RE CROSS EXAMINATION OF MR. RICHARDSON BY MR. JAMES:**

10 Q: May I see that exhibit that we handed you a moment ago?

11 A: Here you go.

12 Q: Thank you, sir. So, you indicated that by virtue of
13 plaintiff's exhibit number one, you believed that the charges
14 were nolle prosed prior to your plea; correct?

15 A: I'm looking at the dates right there.

16 Q: Alright. Which date on here are you looking at and I'll
17 slip this back to you here.

18 A: I was looking at the dates that I got indicted right
19 there and the nolle pros right there.

20 Q: Now, on this form it says Dismissal Nolle Pros Form;
21 correct?

22 A: Yes, sir.

23 Q: And it says to Horry County Clerk of Court; correct?

24 A: Yes, sir.

25 Q: And it says from the solicitor; correct?

1 A: Yes, sir.

2 Q: And on the date of that it lists the date as March 12th,
3 2018; correct?

4 A: Yes, sir.

5 Q: And that's right around the time of your guilty plea?

6 A: Yes, sir.

7 Q: Okay.

8 **MR. JAMES:** I have no further questions for this witness.

9 **THE COURT:** Alright. You may step down.

10 Anything further?

11 **MR. FALK:** No, Your Honor.

12 **THE COURT:** Anything from the State?

13 **MR. JAMES:** Nothing further from the State, Your Honor.

14 **THE COURT:** Alright. I'll take it under advisement and
15 let you know something this week.

16 **MR. JAMES:** May Mr. Edwards be excused?

17 **THE COURT:** Yes. Have a good day.

18 **MR. FALK:** Your Honor, if I could?

19 **THE COURT:** You may.

20 **MR. FALK:** If you will look at page 8 of the transcript,
21 line 24 to 25 and then his response is on line 9.

22 **THE COURT:** Okay.

23 **MR. FALK:** It is odd that he answered that question
24 affirmatively and then there's no further colloquy.

25 **MR. JAMES:** Well, now hold on. Is this a new allegation

1 we're coming up with here?

2 **MR. FALK:** I just, when he just said that I just ---
3 I'm sorry, Judge.

4 **MR. JAMES:** Normally the State would object vociferously
5 as to any new allegations raised in the middle of the
6 proceedings, let alone after the fact. However, the State is
7 cognizant of the fact that I did not object to relevance to
8 that testimony right at the very end. And the recent case, I
9 think it's Rose v State, has indicated that we need to be a
10 bit flexible as to new allegations. The State would
11 respectfully request to reopen the record and call Mr. Edwards
12 to address the allegation.

13 **THE COURT:** Also, if you look at line 16: Have you ever
14 had any mental health or addiction issues that would make it
15 difficult for you to understand what we're doing? I mean, I
16 don't have. The reason I asked that is because I want to know
17 if there is anything that would make it so you wouldn't
18 understand why we are here and what we're doing. Oh, no, sir.
19 No, sir. No, sir. Then he asks the question: Have you taken
20 any prescription, any intoxicating -- anything of an
21 intoxicating nature in the last 24 hours? So, either way it
22 seems to me if he took something intoxicating, he still
23 understands what he was doing based on the way he answered the
24 Judge, three times. But, call your next witness.

25 **MR. JAMES:** This will be very brief, Your Honor. The

1 State would call Mr. Linward Edwards.

2 **DIRECT EXAMINATION OF MR. EDWARDS BY MR. JAMES:**

3 Q: I apologize for having to run you down in the hall there,
4 Mr. Edwards. But unfortunately, we had one last little issue
5 pop up and I just wanted to clarify briefly on the record.

6 The day of the plea was your client aware of his surroundings?

7 A: He was.

8 Q: Did he seem to understand everything that was occurring?

9 A: He did.

10 Q: Did he understand that proceedings that were taking
11 place?

12 A: I believe so.

13 Q: Did he understand the questions that you asked him?

14 A: Yes, sir.

15 Q: Was he able to provide answers responsive to those
16 questions?

17 A: He did.

18 Q: Did he appear to be under the influence of anything at
19 all?

20 A: No.

21 Q: Alright. During the plea colloquy, do you recall the
22 details of the plea proceeding?

23 A: Yes.

24 Q: Do you recall the Judge asking him if he had taken
25 anything of an intoxicating nature in the prior 24 hours?

1 A: Yes.

2 Q: Alright. And do you recall your client responding in the
3 affirmative that he had?

4 A: No.

5 Q: Okay.

6 **MR. JAMES:** If I may approach the witness, Your Honor?

7 **THE COURT:** You may.

8 **MR. JAMES:** And I am showing to him pages 8 and 9 of the
9 plea transcript, looking primarily at lines 16 on page 8 on
10 over to line 1 on page 9.

11 **BY MR. JAMES:**

12 Q: And if you would please review that briefly to refresh
13 your recollection.

14 A: Alright.

15 Q: Do you recall that your client responded in the
16 affirmative that he had taken something of an intoxicating
17 nature?

18 A: Reading that transcript I see. Yes.

19 Q: Okay. But none the less, he appeared to understand the
20 proceedings?

21 A: He did.

22 Q: And understood your questions?

23 A: Yes.

24 Q: And answered in a fashion that reflected that he
25 understood what was going on?

1 A: Yes.

2 Q: Did you have any conversation with him privately after he
3 responded in the affirmative that he had taken some kind of
4 intoxicating substance?

5 A: No.

6 Q: Okay. Did he ever tell you that he otherwise, other than
7 what was stated on this record, that he had taken some kind of
8 intoxicating substance?

9 A: No. Had I had knowledge of that I would have made the
10 Judge aware at the time.

11 **MR. JAMES:** No further questions, Your Honor.

12 **THE COURT:** Alright. Cross?

13 **CROSS EXAMINATION OF MR. EDWARDS BY MR. FALK:**

14 Q: When your client said that he had -- when he had
15 responded in the affirmative, did you consider standing down
16 so that you could discuss this with your client?

17 A: Well, I didn't recall it until I read the transcript.
18 The way I read it, I believe he was just answering the Judge's
19 questions. I don't believe that he knew what he was answering
20 saying that he was under the influence of something.

21 Q: Did he have a conversation with you earlier that day that
22 he had taken something?

23 A: No.

24 **MR. FALK:** No further questions.

25 **THE COURT:** Alright. Thank you. Anything else?

1 **MR. FALK:** No, Your Honor.

2 **MR. JAMES:** That'll be it from the State.

3 **THE COURT:** Alright. I'll let you know something. Thank
4 you.

5 **MR. JAMES:** Thank you, Your Honor.

6 **(COURT ADJOURNED)**

7

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of Gafaskie Richardson versus State of South Carolina held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on October 8, 2019.

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



Sallie Beth Todd, CVR

Official Reporter

June 23, 2020.



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Office of the Solicitor
Fifteenth Judicial Circuit**

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DISMISSAL/NOLLE PROSSE FORM

TO: Horry County Clerk of Court
FROM: GRAY ERVIN, Assistant Solicitor
DATE: MARCH 12, 2018
RE: STATE OF SC VS. GAFASKIE DANYEL RICHARDSON
CASE NO: 17H02876

ORIGINAL
2018 MAR 14 AM 8:14

PLEASE BE ADVISED THAT THE CHARGE(S) LISTED BELOW HAVE BEEN DISMISSED OR NOLLE PROSSED (PLEASE PLACE X IN APPROPRIATE COLUMN).

Warrant #	Charge	Indict #	T/B Date	D/M	N/P	DOA
2017A2610201335	PWID/Dist MDMA, 1st	2017GS2603554	7/19/2017		XX	5/10/2017
2017A2610700479	Traff. Cocaine	2017GS2603557	7/19/2017		XX	5/10/2017
2017A2610700480	Dist. Cocaine	2017GS2603558	7/19/2017		XX	5/10/2017
2017A2610201336	PWID MJ	2017GS2603555	7/19/2017		XX	5/10/2017

Gray Ervin
Assistant Solicitor

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Gafaskie D. Richardson,) Case No.: 2018-CP-26-04099
S.C.D.C. No. 256102,)
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

ORDER OF DISMISSAL

FILED
HORRY COUNTY
2020 MAR 30 P 1:32
RENEE H. ELYS
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Gafaskie D. Richardson ("Applicant") on July 16, 2018. Respondent made its return on or about September 17, 2018. The Court convened an evidentiary hearing into the matter on October 8, 2019, at the Horry County Government & Justice Center in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Linward C. Edwards, II, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the July 2017 term of the Horry County Grand Jury for possession with intent to distribute cocaine (2017-GS-

26-03556); and trafficking methamphetamine (2017-GS-26-04406).¹ Linward C. Edwards, II, Esq., represented Applicant, and W. Grayson Ervin, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On March 12, 2018, Applicant pled guilty to as indicted above. Accepting terms negotiated between Applicant and the State, the Honorable Larry B. Hyman, Jr. sentenced Applicant to imprisonment for concurrent terms of ten years on each charge. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective assistance of counsel, in that:
 - a. Counsel was ineffective "for not challenging the drug amount or weight";
 - b. "Trial counsel failed to review and discuss all discovery information and evidence";
 - c. "Trial counsel was ineffective in that he did unlawfully and improperly pressure and coerce me into giving up my rights in accepting a plea offer";
 - d. "Trial counsel was ineffective in that he should have been able to negotiate a better plea deal on my behalf.

Applicant requests relief as follows:

- "Conviction reversed with remand for new trial"

At the evidentiary hearing, Applicant proceeded forward on the allegations as set forth above.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

¹ Applicant was additionally indicted for possession with intent to distribute MDMA or ecstasy (2017-GS-26-03554); possession with intent to distribute marijuana (2017-GS-26-03555); trafficking cocaine, between ten and twenty-eight grams (2017-GS-26-03557); and distribution of cocaine (2017-GS-26-03558). These charges were dismissed *nolle prosequi* as part of Applicant's plea. (Tr. 9, ll. 19-24).

legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1,

5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced 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. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” Id. at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See

Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

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

1. Failure to Challenge Drug Weights

Applicant alleges Counsel was ineffective in failing to investigate and challenge the weight of the drugs for which he was convicted. “Notwithstanding any other provision of this article, the weight of any controlled substance referenced in this article is the weight of that substance in pure form or any compound or mixture thereof.” S.C. Code Ann. §44-53-392; see also State v. Johnson, 410 S.C. 10, 763 S.E.2d 36 (Ct. App. 2014) (affirming trial court’s ruling that the relevant weight of methamphetamine included the weight of any material, compound, mixture, or preparation containing methamphetamine); State v. Kerr, 299 S.C. 108, 382 S.E.2d 895 (1989) (affirming the same ruling, but with respect to cocaine).

The facts presented by the State during the plea proceeding established that Applicant was the subject of two controlled drug buys at his residence in April and May of 2017; law enforcement agents purchased 33.5 grams of methamphetamine tablets and 6.8 grams of cocaine. (Tr. 9, ll. 5-16). The State noted that the meth tablets initially tested positive for MDMA, and Counsel later explained in mitigation that Applicant "didn't have knowledge that the MDMA pills were, in fact, I guess a composite of methamphetamine." (Tr. 9, ll. 19-24; Tr. 11, ll. 21-23). Applicant confirmed the facts as presented by the State, and explained "[i]t's, like I say, I be doing music, a lot of partying." (Tr. 10, ll. 5-15).

Applicant did not specifically mention the weight of the drugs at the evidentiary hearing, but echoed Counsel's remarks during the plea proceeding that he had not known the tablets contained meth, and that he believed he had been selling ecstasy. Applicant revealed that the State wanted him to be a snitch, but he declined, even though (as he noted on cross-examination) he knew who "set him up" and told Counsel that he had been set up. Applicant recalled getting the lab reports for the testing of the cocaine and marijuana, but not the meth. Applicant testified he asked Counsel to permit him to speak directly with the solicitor; Applicant told the solicitor that he was willing to plead guilty to all of the charges except for those related to meth, but the solicitor was not interested and wished to secure a conviction for which Applicant would have to serve at least 85% of the sentence. Contrary to his prior contention that he had been selling the pills he thought to be ecstasy, Applicant claimed that he was using the pills, not selling them, and that he had two kinds. On cross-examination, Applicant conceded his guilt as to the cocaine, but that he wanted to go to trial regarding the meth. Applicant denied ever seeing his discovery. Applicant testified his chief concern had been the total length of his sentence.

Counsel was unable to recall precisely when he received the lab reports from law enforcement, but explained that the illicit pills field tested positive for MDMA, and only after the lab testing did the State find they contained meth. Counsel testified that the lab report was able to establish just how much of the pills were meth. Counsel described the State's case as "airtight," supported by two confidential informant purchases, a valid search warrant, and Applicant's willing cooperation to show law enforcement where his drugs were when they executed the search warrant. Counsel opined that not knowing the pills were meth was not a valid defense. On cross-examination, Counsel testified he met with Applicant around ten times, and that he reviewed the discovery materials with Applicant and provided a copy. Nonetheless, Counsel recalled that Applicant promptly admitted to everything and that he did not need to see the discovery. Counsel did not perceive any basis to challenge the weight or type of drugs. Counsel testified that the State initially extended an offer where Applicant would plead guilty in exchange for twelve years, but that he was able to negotiate the ten year offer on the day of Applicant's plea. On redirect examination, Counsel clarified that the lab report which reflected the discovery of meth in the pills was in the discovery, and that Applicant saw the report.

Applicant again took the stand to deny meeting with Counsel as often as Counsel claimed. Applicant additionally denied he ever saw the lab report for meth.

The Court finds Applicant has failed to meet his burden of showing ineffective assistance of counsel. No evidence or arguments have been presented to the Court to show any colorable basis on which Applicant could have challenged the weight of the drugs. That multiple drugs were identified as part of the mixture does not diminish the State's ability to attribute the entirety of the weight of the substance to one of the illicit drugs which comprise the mixture. The Court does not find credible Applicant's testimony that he did not review discovery with Counsel, nor

does the Court find credible Applicant's testimony that he did not see the lab report identifying meth in the pills seized by law enforcement. The Court finds Counsel's testimony broadly credible. Counsel received discovery from the state, including the lab reports from the testing of the seized narcotics, reviewed the reports, and reviewed the reports with Applicant such that he would have known the weights of the drugs and their substance. Counsel performed as expected and required under the Constitution.

Further, the Court does not find credible Applicant's testimony that he wanted and still desires to go to trial to challenge his conviction for trafficking meth. Applicant knew he was pleading guilty to trafficking meth prior to doing so. As Applicant partly admitted during evidentiary hearing, his primary concern was not which drug he was pleading to, but rather the duration of his sentence. This Court is thus not convinced that even if there were some identifiable and actionable discrepancy in the weight of the drugs, that Applicant would not have pled guilty but would have proceeded to trial. For all of these reasons, the Court finds Applicant has failed to demonstrate any deficiency on the part of Counsel, or that but for the deficiency alleged he would not have pled guilty but would have proceeded to trial, and accordingly his request for relief by way of this allegation is **DENIED**.

2. Failure to Review, Discuss Discovery with Applicant

Applicant alleges Counsel was ineffective in failing to review and discuss the discovery materials with him. The relevant facts were already set forth in the prior section, and the claim is disposed by this Court's factual findings therein. The Court finds Counsel did receive discovery, did review it in its entirety, did review it all with Applicant, and discussed the substance with him. The Court finds credible Counsel's recollection of the number of meetings with Applicant, and does not find credible Applicant's dispute that they met on fewer occasions. The Court does

not find credible Applicant's testimony that he did not see portions of his discovery, or that Counsel did not discuss parts of it with him. Furthermore, assuming for the sake of argument that Counsel failed to review with Applicant the portion of the lab report indicating the discovery of methamphetamine, Applicant has failed to offer any credible evidence to show that he would have acted differently. As noted in the prior section, Applicant knew he was pleading guilty to trafficking methamphetamine at the time of the plea, and his primary concern was the duration of his sentence, not which of the blended drugs he was pleading guilty to. Altogether, the Court finds the record refutes Applicant's allegation, such that Applicant cannot meet his burden of proving either prong of Hill, and his request for relief by way of this allegation is **DENIED**.

3. Coerced Guilty Plea

Applicant alleges Counsel was ineffective by improperly pressuring and coercing him into pleading guilty. Applicant's claim is rebutted by the record and may be quickly resolved. During the plea proceeding, the plea court inquired, and Applicant answered:

Q. Mr. Richardson, anyone promise you anything, threatened you in any way, done anything inappropriate or improper to make you enter this plea against your will?

A. No, sir.

Q. Are you pleading freely and voluntarily?

A. Yes, sir.

(Tr. 11, ll. 16-22). Applicant presented no credible evidence at the evidentiary hearing to show any undue pressure or improper coercion on the part of Counsel, or anybody else, to elicit his guilty plea. Applicant presented no credible evidence to set aside his sworn statements of voluntariness at the plea proceeding. The Court finds Applicant knowingly, intelligently, and voluntarily pled guilty, and accordingly his claim for relief by way of this allegation is **DENIED**.

4. Failure to Negotiate Better Plea Deal

Applicant contends Counsel was ineffective in failing to negotiate a more favorable plea agreement. “Prosecutors have broad powers in the plea bargain process[.]” Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999). “Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case.” Id. (quoting State v. Thrift, 312 S.C. 282, 291-92, 400 S.E.2d 341, 346-47 (1994)). “Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” Id., 333 S.C. at 684, 511 S.E.2d at 400-01. “The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor’s actions. We must, therefore, analyze the State’s agreement within our judicial constraints.” Id.

“[A] defendant has no constitutional right to plea bargain.” Id. (citing State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), aff’d as modified, 327 S.C. 121, 489 S.E.2d 617 (1997)). “Furthermore, a trial judge is not required to accept a plea. Id. (citing Santobello v. New York, 404 U.S. 257 (1971)). “A plea agreement is only an ‘offer’ until the defendant enters a court-approved guilty plea. A defendant accepts the ‘offer’ by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court.” Id., 333 S.C. at 688, 511 S.E.2d at 402 (citing Harden v. State, 453 So.2d 550 (Fla.Dist.Ct.App. 1984); see also State v. Nesbitt, 411 S.C. 194, 201 n.7, 768 S.E.2d 67, 71 n.7 (2015) (“We note that the Due Process clause is not implicated until the defendant enters his guilty plea, and that plea is accepted by the court. Therefore, if the defendant enters into a negotiated plea agreement prior to the court’s acceptance of his guilty plea, that agreement

is a mere executory promise that, standing alone, has no constitutional significance, as it binds neither the government nor the defendant.”); Puckett v. United States, 556 U.S. 129, 137 (2009) (“Although the analogy may not hold in all respects, plea bargains are essentially contracts.”). The only exception is where a defendant can show he has detrimentally relied upon a plea agreement. Id., 333 S.C. at 688-89, 511 S.E.2d at 402-03. Otherwise, a prosecutor may withdraw a plea offer at any time prior to an actual entry of the guilty plea. Id., 333 S.C. at 689-90, 511 S.E.2d at 403-04.

Counsel could not force the State to offer a more generous plea offer, and Applicant offers no evidence to show that Counsel could have presented anything further to the State that would have prompted the prosecution to extend a more favorable plea offer. To the contrary, Applicant’s testimony was that the State was focused on securing a conviction which would produce a sentence of which Applicant would be required to serve at least 85%, and rejected Applicant’s offer to plead to everything except the indictment for trafficking methamphetamine. Counsel capably negotiated with the State to reduce its plea offer by two years; he could do no more. Accordingly, Applicant cannot meet his burden of proof under Strickland through this allegation, and his request for relief is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11 day of March, 2020.


 WILLIAM H. SEALS, JR.
 Presiding Judge
 Fifteenth Judicial Circuit

 _____, South Carolina

WITNESSES

Benjamin A Wilson 15th Circuit Drug Enforcement Unit

18

K. Anderson

DOCKET NO. 2017-GS-26- 03556

**The State of South Carolina
County of Horry**

Gray Ervin

17H02876

COURT OF GENERAL SESSIONS

July, 2017 TERM

ARREST WARRANT NUMBER

2017A2610201337

CDR: 0183 44-53-0370(b)(1)

DOA: 5/10/2017

ACTION OF GRAND JURY

TRUE BILL

Rich O'Connell

Foreperson of Grand Jury

Date: JUL 19 2017

VERDICT

Foreperson of Petit Jury

Date:

THE STATE

vs.

Gafaskie Danyel Richardson

B/ M

Hilo Ct

Myrtle Beach, SC 29588

ATTORNEY:

Indictment for

Possession with Intent to Distribute Cocaine

Jimmy A. Richardson, II, Solicitor

**FILED
HORRY COUNTY**

2017 JUL 21 AM 8:34

**RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC**

DATE RECEIVED FROM

GRAND JURY



ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

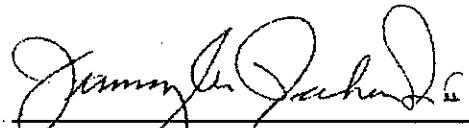
At a Court of General Sessions, convened on July 19, 2017, the Grand Jurors of Horry County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

CDR: 0183 44-53-0370(b)(1)

That Gafaskie Danyel Richardson did in Horry County, on or about May 10, 2017, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370(b)(1), S. C. Code of Laws, 1976, as amended.

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


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Benjamin A Wilson 15th Circuit Drug Enforcement
Unit

Robert Phillips

ARREST WARRANT NUMBER

2017GS2604406
CDR: 0392 44-53-0375(C)(2)(a)
DOA: 5/10/2017

ACTION OF GRAND JURY

TRUE BILL

Bill Higgs
Foreperson of Grand Jury
Date:

SEP 13 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-26- *04406*

The State of South Carolina

County of Horry

Gray Ervin

17H02876

COURT OF GENERAL SESSIONS

September, 2017 TERM

THE STATE

vs.

Gafaskie Danyel Richardson
B/ M
Hilo Ct
Myrtle Beach, SC 29588

ATTORNEY: Linward C. Edwards, II, Esqui

Indictment for

Trafficking Methamphetamine

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY

27 OCT 13 11 02

CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM
GRAND JURY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

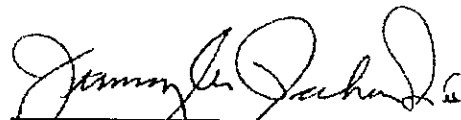
At a Court of General Sessions, convened on September 13, 2017, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING METHAMPHETAMINE
MORE THAN 28 GRAMS, LESS THAN 100 GRAMS

CDR: 0392 44-53-0375(C)(2)(a)

That Gafaskie Danyel Richardson did in Horry County on or about August 24, 2017, knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Methamphetamine in an amount of more than twenty-eight grams but less than one-hundred grams, same being a controlled substance all within the meaning of Section 44-53-110, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(c)(2), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEHorry
VS.

Gafaskie Danyel Richardson

AKA:

Race: BLACK Sex: M Age: 44

DOB: SS#:

Address: Hilo Ct

City, State, Zip: Myrtle Beach, SC 29588

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: PWID/Dist. of Cocaine/LSD/other Narcotic drugs in Sch. I(b) & (c)/Sched. II, 1st offense

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ervin, Gray

SCB76913

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)		\$ 8.25

TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Renee Eluis
Natalie Dahi

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2603556

A/W#: 2017A2610201337

Date of Offense: 5/10/2017

S.C. Code § : 44-53-0370(b)(1)

CDR Code #: 0183

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

0-15 Yrs.

w/ 2017 HS 26 54400

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 4-12-2018

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date:

2152

3-12-18

STATE 82 SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Horry

VS.

Gafaskie Danyel Richardson

INDICTMENT/CASE#: 2017GS2604406

A/W#: 2017GS2604406

Date of Offense: 8/24/2017

S.C. Code § : 44-53-0375(C)(2)(a)

CDR Code #: 0392

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

(7-25 Yrs.)

AKA:

Race: BLACK Sex: M Age: 44

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Hilo Ct

City, State, Zip: Myrtle Beach, SC 29588

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in Cocaine Base/Meth, 28 to 100 grams, 1st offense

in violation of § 44-53-0375(C)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0392

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State. 10 Yrs

ATTEST: [Signature] SCB76913 [Signature] Defendant Attorney for Defendant SC Bar# 100303 C/C

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: w/ 2017 GS 26-0 355C
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 4-12-2028

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date: