

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Greenville County

Daniel D. Hall, Circuit Court Judge
—————

JAMES DAVID SHERFIELD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000431

—————
APPENDIX
—————

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

RECEIVED

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S.C. SUPREME COURT

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

1
2 THE CLERK: Your Honor, this is 2014-GS-23-9182 [sic],
3 James Sherfield, Junior, indicted for unlawful conduct
4 towards a child, pleading to the same, and it is a waiver.
5 WHEREUPON,

6 JAMES SHEFFIELD, JUNIOR,

7 After having been duly sworn, testified as follows:

8 THE COURT: You are James Sherfield?

9 DEFENDANT SHERFIELD: Yes, sir.

10 THE COURT: And how old are you?

11 DEFENDANT SHERFIELD: 30.

12 THE COURT: And how much education do you have?

13 DEFENDANT SHERFIELD: I quit in the twelfth grade. I
14 went to the twelfth, twelfth grade.

15 THE COURT: So you can read and write?

16 DEFENDANT SHERFIELD: Yes, sir.

17 THE COURT: And do you work?

18 DEFENDANT SHERFIELD: Yes, sir.

19 THE COURT: What kind of work do you do?

20 DEFENDANT SHERFIELD: General laborer for Holbrooks
21 Salvage and Docks.

22 THE COURT: Mr. Chambers is your lawyer?

23 DEFENDANT SHERFIELD: Yes, sir.

24 THE COURT: Have you talked with him as often and for
25 as long as you feel necessary for him to properly represent

1 you?

2 DEFENDANT SHERFIELD: Yes, sir.

3 THE COURT: When you talked to him, have you
4 understood your talks with him?

5 DEFENDANT SHERFIELD: Yes, sir.

6 THE COURT: Has he done everything for you that you've
7 asked him to do?

8 DEFENDANT SHERFIELD: Yes, sir.

9 THE COURT: Has he done anything at all that you don't
10 like?

11 DEFENDANT SHERFIELD: No, sir.

12 THE COURT: Are you fully and completely satisfied
13 with his services?

14 DEFENDANT SHERFIELD: Yes, sir.

15 THE COURT: No complaint to make against your lawyer?

16 DEFENDANT SHERFIELD: None at all.

17 THE COURT: Has anyone used any force or made any
18 threats against you in order to get you to plead guilty?

19 DEFENDANT SHERFIELD: No, sir.

20 THE COURT: Has anybody promised you a lighter
21 sentence or anything for pleading guilty?

22 DEFENDANT SHERFIELD: No, Your Honor.

23 THE COURT: You're pleading guilty voluntarily, that
24 is, of your own free will?

25 DEFENDANT SHERFIELD: Yes, sir.

1 THE COURT: You understand the maximum sentence for
2 this offense is up to 10 years in prison?

3 DEFENDANT SHERFIELD: Yes, sir.

4 THE COURT: You don't want a jury trial?

5 DEFENDANT SHERFIELD: No, sir.

6 THE COURT: You understand you have a right to one?

7 DEFENDANT SHERFIELD: Yes, sir.

8 THE COURT: If you plead guilty today, you give up all
9 your rights that you have when you stand trial with a jury;
10 is that what you want to do?

11 DEFENDANT SHERFIELD: Yes, sir.

12 THE COURT: Are you under the influence of any
13 alcohol, drug or any other substance right at this moment?

14 DEFENDANT SHERFIELD: No, sir.

15 THE COURT: You are sober, you know what you're doing
16 and you want to plead guilty?

17 DEFENDANT SHERFIELD: Yes, sir.

18 THE COURT: You knew what you were doing was wrong or
19 against the law?

20 DEFENDANT SHERFIELD: Your Honor, yes, I do.

21 THE COURT: All right. Solicitor, tell me about it.

22 MS. SCOTT: Thank you, Your Honor.

23 This occurred October 27, 2014. This defendant placed
24 a six-month-old child at unreasonable risk of harm by
25 exposing him to marijuana. The child tested positive for

1 marijuana and the defendant admitted to being a heavy
2 marijuana smoker.

3 The recommendation of the State is concurrent with a
4 probation revocation for this defendant. He spent 16 days
5 in jail before he bonded out, Your Honor.

6 His prior criminal history is a 2003 possession of
7 marijuana times two, a 2004 burglary second and a petit
8 larceny, and in 2005 a breach of peace, in 2010 another
9 breach of peace, in 2013 a possession with intent to
10 distribute methamphetamine and child neglect.

11 THE COURT: And tell me again your recommendation.

12 MS. SCOTT: Concurrent -- your sentence being
13 concurrent with a probation revocation today.

14 MR. CHAMBERS: Yeah. He's got a probation which we'd
15 like to handle today, if we could.

16 And my client apparently vehemently protests that he
17 has a possession with intent to distribute.

18 DEFENDANT SHERFIELD: That never happened. You must
19 have the wrong record.

20 PROBATION CLERK: Your Honor, he was sentenced on
21 4/8/14 by Judge Miller for unlawful neglect and received a
22 sentence of 7 years suspended on 41 days time served and
23 30 months probation. The victim has "do not notify," so we
24 are able to handle it today, if we can.

25 THE COURT: So his sentence ---

1 PROBATION CLERK: 7 years.

2 THE COURT: And it was suspended?

3 PROBATION CLERK: Right. He had 41 days. They gave
4 him time served for the 41 days and then it was suspended
5 on 30 months probation.

6 THE COURT: And your recommendation is what?

7 MS. SCOTT: It was whatever you sentence him to be
8 concurrent with the probation revocation. So basically,
9 whatever we handle with the probation today. Can it be
10 handled today, Judge?

11 PROBATION CLERK: Yes.

12 THE COURT: And what was the date of the prior
13 offense?

14 PROBATION CLERK: 4/8/14.

15 MR. CHAMBERS: And this is 11/18/14.

16 Basically, Your Honor, I -- well, I mean, you can see
17 how things transpired.

18 THE COURT: What's the date of the other one, the
19 first one?

20 PROBATION CLERK: Of his probation case? That was the
21 one that was 4/8/14.

22 THE COURT: And this one occurred in October.

23 PROBATION CLERK: Of '14.

24 THE COURT: The same year.

25 PROBATION CLERK: Right. So it would be a violation.

1 THE COURT: And when was he sentenced on that one? On
2 yours, I'm talking about.

3 PROBATION CLERK: The sentence is 4/8/14.

4 THE COURT: And so then this offense occurred a few
5 months later in October?

6 PROBATION CLERK: Right.

7 THE COURT: All right. Did I accept the plea?

8 MS. SCOTT: I don't know, Your Honor, but I will make
9 a correction on the record about his criminal history.
10 Although it states he has a PWID meth, Your Honor, that was
11 only an arrest. It was dismissed upon a plea of another
12 conviction that he has. So, Your Honor, he does not have a
13 PWID of meth.

14 THE COURT: All right. I'll accept the plea as being
15 voluntarily made and as having a sufficient factual basis.

16 All right. Mr. Chambers?

17 MR. CHAMBERS: Your Honor, this is kind of a confusing
18 case because these things kind of came really close
19 together. I wasn't involved in the DSS case, but there was
20 a DSS case. There were four children. They were removed
21 from the home. This one deals specifically with a
22 six-month-old child. I believe that the other case may
23 have involved one or more of the other children, but I
24 wasn't involved in that either. So I'm not real clear
25 about that.

1 But what happened is that in November of that year,
2 the six-month-old was tested pursuant to this DSS case, and
3 at that time tested positive for marijuana. I don't know
4 when the child actually came into contact with marijuana,
5 but my understanding is that all this stuff was fairly
6 close in time. It just ends up that we've got two sets of
7 charges that are fairly close together, and he was on
8 probation, obviously, when he was charged with this other
9 one.

10 He has to his credit -- and this is -- you know,
11 obviously this is almost two years later -- cooperated
12 fully with DSS to the point that DSS has ended its case.
13 The children, it's my understanding, are back with my
14 client, he's working, he's taking care of the children.
15 Because of that -- and I would ask the Court even though,
16 you know, ordinarily somebody's on probation, does exactly
17 the same thing that they were on probation for, they
18 wouldn't get another chance. They'd end up going to
19 prison. But I'm asking the Court, based on everything that
20 I just told you, to consider letting him continue on
21 probation, basically give him a probationary sentence here
22 and, you know, kind of hold his feet to the fire.

23 He tells me he's not using drugs or anything anymore.
24 I don't know if he's been drug tested lately, but he says
25 he doesn't use drugs now.

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(Proceedings recessed at 3:38 p.m.)

MR. BLOUIN: Your Honor, this is in the case of Mr. Sherfield. We just want to go back on the record briefly and just acknowledge that given the sentence, that he did have 10 days to appeal Your Honor's sentence, and that if he does do that, that had to be in writing.

THE COURT: All right. So he's been notified of that.

*****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 12th day of May, 2016.

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

September 30, 2016



Cheryl A. Smith, CVR-M
Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

JAMES SHERFIELD #38150)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-23-

APPLICATION FOR

POST-CONVICTION RELIEF

2016-CP-23- 05314

FILED-CLEER OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMMER
SEP 14 PM 10 11

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 ALLENDALE C.I. F-2-B-4, P.O. BOX 1151 FAIRFAX S.C. 29827
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) WANDA SHERFIELD
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) UNLAWFUL CHILD NEGLECT
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10 SUSPENDED TO 7 YEARS 5 YEARS PROBATION
 - (b) 5-12-16
 - (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?

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. N/A
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. N/A
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. N/A
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) COUNSEL FAILED TO FILE NOTICE OF APPEAL
 - (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: DISPARITY IN SENTENCE, VIOLATION OF PLEA AGREEMENT
- (a) 3 UNVAILED GUILTY PLEA, CRUEL + UNUSUAL PUNISHMENT
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL, LACK OF JURISDICTION
- (c) FAILURE TO HAVE PRELIMINARY HEARING

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

- (a) SEE ATTACHED
- (b) _____
- (c) _____

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

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

- i. _____
- ii. _____
- 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) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? ✓
- (b) your trial, if any? NO
- (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. GREENVILLE COUNTY PUBLIC DEFENDER'S OFFICE
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. GUILTY PLEA
 - ii. _____
 - iii. _____

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

TO VACATE SENTENCE, ORDER A HEARING TO DETER-
MINED COMPETENCY DUE TO MENTAL ILLNESS AND
TO BE EVALUATED BY PSYCHIATRIST.

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

YES

STATE OF SOUTH CAROLINA)
County of ALLENDALE)

VERIFICATION

I, JAMES SHERFIELD, 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.

James Sherfield Jr

SWORN to and subscribed before me this 17 day of August, 2016.

Virginia D. Hubbs (L.S.)
Notary Public

My Commission Expires: 12-12-22

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

I, JAMES SHERFIELD, 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.

James Sherfield
Applicant

SWORN or affirmed to and subscribed before me this
17 day of August, 2016.

Virginia Smith
Notary Public

My Commission Expires: 12-12-22

CRUEL AND UNUSUAL PUNISHMENT
8TH AMENDMENT VIOLATION
DISPARITY IN SENTENCE

DEFENDANT CONTENDS HIS SENTENCE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT AND DISPARITY IN SENTENCING A VIOLATION OF THE 8TH AMENDMENT.

DEFENDANT AND HIS WIFE WAS CHARGED WITH THE SAME CRIME OF UNLAWFUL CHILD NEGLECT AND HE AND HIS WIFE WAS BOTH OFFERED BY THE STATE A SENTENCE OF 4 YEARS PROBATION. DEFENDANT'S WIFE PLED IN FRONT OF ANOTHER JUDGE AND RECEIVED PROBATION. DEFENDANT'S COUNSEL DID NOT ALLOW HIS CLIENT TO PLEAD FOR OVER 2 YEARS STATING HE WAS NOT COMFORTABLE WITH THE JUDGE. AFTER 2 YEARS DEFENDANT WAS TAKEN IN FRONT OF THIS JUDGE AND THE JUDGE ASKED HIM IF HE COULD PASS A DRUG TEST. DEFENDANT STATED NO. THE JUDGE SENTENCED HIM TO 10 YEARS SUSPENDED TO 7 YEARS AND 5 YEARS OF PROBATION. DEFENDANT CONTENDS THAT HIS SENTENCE IS DISPROPORTIONATE TO THE OFFENSE AND CONSTITUTES DISPARITY IN SENTENCING. DEFENDANT IS MENTALLY DISABLED AND RECEIVES SSI AND WAS IN A CAR ACCIDENT WHICH SEVERELY DAMAGED HIS BRAIN.

THE PRINCIPLE THAT A PUNISHMENT SHOULD BE PROPORTIONATE TO THE CRIME IS DEEPLY ROOTED AND FREQUENTLY REPEATED IN COMMON LAW JURISPRUDENCE. HODGES V. HUMPHREYS, 2 BULLST 139, 140, 80 ENG. REP. 1015, 1016 1KB 1615 (CROKE J.). IMPRISONMENT OUGHT TO ALWAYS BE ACCORDING TO THE QUALITY OF THE OFFENSE. THE CONSTITUTIONAL PRINCIPLE OF PROPORTIONALITY HAS BEEN RECOGNIZED EXPLICITLY IN THIS COURT FOR ALMOST A CENTURY. SEE WEEMS V. UNITED STATES, 30 S. CT. 544, L. ED. 793 (1910), THAT THE DEFENDANT HAD BEEN CONVICTED OF FAISIFYING A PUBLIC DOCUMENT AND SENTENCED TO 15 YEARS OF "CADERA TEMPORAI" A FORM OF IMPRISONMENT THAT INCLUDED LABOR IN CHAINS AND PERMANENT

CIVIL DISABILITIES. THE COURT NOTED THAT IT IS A PRECEPT OF JUSTICE THAT PUNISHMENT FOR THE CRIME SHOULD BE GRADUATED AND PROPORTIONED TO OFFENSE. I.D. AT 367; 30 S.C.T. AT 549, AND HEID THAT THE SENTENCE VIOLATED THE 8TH AMENDMENT. THE COURT NEXT APPLIED THE PRINCIPLE TO INVALIDATE A CRIMINAL SENTENCE IN ROBINSON V. CALIFORNIA 370 U.S. 62, 82 S.C.T. 1417 (1962), A 90 DAY SENTENCE WAS FOUND TO BE EXCESSIVE FOR THE CRIME OF BEING "ADDICTED TO NARCOTICS". THE DEFENDANT IN THIS CASE IS BEING PUNISHED FOR BEING MENTALLY DISABLED AND INCOMPETANT BECAUSE OF THE ACCIDENT HE HAD THAT DAMAGED HIS BRAIN AND HE HAS SEVERE MEMORY LOSS AND HE IS BEING TREATED BY A PSYCHIATRIST, PH.D. DOCTOR. DEFENDANT HAS NO UNDERSTANDING OF THE LAW AND HAD TO BE APPOINTED A GUARDIAN AD LITEM IN HIS FAMILY COURT CASE BECAUSE HE IS NOT COMPETANT. DEFENDANT IS BEING PUNISHED FOR BEING DISABLED AND MENTALLY DISABLED WHICH CAN BE SHOWN IN HIS MEDICAL RECORDS AND SSI STATEMENTS. COUNSEL WAS INEFFECTIVE FOR FAILING TO ARGUE AND SHOW THE JUDGE HE WAS MENTALLY DISABLED AND FAILED TO ARGUE THE SENTENCE WAS UNREASONABLE. SEE UNITED STATES V. CARPENTER, 781 F.3 599, 622 (1ST CIR. 2015) (QUOTING UNITED STATES V. MADERA ORTIZ, 637 F.3d 26, 30 (1ST CIR. 2011)).

INEFFECTIVE ASSISTANT OF COUNSEL

1. COUNSEL FAILED TO FILE NOTICE OF MOTION TO APPEAL OR TO FILE A MOTION FOR RECONSIDERATION FOR AN UNREASONABLE SENTENCE BASED ON HIS DISABILITY. SEE SECTION 17-24-10.

2. COUNSEL FAILED TO EXPLAIN THE CIRCUMSTANCES FOR HIS AND WIFE'S ADREST THAT SHE RECEIVED 4 YEARS PROBATION FOR THE SAME CHARGE THAT DEFENDANT WAS PROMISED THE SAME DEAL OF 4 YEARS PROBATION AND THAT HE WAS MENTALLY DISABLED BY A CAR ACCIDENT AND HE WAS ALREADY RULED INCOMPETENT BY THE FAMILY COURT AND A GUARDIAN IN LITEM HAD TO BE APPOINTED TO REPRESENT HIM. COUNSEL FAILED TO ARGUE IN HIS BEHALF THAT HIS CLIENT NEEDED TREATMENT AND REHABILITATION BECAUSE OF HIS MEDICAL CONDITION AND CAUSED DEFENDANT TO BE EXCESSIVELY SENTENCED AND PUNISHED BECAUSE OF HIS INEFFECTIVENESS. THIS SENTENCE DOES NOT ACCORD WITH "THE EVOLVING STANDARDS OF DECENCY THAT MARK THE PROCESS OF A MATURING SOCIETY". TROP V. DULLES, 78 S. CT. 590, 598 (1958).

3. COUNSEL FAILED TO FOLLOW UP AND REPRESENT HIS CLIENT AT THE PRELIMINARY HEARING THAT HE REQUESTED. PURSUANT TO §17-23-160 & 170, §17-23-162, 22-5-320 S.C. CODE OF LAWS. COUNSEL FAILED TO ARGUE BECAUSE NO PRELIMINARY HEARING WAS HELD THE COURT LACKED SUBJECT MATTER JURISDICTION TO TRY HIM. SEE STATE V. FUNDERBURK 191 S.E.2d 520 (1972), STATE V. FORTNER, 222 S.E.2d 508 (1976) WHERE THE DEMAND FOR A PRELIMINARY HEARING IS TIMELY MADE, THE COURT OF GENERAL SESSIONS HAS NO JURISDICTION OF THE CASE UNTIL AFTER THE PRELIMINARY HEARING. AN INDICTMENT RETURNED BEFORE THE PRELIMINARY HEARING IS A NULLITY.

4. COUNSEL FAILED TO STATE ON RECORD THAT HE HAD AN AGREEMENT BY THE STATE TO GIVE THE DEFENDANT 4 YEARS PROBATION ALONG WITH HIS WIFE FOR THE PLEA.

5. COUNSEL WAS INEFFECTIVE FOR FAILING TO EXPLAIN TO THE

THAT IT IS AN AFFIRMATIVE DEFENSE OF A PLEA OF GUILTY BUT MENTALLY ILL.

IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION FOR A CRIME THAT, AT THE TIME OF THE COMMISSION OF THE ACT CONSTITUTING THE OFFENSE, THE DEFENDANT, AS A RESULT OF MENTAL DISEASE OR DEFECT, LACKED THE CAPACITY TO DISTINGUISH MORAL RIGHT OR LEGAL RIGHT FROM MORAL WRONG OR LEGAL WRONG, OR TO RECOGNIZE HIS ACT OR BEING WRONG. SEE STATE V. POTWEXTER, 431 S.E.2d 254 (1993). A DEFENDANT IS GUILTY BUT MENTALLY ILL IF AT THE TIME OF THE COMMISSION OF THE CRIME, HE HAD THE CAPACITY TO DISTINGUISH RIGHT FROM WRONG AS DEFINED BY §7-24 TO(A), BUT FOR MENTAL DISEASE OR DEFECT LACKED SUFFICIENT CAPACITY TO CONFIRM HIS CONDUCT TO THE REQUIREMENT OF LAW.

DEFENDANT WAS INCOMPETENT AT THE TIME OF HIS GUILTY PLEA AND COUNSEL FAILED TO HAVE AN EVALUATION DONE AS REQUIRED BY LAW. DEFENDANT TOLD COUNSEL HE WAS IN AN AUTO ACCIDENT AT THE ONE TIME MEETING THEY HAD BEFORE HIS NEXT COURT DATE AND HE WAS TAKING MEDICATION AND THAT HE HAD BEEN APPOINTED A GUARDIAN AD LITEM AT HIS FAMILY COURT HEARING BECAUSE HE WAS MENTALLY UNSTABLE AND INCOMPETENT. COUNSEL'S FAILURE TO NOTIFY COURT OF HIS DISABILITY AND MEDICAL CONDITION TO ADEQUATELY DETERMINE IF HE NEEDED A PSYCHIATRIST OR DOCTOR TO TESTIFY OF HIS CONDITION AND WHETHER HE UNDERSTOOD THE LAW AND WHAT HE WAS PLEADING TO. AND WHETHER HE WAS ABLE TO DEFEND HIMSELF OR UNDERSTAND THE PROCEEDINGS AGAINST HIM.

PSYCHIATRIST TESTIFIED THAT DEFENDANT'S AUTO ACCIDENT, WHICH OCCURRED BEFORE CHARGED OFFENSES

WERE COMMITTED, WHICH CAUSED THE DEFENDANT TO SUFFER FROM "ANOXIA" WHICH CAUSED CEREBRAL DAMAGE RESULTING FROM LACK OF OXYGEN, AND PSYCHIATRIST TESTIFIED THAT DEFENDANT WAS INCOMPETENT AND COULD NOT PARTICIPATE IN HIS OWN DEFENSE. MATTHEWS V. STATE, 596 S.E. 2d 49 (2004), DEFENDANT'S ATTORNEY FAILED TO OBJECT WHERE SOLICITOR RECOMMENDED MAXIMUM SENTENCE IN VIOLATION OF NEGOTIATED PLEA AGREEMENT, AND FACT THE DEFENDANT WAS UNSURE WHETHER TO PLEAD GUILTY, COUPLED WITH THE FACT THAT HE WAS UNDER THE IMPRESSION THE SOLICITOR WOULD NOT MAKE SENTENCE REQUEST, DEMONSTRATED HE WOULD NOT HAVE PLEADED GUILTY BUT FOR ATTORNEY'S INEFFECTIVE ASSISTANCE. THOMPSON V. STATE, 531 S.E. 2d 294 (2000).

COUNSEL WAS INEFFECTIVE BY FAILING TO EFFECTUALLY EXPLAIN HIS AFFIRMATIVE DEFENSES TO DEFENDANT AND TO OBTAIN HIS MEDICAL RECORDS OR OBTAIN A PSYCHIATRIST TO EVALUATE DEFENDANT'S CONDITION BEFORE ALLOWING HIM TO PLEAD GUILTY WITH THE BELIEF HE WAS GOING TO GET ONLY 4 YEARS PROBATION AS PROMISED ALONG WITH HIS WIFE AND A CO-DEFENDANT. DEFENDANT WAS EXCESSIVELY PUNISHED FOR HAVING A MEDICAL DISABILITY AND BEING MENTALLY INCOMPETENT. COUNSEL'S CONDUCT WAS UNDER THE PROFESSIONAL NORMS AND AMOUNTED TO NO COUNSEL AT ALL.

RESPECTFULLY SUBMITTED,
~~James Sheffield~~
 JAMES SHEFFIELD #368150

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

James David Sherfield, #368150,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-5314

RETURN¹

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on September 14, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. In 2015, Applicant was indicted in Greenville County for one of Unlawful Conduct Towards a Child (2015-GS-23-9182). Applicant was represented by Randall Lee Chambers, Esq. On May 12, 2016, Applicant waived presentment to Grand Jury and pled guilty at the recommendation of the state to Unlawful Conduct Towards a Child. On May 12, 2016, the Honorable C. Victor Pyle, Jr., revoked Applicant's existing probation and ran it concurrent to ten years imprisonment with the balance suspended upon the service of seven years, and then probation for five years.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

¹ Respondent requests that counsel be appointed.

II.

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

1. Sentencing Objections
 - a. "Applicant contends that his sentence constitutes cruel and unusual punishment and disparity in sentencing ... [Applicant] and his wife were charged with the same crime [and received different sentences]"
 - b. "Violation of plea agreement."
2. Ineffective Assistance of Counsel
 - a. "Counsel failed to file notice of motion to appeal or to file a motion for reconsideration for an unreasonable sentence based on his disability.
 - b. "Counsel failed to explain the circumstances for Applicant and wife's arrest that she received four years probation for the same charge that defendant was promised the same deal."
 - c. "Counsel failed to follow up and represent his client at the preliminary hearing.
 - d. "Counsel failed to state on record that he had an agreement by the state to give Applicant four years probation along with his wife for the plea."
 - e. "Counsel failed to raise an affirmative defense of a plea of guilty but mentally ill."
3. Involuntary Guilty Plea
 - a. "Applicant was incompetent at the time of his guilty plea and counsel failed to have an evaluation done.
 - b. "Applicant was in an auto accident at the meeting they had before his next court date and he was taking medication ... Applicant's auto accident, which occurred before charged offenses were committed, [caused] Applicant to suffer cerebral damage ... and psychiatrist testified that Applicant was incompetent and could not participate in his own defense."

4. Lack of Jurisdiction
 - a. "Because no preliminary hearing was held, the court lacked subject-matter jurisdiction to try Applicant ... An indictment returned before the preliminary hearing is anullity."

III.

Petitioner's discontent regarding his sentence is not grounds for collateral attack on his sentence. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, the Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 272 S.C. 563, 257 S.E.2d 748 (1979). The Applicant has failed to show his sentence was a result of any of these factors. Accordingly, this Court should dismiss this allegation as being without merit.

IV.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within

the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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 pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent further submits Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his

statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

VI.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 *and* -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d

846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. 93, 610 S.E.2d 494, 499 (2005); See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

IX.

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

X.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

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for Johanna Valenzuela
By _____
ATTORNEYS FOR RESPONDENT

12 Jan., 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
)
 JAMES DAVID SHERFIELD, #368150,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS

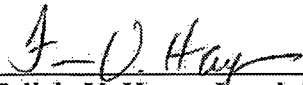
2016-CP-23-5314

AFFIDAVIT OF SERVICE BY MAIL

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

James David Sherfield, #368150
Allendale Correctional Institution
P. O. Box 1151
Fairfax, SC 29827

DATED this the 12th day of January, 2017.



 Felicia V. Hayes, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	2016-CP-23-5314
COUNTY OF GREENVILLE)	
)	
)	
)	
)	
JAMES DAVID SHERFIELD,)	
Applicant,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
Respondent.)	
_____)	

June 29, 2017
 Greenville, South Carolina

B E F O R E:

THE HONORABLE DANIEL DEWITT HALL, JUDGE

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

SUSANNAH C. ROSS, ESQ.
 Attorney for the Applicant

DESHAWN MITCHELL, ESQ.
 Attorney for the Respondent

CHERYL A. SMITH
 Circuit Court Reporter

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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 10:08 a.m.)

MR. MITCHELL: Your Honor, this next one is
2016-CP-23-5314, James David Sherfield.

Applicant is presently incarcerated or confined to
the South Carolina Department of Corrections pursuant to
orders of commitment of the clerk of court for Greenville
County. In 2015, applicant was indicted in Greenville
County for one count of unlawful conduct towards a child.
Applicant was represented by Randall Chambers.

On May 12, 2016, applicant waived presentment to the
grand jury and pled guilty at the recommendation of the
State to unlawful conduct towards a child. On that same
date, the Honorable Judge Victor Pyle revoked applicant's
existing probation and ran it concurrent to ten years
imprisonment with the balance suspended upon the service
of seven years and then probation for five years.

He is in the courtroom today present and represented
by Ms. Ross.

THE COURT: Ms. Ross, are you prepared to go forward
with the hearing in this matter this morning?

MS. ROSS: Yes, Your Honor.

THE COURT: All right. Call your first witness.

MS. ROSS: We call Mr. Sherfield at this time.

1 THE CLERK: Please place your left hand on the Bible
2 and raise your right hand.

3 WHEREUPON,

4 JAMES DAVID SHERFIELD

5 After having been duly sworn, testified as follows:

6 THE CLERK: Thank you. You may be seated. Please
7 state your full name for the record.

8 THE WITNESS: James David Sherfield, Junior.

9 DIRECT EXAMINATION

10 BY MS. ROSS:

11 Q Okay. Mr. Sherfield, just going forward with this
12 postconviction action, do you understand if you win, that
13 you'll be back in the position you were in before the
14 violation, so looking at possibly a ten-year sentence?

15 A Yes, ma'am.

16 Q And you still want to proceed?

17 A Yes, ma'am.

18 Q Why have you alleged ineffective assistance of
19 counsel in this case?

20 A I've been mentally disabled since I was 19 years old.
21 I didn't get a chance to talk to my lawyer at all, only
22 right before I went into the courtroom. And I wasn't
23 ready. He told me I was going to get four years
24 probation. I assumed it was right. So I went along with
25 everything, and I got ten years.

1 Q Okay. And then tell me more about mentally disabled.
2 Were you ever in a car accident?

3 A Yes, ma'am. I was airlifted. Had a car wreck when I
4 was 19, and I was in ICU for two weeks. Damage to the
5 frontal lobe, short-term memory loss.

6 Q Okay. And how about had you ever had carbon monoxide
7 exposure?

8 A No, ma'am. I'm not sure about that. I don't
9 remember anything about that.

10 Q Okay. But you do have memory problems?

11 A Yes, ma'am.

12 Q Okay. And did your lawyer talk to you about that
13 before your probation violation?

14 A No, ma'am.

15 Q Do you recall how many times you met with your
16 lawyer?

17 A I saw him for maybe three minutes before I went into
18 the courtroom and got sentenced.

19 Q All right. Did he get any witnesses for you?

20 A No, ma'am.

21 Q Now, at the time of this probation violation, would
22 you have failed a drug test?

23 A No, ma'am.

24 Q Why did you tell the judge you would have?

25 A I was on mental health medication, and I don't know

1 what fails and what don't. So I found it -- if I told him
2 I would pass it and he drug tested me and I failed it for
3 my mental health medication, then it would be worse.

4 Q Okay. And I've got some of your medical records.
5 Are these some of the medications that you were on, the
6 Lexapro and some other stuff?

7 A Yes, ma'am. And I'm currently on Celexa,
8 40 milligram, and Vistaril as well.

9 MS. ROSS: If you could mark this as Applicant's
10 Number 1, I would offer it into evidence at this time.

11 MR. MITCHELL: Without objection.

12 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
13 identification.)

14 MS. ROSS: If I could approach, Judge. This is just
15 showing that he was on prescribed medications.

16 BY MS. ROSS:

17 Q Now, about the sentence you got, why was it
18 reasonable for you to expect that your probation would be
19 continued?

20 A Randy Chambers had told me that the State offered me
21 four years, and I told him, okay. I'll take the four
22 years probation, which is the same thing my wife got. And
23 she's in the courtroom today as well. And I told him I'd
24 take it. And that's what I assumed I was going to get.

25 Q So your wife got probation, or four years of

1 probation. Is that what you're saying?

2 A Yes ma'am. She's sitting behind you.

3 Q And was she charged with the same charge you were
4 charged with?

5 A The same exact everything.

6 Q Did she have a probation violation hearing like you
7 did?

8 A Yes, ma'am. We had the same probation officer and
9 everything.

10 Q And she was just continued on probation, but you were
11 given ten suspended to seven?

12 A Yes, ma'am.

13 Q And your lawyer didn't make the distinction that you
14 were talking about mental health drugs that you'd test
15 positive to?

16 A No, ma'am. I tried to tell him at the end, but I was
17 so scared. When he sentenced me, I didn't know what to
18 say.

19 Q All right.

20 A And before I could tell him, it was over with.

21 Q Okay. Now, did he argue for you that you had
22 absconded for one month? That was the -- I believe that I
23 have a note that was the extent of your violation?

24 A I don't understand.

25 Q Did you miss one report? Was your probation

1 violation that you missed one report or do you recall?

2 A No, ma'am. I never missed a report.

3 Q Okay. Had you been drinking?

4 A No, ma'am.

5 Q And was Mr. Norface [phonetic] aware of your mental
6 health conditions, your agent?

7 A Yes, ma'am.

8 I never failed a drug test for him either.

9 Q All right. And your attorney didn't bring that up
10 with Judge Pyle that you've never failed a drug test?

11 A No, ma'am.

12 Q Is there anything else you want to put on the record
13 about this postconviction?

14 A I just -- I'd love it if I could go home, be with my
15 family. Maybe at least get the same plea that I was
16 offered to start with.

17 MS. ROSS: Okay. I've got no further questions.

18 THE COURT: All right. Mr. Mitchell?

19 MR. MITCHELL: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. MITCHELL:

22 Q Good morning, Mr. Sherfield. How are you?

23 A I'm fine, sir.

24 Q Good.

25 Have you ever been diagnosed with any type of mental

1 illness?

2 A Yes, sir.

3 Q And what's that?

4 A Short-term memory loss.

5 Q So the doctor has construed that to be a mental
6 illness?

7 A Yes, sir. I've been disabled since 19.

8 Q So do you get any type of benefits or something from
9 the government?

10 A Yes, sir.

11 Q Okay. And you talked to Mr. Chambers about that?

12 A No, sir.

13 Q You didn't? You didn't think to tell him about it?

14 A No, sir.

15 Q He didn't ask you about it?

16 A No, sir.

17 Q So when the judge asked you if you were under the
18 influence of any type of drugs or narcotics or anything
19 like that, what was your answer to the judge?

20 A I said no. He asked me if I would fail a drug test.
21 He didn't ask me if I was under the influence. And I told
22 him that I would because I didn't know if I would or not.

23 Q So he didn't ask you if you were under the influence
24 of any type of drug or anything like that?

25 A No, sir.

1 MR. MITCHELL: Your Honor, may I approach?

2 THE COURT: Yes, you may.

3 MR. MITCHELL: I'm handing the witness what's part of
4 the record already, a transcript of the guilty plea. I'm
5 showing him page 5, Lines 10 through 12.

6 THE WITNESS: Yeah, yeah. I guess he did.

7 BY MR. MITCHELL:

8 Q The judge asked if you were ---

9 A Yes, sir. I see that now. I'm sorry.

10 Q And what was your answer?

11 A No, sir.

12 Q Okay. And when the judge asked if you were satisfied
13 with your attorney, what was your answer?

14 A Yes, sir.

15 Q And when he asked you if you were pleading freely and
16 voluntarily, what was your answer?

17 A Yes, sir.

18 Q Okay. Besides medication, do you have any reports,
19 any expert reports from doctors saying that you have been
20 diagnosed with a mental illness?

21 A I tried to get them. I tried to get them from --
22 through my lawyer. I've been disabled since 19. I had a
23 bad car wreck. I don't know. I don't have any really
24 paperwork from them for myself or anything like that, I
25 don't think. My mother's here. I don't know if she might

1 have something. I don't know.

2 Q And you pled guilty to unlawful conduct to a child.

3 Is that what you were on probation for previously?

4 A Yes, sir.

5 MR. MITCHELL: Okay. No further questions, Judge.

6 THE COURT: Thank you.

7 Anything further. Ms. Ross?

8 MS. ROSS: No, Your Honor.

9 THE COURT: All right. Thank you, Mr. Sherfield.

10 You can step down.

11 MS. ROSS: And I call Wanda Sherfield at this time.

12 THE CLERK: Ms. Sherfield, please place your left on
13 the Bible and raise your right hand.

14 WHEREUPON,

15 WANDA SHERFIELD

16 After having been duly sworn, testified as follows:

17 THE CLERK: Please state your full name for the
18 record.

19 THE WITNESS: Wanda Lynn Sherfield.

20 THE CLERK: Thank you. You may be seated.

21 DIRECT EXAMINATION

22 BY MS. ROSS:

23 Q Hey, Ms. Sherfield.

24 A Hey.

25 Q So were you there during this plea and violation,

1 during this hearing?

2 A The last court, no, ma'am. I wasn't. I was at work.

3 Q Okay.

4 A But I was at the one prior to where it was continued.

5 Q Okay. So you didn't see any interaction from that
6 day?

7 A Hu-uh. No, ma'am.

8 Q As far as your husband's mental health issues, what
9 is your experience of them?

10 A Since I've met him, he's been getting a disability
11 check, he's been taking the mental health medication.

12 Q Okay. Does he ever forget things?

13 A Yes, ma'am.

14 Q Does he ever misunderstand things?

15 A Yes, ma'am.

16 Q When he testified that he misunderstood the question
17 or understood the question about being under the influence
18 of any kind of drugs, in your experience of him, would
19 that be a possible ---

20 A Yes, ma'am.

21 Q And you had the same. You were the codefendant and
22 had the exact same charges?

23 A In both cases.

24 Q In both cases.

25 A Yes, ma'am.

1 Q And did you get any jail time?

2 A No, ma'am.

3 MS. ROSS: All right. I've got no further questions.

4 THE COURT: Mr. Mitchell?

5 CROSS EXAMINATION

6 BY MR. MITCHELL:

7 Q Ms. Sherfield, prior to these two charges, did you
8 have a prior record at all?

9 A I had breach of peace when I was 18, and then two
10 assault charges when I was younger.

11 Q So General Sessions or magistrate court?

12 A Magistrate, I think. No felonies.

13 Q Did your spouse have previous felonies?

14 A Honestly, I'm not sure.

15 MR. MITCHELL: Thank you.

16 MS. ROSS: I've got no further questions.

17 THE COURT: All right thank you. You can step down.

18 Ms. Ross?

19 MS. ROSS: That's our case, Your Honor.

20 THE COURT: Mr. Mitchell?

21 MR. MITCHELL: Your Honor, at this time, we call
22 Mr. Randall Chambers to the stand.

23 WHEREUPON,

24 RANDALL CHAMBERS

25 After first having been duly sworn, testified as follows:

1 THE CLERK: You may be seated. And please state your
2 full name for the record.

3 THE WITNESS: My full name is Randall Lee Chambers.

4 DIRECT EXAMINATION

5 BY MR. MITCHELL:

6 Q Good morning, Mr. Chambers. How are you this
7 morning?

8 A I'm doing well., How about you?

9 Q I'm doing well.

10 How long have you been practicing law here in South
11 Carolina?

12 A In South Carolina since 1992. I practiced four years
13 before that as a member of the Kentucky bar and then the
14 United States Navy.

15 Q Thank you for your service.

16 A Thank you.

17 Q How much of that has been dedicated to criminal law?

18 A I mean, pretty much the whole time. I did criminal
19 defense at trial and appellate levels when I was on active
20 duty in the Navy, and then I worked at the Solicitor's
21 Office as a prosecutor for six years, and I've been in
22 private practice since '98 doing primarily criminal
23 defense.

24 Q Fair to say you're pretty experienced in criminal
25 law?

1 A I am.

2 Q So turning our attention to this case, were you
3 retained or were you appointed?

4 A Appointed through -- I have a contract with the
5 Public Defender's Office where I do a certain number of
6 appointed cases each month.

7 Q And do you recall the charges or how they arose in
8 relation to this defendant, or the facts surrounding the
9 case, I should say?

10 A You know, it seems to me, and I reviewed the file
11 before I came over and meant to bring it with me so that I
12 could look at it and I just walked off and forgot it, but
13 one of the defendant and his wife's children tested
14 positive for drugs. And then I think there was DSS got
15 involved, and there was an admission at least by
16 Mr. Sherfield in this case that he had used or smoked
17 marijuana in the house. I don't remember it involving
18 anything more serious than marijuana.

19 Q Do you recall meeting with the defendant?

20 A Yeah. We met, but we didn't meet often. We met more
21 than three minutes before we came into court. But I
22 looked back through the file. When I first got it, it
23 came to me as what we refer to as a jail case. We usually
24 get about ten of those a month. And you're supposed to go
25 see them within 48 hours of being appointed. I try to do

1 that. Sometimes I do, sometimes I can't.

2 But when I went to see him, he had already been
3 released. And then it looked like we had -- he missed a
4 court date, and then he showed a couple times and we
5 talked briefly. I reviewed discovery with him at one
6 point. Then there was -- he was supposed to make an
7 appointment at the Public Defender's Office, and I have a
8 note in there that he was no-show for an appointment at
9 the Public Defender's Office. And then we eventually
10 pled. I don't remember the date. But he did plea, and he
11 pled in front of Judge Pyle.

12 Q And during these meetings, would it be fair to say
13 that you would have went over the charges with him and
14 potential sentences for the charges?

15 A Well, I didn't go over with the detention center
16 because he wasn't there. Yeah. We went, we -- I mean,
17 there's only the one charge. We talked about that. And,
18 you know, he let me know that he was on probation for the
19 same thing. And we went over discovery, which wasn't -- I
20 mean, there wasn't very much to it. I mean, it was a very
21 short report. It was just that the child had tested
22 positive and he had admitted to smoking marijuana in the
23 house.

24 Q Did Mr. Sherfield ever indicate to you that he didn't
25 understand anything related to the charge?

1 A No. I mean, like I do with everybody, and I had
2 asked him just some basic things about his background, and
3 one of the things that I have is do you have any physical
4 or mental health issues. It's one of the things that --
5 we have these preprinted files, and it's right there.

6 He indicated to me that he was on medication. I
7 don't remember if he told me what medication it was. He
8 told me that he had some issues with memory loss. But, I
9 mean, there's nothing struck me odd about that, because I
10 would say better than half of the people that I represent
11 are on some kind of mental health medication. What I look
12 for is does he understand our conversations. And he
13 seemed to understand them to me. When we had
14 conversations, he asked questions very much like he was on
15 the stand today, you know. That kind of demeanor, that
16 kind of command of the facts, that kind of understanding
17 of what was going on. And so at no point did I have any
18 concern about his ability to understand what was going on.

19 And the other thing is, he had a record, so he'd
20 clearly been to court before. So, I mean, there was
21 nothing in my interaction with him that would ever have
22 indicated that he didn't understand what we were talking
23 about, that he didn't understand the process. And, again,
24 I mean, he has mental health issues, but then so do most
25 of the people who come in here. So I didn't have any

1 concerns about it.

2 Q So prior to the unlawful conduct charge in the
3 previous one, he had other -- other ---

4 A Yeah. I think so. And I don't want to misspeak on
5 that. If that's not true, then I apologize. But my
6 recollection is I don't think he had anything bad. I
7 mean, he's not a criminal. He's not a bad guy. But there
8 were some things on there, and he'd clearly been to court.
9 He was on probation.

10 Q Okay. I think you said that during your
11 conversations, it never struck you that he didn't
12 understand anything that you said to him.

13 A No. And he was able to answer the judge's questions,
14 obviously. I mean, it was -- you know, I -- I don't think
15 -- my personal opinion was there wasn't a problem. I
16 can't say that he didn't suffer from traumatic brain
17 injury because a lot of times, you can't notice that. I
18 didn't know that he'd been in a car wreck. I knew that he
19 was on disability, and he told me basically the reason,
20 but I never heard about a car wreck until today.

21 Q Let me ask you this. Did he ever say to you,
22 Mr. Chambers, I don't understand what you're saying to me,
23 I don't understand what's going on?

24 A Not that -- I mean, I don't think he did that
25 specifically. I don't remember every word of our

1 conversations, but, I mean, he may have asked me to
2 clarify something or something along those lines. But,
3 again, pretty much everybody that I talk to does that. If
4 I'm explaining, you know, there's sort of the
5 back-and-forth about what happens.

6 Q Did his wife or any family member ever express to you
7 any mental disability or anything?

8 A No. I don't think I ever talked to anybody but him.
9 I don't ever remember anybody being with him when I talked
10 to him.

11 Q In your opinion, the applicant was competent to enter
12 a plea freely and voluntarily?

13 A Yeah. I wouldn't have let him do it otherwise.

14 MR. MITCHELL: Thank you so much, Mr. Chambers.
15 That's all the questions I have for you. Please answer
16 any questions Ms. Ross may have.

17 THE COURT: Ms. Ross?

18 MS. ROSS: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. ROSS:

21 Q Mr. Chambers, did you verify that he was on any
22 medications or did you talk to him about being on
23 medications?

24 A No. I just asked him like I do everybody. I said,
25 Do you have any physical or mental health issues? And he

1 told me, and he told me that he was on some meds. And
2 that's what I knew about it.

3 Q Did you speak to him at all after the plea?

4 A I think I spoke to him briefly when he went back
5 here. Or I may or may not have. I usually do that, and
6 since it was Judge Pyle, they don't have people lined up.
7 So I believe that I went back there and spoke to him
8 afterwards. That's usually my practice. But if I didn't,
9 you know, there may have been a reason I didn't do that.

10 Q All right. Do you recall specifically asking him
11 what he would have tested positive to or anything of that
12 sort?

13 A I don't know if we talked about that beforehand or
14 not. I will sometimes ask that question when it's clearly
15 a drug-related case, but I don't recall if I asked him
16 that.

17 Q Okay. And that's before or after the plea?

18 A Yeah.

19 Q Okay. And then finally, did you put in a motion to
20 reconsider or anything with Mr. Pyle after that sentence?

21 A No. I mean, he didn't -- he didn't ask me to. He
22 didn't contact me to do that. And didn't really see any
23 reason to do it. I thought it was -- listen, I thought it
24 was an unduly harsh sentence, and it surprised me. Now,
25 the offer that we had in the case and the only offer we

1 ever had in the case, because I looked at the tracking
2 sheets, and the offer that I got from the Solicitor's
3 Office was for a sentence to run concurrent with his
4 probation revocation. But we ended up handling the
5 probation revocation at the same time of the plea, which,
6 as you know from your experience, is very common.

7 Now, if I had been to a prescheduled probation
8 revocation, I would have had a copy of the revocation
9 report. I didn't have a copy of the revocation report,
10 but he indicated to me that he wanted to go forward with
11 it that day, and so we did. Now, this is my recollection.
12 And then the judge listened to everything, and he
13 sentenced him. I mean, I was really surprised.

14 Before we went in, I will tell you that -- I mean,
15 this is pretty much the tenor of our conversation.
16 They're not making any recommendation as far as the number
17 of years go, but they recommend it run concurrent with
18 probation. You're on probation for the same thing, but in
19 my estimation, this is not really very serious. I said
20 there is a chance that you'll get probation. But, again,
21 because I -- I mean, it's marijuana, and I think that
22 there are degrees of severity as far as drug use and
23 things go in the home. And my experience with Judge Pyle
24 was that he wasn't somebody that was particularly
25 concerned about drug users and things like that as far as his

1 sentencing goes. But for whatever reason, he determined
2 that he was going to sentence this gentleman to ten years
3 suspended to seven. I thought it was harsh, but I also
4 know that any motion to reconsider filed with Judge Pyle
5 was probably not going to make any difference.

6 Q Okay. Now, one last thing. So because you didn't
7 have the report, did you ever talk to Mr. Norface, the
8 probation agent on the case on the prior probation?

9 A No. Not at any point.

10 Q So you had no idea that he had not tested positive
11 for anything?

12 A I don't really think I know who his agent was.

13 Q Okay.

14 A I mean, it was -- you know how it goes. You're in
15 court, and the person from probation is there, and they'll
16 stand up and say, He's on probation. We can handle it
17 today if he wants to.

18 Q Okay.

19 A That's what happens.

20 Q All right. So you didn't have the report to be able
21 to rebut the fact that he said he would test positive when
22 he had been drug tested on probation?

23 A I did not.

24 MS. ROSS: Okay. Nothing further.

25 MR. MITCHELL: I just have one additional question.

REDIRECT EXAMINATION

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BY MR. MITCHELL:

Q The case, was it ever proceeded to trial or was it always on the guilty plea track?

A Well, I mean, we don't really have that here in Greenville. I mean, it was never on the trial docket, and I don't think there was ever any serious discussion about it going to trial. So I guess if you want to give me those two choices, I would say it was on the plea track.

But I didn't have -- I mean, I didn't have a lot of contact with him. I mean, there were times -- I mean, as I told you, times he didn't show up for court, he didn't show up when I scheduled an appointment at the Public Defender's Office, you know. So most of our conversations occurred here on the day that we were having court, which is not altogether unusual. I mean, I've pled plenty of people over the years when we haven't met in the office or we haven't talked at the jail. But I don't do it unless they're satisfied.

Listen, anybody wants to pick up any term of court's trial docket and see how many times my name's on it because -- you know, so I don't force anybody to plead guilty. I'm not an arm twister, and I try to get the best result for everybody that I can. And so I have no fear of going to trial if that's what he wanted to do. He told me

1 he wanted to plead, he told me he was ready to plea, he
2 told the judge the same thing, and that's what happened.
3 I think it's a really harsh sentence, and I would love to
4 see him get a reduced sentence if there's a reason for it,
5 but I feel like I did everything for him I could do.

6 MR. MITCHELL: Thank you, Mr. Chambers.

7 THE COURT: Thank you, Mr. Chambers. You can step
8 down.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Anything further?

11 MR. MITCHELL: Nothing, Your Honor.

12 THE WITNESS: May I be excused, Your Honor?

13 THE COURT: Yes, you may.

14 RULING BY THE COURT

15 THE COURT: I'm going to deny the petition for
16 relief. The petitioner in this case has failed to meet
17 his burden of proof in order to grant the relief that he
18 has requested in the petition.

19 Mr. Mitchell, if you'll prepare an order.

20 MR. MITCHELL: Absolutely, Your Honor.

21 THE COURT: Thank you.

22 (WHEREUPON, proceedings concluded at 10:33 a.m.)
23
24
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3 CERTIFICATE OF REPORTER

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF GREENVILLE)
67 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Greenville County, South Carolina, on the
14 29th day of June, 2017.15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
1718 March 23, 2018
1920
21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

ANMED HEALTH
Wren Family Medicine

6650 Highway 81 North • Piedmont, South Carolina 29673 • 864.512.5910 • Fax 864.512.5915

MRN: 0000323680

Encounter: 04/14/2016 9:00AM, Joseph Mulvihill M.D.

Patient Information:
 JAMES SHERFIELD

TOWNVILLE, SC 29689-0000

(H) [REDACTED]
 (W)

DOB: [REDACTED]
 Gender: M
 Pref. Lang.: ENGLISH
 Race: White
 Ethnicity: Non-Hispanic or Latino

Ref. Prov.: Joseph Mulvihill M.D.
 PCP: Joseph Mulvihill M.D.

Assessment

1. Social anxiety disorder (F40.10)
 - Doing well with the lexapro. Hesitate to alter or add to regimen, but will trial low dose vistaril as needed, but recommended breathing exercises, meditation, mindfulness. Plan on f/u in 3 months. Call/RTC for any concerns.



*one month
 prior no
 mention*

Plan

Social anxiety disorder

- Start: HydroXYZine HCl - 25 MG Oral Tablet; One half to one tablet every 8 hours as needed
- Renew: Escitalopram Oxalate 20 MG Oral Tablet; TAKE 1 TABLET DAILY
- Follow-up visit in 3 months Evaluation and Treatment Follow-up Status: Complete Done: 14Apr2016

Patient Education

Patient was encouraged to keep his next scheduled follow-up appointment with me.

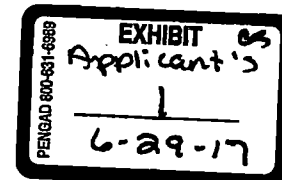
Medication Use & Side Effects: Discussed proper medication use and potential side effects with patient. Patient and or Caregiver verbalized understanding.

Chief Complaint

3 month follow up, medication refills. Patient states that he still has a little bit of anxiety.

Reason For Visit

Established patient follow up.



History of Present Illness

Pt is a 30 yo gentleman who comes to the office for f/u. Pt reports that he's still having anxiety, but reports he feels like that the lexapro is helping a lot. Pt doesn't want to be on anything that will nock him out.

(A)

Printed By: Holly Glenn

1 of 3

3/24/17 3:26:14 PM

Patient: JAMES D. SHERFIELD
Encounter: 04/14/2016 9:00AM

DOB: [REDACTED]

Review of Systems

Constitutional: negative.
Cardiovascular: negative.
Respiratory: negative.
Gastrointestinal: negative.
Psychiatric: anxiety, but no depression and not suicidal.

Allergies

- 1. No Known Allergies

Current Meds

- 1. Escitalopram Oxalate 20 MG Oral Tablet; TAKE 1 TABLET DAILY;
Therapy: 07Jan2016 to (Evaluate:06May2016) Requested for: 07Jan2016; Last
Rx:07Jan2016 Ordered

Active Problems

- 1. Social anxiety disorder (F40.10)

Past Medical History

- Social anxiety disorder (F40.10)
Past medical history reviewed with patient/caregiver.

Surgical History

- History of Ankle Surgery
Past surgical history reviewed with patient/caregiver.

Family History

- No pertinent family history : Mother
Family medical history reviewed with patient/caregiver.

Social History

- Current smoker (F17.200)
- Disabled
- Married
- Non drinker / no alcohol use
Social History reviewed with patient/caregiver.

Vitals

	Recorded: 14Apr2016 08:55AM
Systolic	120
Diastolic	80
Heart Rate	96
Temperature	97.9 F
Pain Scale	0
Pain Scale Type	NRS
Weight	251 lb
BMI Calculated	34.04
BSA Calculated	2.35
Fall Since Last Visit	No

Patient: JAMES D. SHERFIELD
Encounter: 04/14/2016 9:00AM

DOB: [REDACTED]

Use Assistive Device	No
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Physical Exam

Constitutional

General appearance: No acute distress, well appearing and well nourished.

Eyes

Conjunctiva and lids: No swelling, erythema, or discharge.

Pupils and irises: Equal, round and reactive to light.

Ears, Nose, Mouth, and Throat

External inspection of ears and nose: Normal.

Oropharynx: Normal with no erythema, edema, exudate or lesions.

Pulmonary

Respiratory effort: No increased work of breathing or signs of respiratory distress.

Auscultation of lungs: Clear to auscultation.

Cardiovascular

Auscultation of heart: Normal rate and rhythm, normal S1 and S2, without murmurs.

Examination of extremities for edema and/or varicosities: Normal.

Lymphatic

Palpation of lymph nodes in neck: No lymphadenopathy.

Musculoskeletal

Gait and station: Normal.

Skin

Skin and subcutaneous tissue: Normal without rashes or lesions.

Psychiatric

Orientation to person, place and time: Normal.

Mood and affect: Normal.

Signatures

Electronically signed by : Joseph Mulvihill, M.D.; Apr 14 2016 10:26AM EST

(Author)

Patient: **JAMES D. SHERFIELD**
 Encounter: **04/14/2016 9:00AM**

DOB: [REDACTED]

Use Assistive Device	No
----------------------	----

Physical Exam

Constitutional

General appearance: No acute distress, well appearing and well nourished.

Eyes

Conjunctiva and lids: No swelling, erythema, or discharge.

Pupils and irises: Equal, round and reactive to light.

Ears, Nose, Mouth, and Throat

External inspection of ears and nose: Normal.

Oropharynx: Normal with no erythema, edema, exudate or lesions.

Pulmonary

Respiratory effort: No increased work of breathing or signs of respiratory distress.

Auscultation of lungs: Clear to auscultation.

Cardiovascular

Auscultation of heart: Normal rate and rhythm, normal S1 and S2, without murmurs.

Examination of extremities for edema and/or varicosities: Normal.

Lymphatic

Palpation of lymph nodes in neck: No lymphadenopathy.

Musculoskeletal

Gait and station: Normal.

Skin

Skin and subcutaneous tissue: Normal without rashes or lesions.

Psychiatric

Orientation to person, place and time: Normal.

Mood and affect: Normal.

Signatures

Electronically signed by : Joseph Mulvihill, M.D.; Apr 14 2016 10:26AM EST

(Author)

ANMED HEALTH
Wren Family Medicine

6650 Highway 81 North • Piedmont, South Carolina 29673 • 864.512.5910 • Fax 864.512.5915

MRN: 0000323680

Encounter: 01/07/2016 9:00AM, Joseph Mulvihill M.D.

Patient Information:
 JAMES SHERFIELD

TOWNVILLE, SC 29689-0000

(H) [REDACTED]
 (W) [REDACTED]

DOB: [REDACTED]

Gender: M

Pref. Lang.: ENGLISH

Race: White

Ethnicity: Non-Hispanic or Latino

Ref. Prov.: Joseph Mulvihill M.D.

PCP: Joseph Mulvihill M.D.

Assessment

1. Social anxiety disorder (F40.10)
 - Will obtain CBC, BMP, PTP and f/u results. Will restart lexapro at 20mg and plan on f/u in 3 months. Call/RTC for any concerns.
2. Current smoker (F17.200)
 - Pt currently uses vapor nicotine delivery system. Discussed the potential health risks including that long term studies are unavailable and recommended cessation.

Plan

SochHx: Current smoker

- You need to stop smoking. Though it is not easy, more than half of all adult smokers have quit. We encourage you to write down all the reasons you should quit smoking and set a quit date for yourself. Ask us how we can help. You may also call 1-800-QUIT-NOW for free resources and assistance.; Status:Complete; Done: 07Jan2016
- You need to stop smoking. Smoking affects your lungs, taste buds, skin and energy levels to name a few. Talk to us about how we can help. You may also call the quit line at 1-800-QUIT-NOW for free resources and assistance.; Status:Complete; Done: 07Jan2016

Social anxiety disorder

- Start: Escitalopram Oxalate 20 MG Oral Tablet; TAKE 1 TABLET DAILY
- Basic Metabolic Panel; Status:Active; Requested for:07Jan2016;
- Blood Count, Complete With Auto Differential; Status:Active; Requested for:07Jan2016;
- Progressive Thyroid Panel (PTP); Status:Active; Requested for:07Jan2016;
- Follow-up visit in 3 months Evaluation and Treatment Follow-up Status: Need Information - Schedule Follow-up Appointment Requested for: 07Jan2016

Patient Education

Patient was encouraged to keep his next scheduled follow-up appointment with me.

Medication Use & Side Effects: Discussed proper medication use and potential side effects with patient. Patient and or Caregiver verbalized understanding.

Patient: JAMES D. SHERFIELD
Encounter: 01/07/2016 9:00AM

DOB: [REDACTED]

Chief Complaint

New patient to become established and discuss being put back on Lexapro that he previously was taking.

Reason For Visit

New Patient

History of Present Illness

Pt is a 30 yo gentleman who comes to the office to establish care. Pt reports that he would like to be placed back on lexapro for depression/anxiety. Pt reports several months ago he went to Doctor's Care and was placed on lexapro 20mg daily. Pt reports that medication was working very well for him, but he's run out over the last 1-2 months. Pt reports he has some depression, but mostly anxiety. Pt reports that if he goes around people he's never met he has anxiety and makes him want to stay home. Pt reports the lexapro really helped. Pt reports that he tries to exercise some to help as well. Pt reports he doesn't

Review of Systems

Constitutional: negative.
Cardiovascular: negative.
Respiratory: negative.
Gastrointestinal: negative.
Psychiatric: irritability and anxiety, but no insomnia, no depression and not suicidal.

Allergies

1. No Known Allergies

Current Meds

1. No Reported Medications Recorded

Past Medical History

- Social anxiety disorder (F40.10)
- Past medical history reviewed with patient/caregiver.

Surgical History

- History of Ankle Surgery
- Past surgical history reviewed with patient/caregiver.

Family History

- No pertinent family history : Mother
- Family medical history reviewed with patient/caregiver.

Social History

- Current smoker (F17.200)
 - Last Impression: 07 Jan 2016 | Pt currently uses vapor nicotine delivery system. Discussed the potential health risks including that long term studies are unavailable and recommended cessation. | Mulvihill, Joseph (Family Medicine)
 - Disabled
 - Married
 - Non drinker / no alcohol use
- Social History reviewed with patient/caregiver.

Vitals

Patient: **JAMES D. SHERFIELD**
 Encounter: **01/07/2016 9:00AM**

DOB: [REDACTED]

Recorded: 07Jan2016 09:04AM	
Systolic	134
Diastolic	84
Heart Rate	101
Temperature	98 F
Height	6 ft
Weight	266 lb 2 oz
BMI Calculated	36.09
BSA Calculated	2.41
Fall Since Last Visit	No
Use Assistive Device	No

Physical Exam

Constitutional

General appearance: No acute distress, well appearing and well nourished.

Eyes

Conjunctiva and lids: No swelling, erythema, or discharge.

Pupils and irises: Equal, round and reactive to light.

Ears, Nose, Mouth, and Throat

External inspection of ears and nose: Normal.

Otoscopic examination: Tympanic membrane translucent with normal light reflex. Canals patent without erythema.

Oropharynx: Normal with no erythema, edema, exudate or lesions.

Pulmonary

Respiratory effort: No increased work of breathing or signs of respiratory distress.

Auscultation of lungs: Clear to auscultation.

Cardiovascular

Auscultation of heart: Normal rate and rhythm, normal S1 and S2, without murmurs.

Examination of extremities for edema and/or varicosities: Normal.

Abdomen

Abdomen: Non-tender, no masses.

Liver and spleen: No hepatomegaly or splenomegaly.

Lymphatic

Palpation of lymph nodes in neck: No lymphadenopathy.

Musculoskeletal

Gait and station: Normal.

Digits and nails: Normal without clubbing or cyanosis.

Inspection/palpation of joints, bones, and muscles: Normal.

Skin

Skin and subcutaneous tissue: Normal without rashes or lesions.

Psychiatric

Orientation to person, place and time: Normal.

Mood and affect: Normal.

Signatures

Electronically signed by : Joseph Mulvihill, M.D.; Jan 7 2016 9:31AM EST

(Author)

ANMED HEALTH
Wren Family Medicine

6650 Highway 81 North • Piedmont, South Carolina 29673 • 864.512.5910 • Fax 864.512.5915

MRN: 0000323680

Encounter: 01/07/2016 9:00AM, Joseph Mulvihill M.D.

Patient Information:

JAMES SHERFIELD

TOWNVILLE, SC 29689-0000

(W)

DOB: [REDACTED]
Gender: M
Pref. Lang.: ENGLISH
Race: White
Ethnicity: Non-Hispanic or Latino

Ref. Prov.: Joseph Mulvihill M.D.
PCP: Joseph Mulvihill M.D.

Plan

Sochx: Current smoker

- You need to stop smoking. Though it is not easy, more than half of all adult smokers have quit. We encourage you to write down all the reasons you should quit smoking and set a quit date for yourself. Ask us how we can help. You may also call 1-800-QUIT-NOW for free resources and assistance.; Status:Complete; Done: 07Jan2016
- You need to stop smoking. Smoking affects your lungs, taste buds, skin and energy levels to name a few. Talk to us about how we can help. You may also call the quit line at 1-800-QUIT-NOW for free resources and assistance.; Status:Complete; Done: 07Jan2016

Social anxiety disorder

- Start: Escitalopram Oxalate 20 MG Oral Tablet; TAKE 1 TABLET DAILY
- Follow-up visit in 3 months Evaluation and Treatment Follow-up Status: Need Information - Schedule Follow-up Appointment Requested for: 07Jan2016
- Basic Metabolic Panel; Status:Complete; Done: 07Jan2016 09:45AM
- Blood Count, Complete With Auto Differential; Status:Complete; Done: 07Jan2016 09:45AM
- Progressive Thyroid Panel (PTP); Status:Complete; Done: 07Jan2016 09:45AM

Discussion/Summary

essentially normal labs not fasting.

Verified Results

Blood Count, Complete With Auto Differential 07Jan2016 09:45AM Mulvihill, Joseph

Test Name	Result	Flag	Reference
White Blood Cell	7.60 K/microL		3.50-10.80
Red Blood Cell	4.90 M/microL		4.20-5.80
Hemoglobin	14.5 g/dL		13.0-17.0
Hematocrit	44.8 %		38.5-52.0

Patient: **JAMES D. SHERFIELD**
 Encounter: **01/07/2016 9:00AM**

DOB: XXXXXXXXXX

Mean Cell Volume	91.5 fL	80.0-100.0
Mean Cell Hemoglobin	29.7 PG	25.9-34.9
Mean Cell Hemoglobin Concentration	32.4 g/dL	32.0-36.0
Red Cell Diameter Width	14.2 %	11.0-15.0
Platelet	265 K/microL	150-450
Mean Platelet Volume	9.2 fL	7.0-11.7
Neutrophil Auto Percent	62.7 %	

Per the College of American Pathologist (CAP), reference ranges should not be reported for the percent cell counts when reporting reference ranges for the absolute number counts to prevent misinterpretation of CBC data.

Lymphocyte Auto Percent	27.5 %	
Monocyte Auto Percent	7.2 %	
Eosinophil Auto Percent	2.1 %	
Basophil Auto Percent	0.5 %	
Neutrophil Absolute Number	4.80 K/microL	1.50-8.10
Lymphocyte Absolute Number	2.1 K/microL	0.6-4.8
Monocyte Absolute Number	0.6 K/microL	0.1-1.3
Eosinophil Absolute Number	0.2 K/microL	0.0-0.7
Basophil Absolute Number	0.0 K/microL	0.0-0.2
NRBC #	0.01 K/microL	0.00-0.09
Manual Differential	Not Indicated	
NRBC	0.1 %	

Test Performed by
 Anmed Health Medical Center
 800 North Fant Street
 Anderson, SC 29621
 Phone: (864) 512-1816

Basic Metabolic Panel

07Jan2016 09:45AM

Mulvihill, Joseph

Test Name	Result	Flag	Reference
Glucose	114 mg/dL	H	70-99
Blood Urea Nitrogen	14 mg/dL		6-20
Creatinine	1.10 mg/dL		0.70-1.20
Sodium Level	140 mmol/L		135-146
Potassium Level	4.8 mmol/L		3.5-5.2
Chloride	100 mmol/L		98-107
Carbon Dioxide	29 mmol/L		22-29
Calcium Level Total	9.7 mg/dL		8.6-10.0
Anion Gap(Lytes)	11 mmol/L		4-15
eGFR	>60		

Patient: JAMES D. SHERFIELD
Encounter: 01/07/2016 9:00AM

DOB: [REDACTED]

The NKDEP recommends that eGFR readings of greater than 60 mL/min not be reported due to potential inaccuracies.
eGFR should be correlated with the patient's clinical status.
Chronic kidney disease is defined as either kidney damage or GFR less than 60 ml/min/1.73 m2 for at least three months.

Stages of Chronic Kidney Disease:

Stage	Description	eGFR(mL/min/1.73m2)
1	Kidney damage with normal or increased GFR	greater than 90
2	Kidney damage with mild decreased GFR	60-89
3	Moderate decreased GFR	30-59
4	Severe decreased GFR	15-29
5	Kidney Failure	less than 15 (or dialysis)

NOTE: The MDRD formula as used above for eGFR is not recommended for drug dosage calculations.

GFR (African American) >60

Test Performed by
Anmed Health Medical Center
800 North Fant Street
Anderson, SC 29621
Phone: (864) 512-1816

Progressive Thyroid Panel (PTP) 07Jan2016 09:45AM Mulvihill, Joseph

Test Name	Result	Flag	Reference
Thyroid Stimulating Hormone	0.521 uIU/mL		0.300-4.000
Thyroid Interpretation	SEE RESULTS BELOW		
TSH is normal. Euthyroid, no further testing is necessary. See Comment			
Test Performed by Anmed Health Medical Center 800 North Fant Street Anderson, SC 29621 Phone: (864) 512-1816			

AnMed Health Wren Family Medicine

6650 Highway 81 North
Piedmont, SC 29673
(864) 512-5910

Patient: SHERFIELD, JAMES D
[REDACTED]
TOWNVILLE, SC 29689-0000

Age/DOB: 31 years [REDACTED]
EMRN: 0000323680
OMRN: 0000323680
Home: [REDACTED]
Work: [REDACTED]

Medication List

<u>Medication</u>	<u>Days</u>	<u>Qty</u>	<u>Refills</u>	<u>Start</u>	<u>End</u>	<u>Provider</u> <u>Status</u>
Escitalopram Oxalate 20 MG Oral Tablet TAKE 1 TABLET DAILY.	30	30 Tablet	5	7Jan2016		Mulvihill, Joseph Active
HydrOXYzine HCl - 25 MG Oral Tablet One half to one tablet every 8 hours as needed	0	30 Tablet	1	14Apr2016		Mulvihill, Joseph Active



Mail Payments To
RecordQuest
PO Box 2017
Mount Pleasant, SC 29465-2017

Overnight Shipping and Certified Mail
RecordQuest
537 Long Point Rd Ste 101
Mt Pleasant, SC 29464-8279

Customer Service
Phone: (888) 300-7410
Fax: (866) 560-8109
roi@recordquest.com

Tax ID: 71-1008946

Deliver To

Susannah Ross, Esq.
Ross & Enderlin, P.A.
330 E Coffee St
Greenville, SC 29601-2804

PAID

RQ-ID
907969-09

Requester

330 E Coffee St
Greenville, SC 29601-2804

Phone Fax

Facility

AnMed - Wren Family Medicine

Patient Name

James Sherfield

Patient Date of Birth

[REDACTED]

Total Pages

14

Billable Pages

10

Date

Apr 4 2017

Amount Due

\$0.00

Due Date

No Payment Due

Description	Qty	Cost Per	Cost
Search and handling fee per the Physicians Patient Records Act - Section 44-115-80 - UPDATED FEE as of 6/23/2014 per bill 4354 - http://www.scstatehouse.gov/sess120_2013-2014/bills/4354.htm	1	\$25.00	\$25.00
\$.65 per page for first 30 pages	10	\$0.65	\$6.50
SC Sales Tax - 6.00%	1	\$1.89	\$1.89
Payment by Credit Card			(\$33.39)
		Subtotal	\$33.39
		Payments	\$33.39
		Balance	\$0.00

Thank you for your payment.

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SUSANNAH ROSS
ATTORNEY AT LAW

FACSIMILE TRANSMITTAL SHEET

TO: Dr. Mulvihill	FROM: Susannah Ross
RE: records	DATE: 3/8/2017
FAX NUMBER: (864) 512-5915	TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER: 512-5910	SENDER'S PHONE NUMBER: (864) 242-0029

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY

NOTES/COMMENTS:

I appointed t represent James Sherfield in a legal matter. He informs me that he was a patient of yours and had suffered brain damage in a car accident. Please find the attached release for records. Feel free to call if you have any questions or concerns.

330 E. COFFEE ST, GREENVILLE, SC 29601
PHONE: (864) 242-0029

ROSS & ENDERLIN, P.A.
ATTORNEYS AT LAW

AUTHORIZATION FOR RELEASE RECORDS

DATE: 2/22/12

TO: DR. JOSEPH MICHAEL VENEILL

RE: JAMES SHERFIELD

DOB: [REDACTED]

S.S.# [REDACTED]

TYPE OF RECORDS: MEDICAL

I, JAMES SHERFIELD, hereby request and authorize DR. JOSEPH MICHAEL VENEILL to release any and all records, reports, or information concerning myself to my attorney, SUSANNAH ROSS, or any of its agents and/or employees to inspect the above captioned records and to make or receive copies of any documents found therein. I understand these records may contain information about drug or alcohol abuse.

James Sherfield Jr
Person Authorizing Release

Parent or Guardian

SWORN TO BEFORE ME THIS 22 day of Feb, 2012.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 5/17/12

Please forward all correspondence to:

Susannah Ross, Attorney at Law
Ross and Enderlin, PA
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Susannah@rossenderlin.com

As an agency appointed by the Circuit Court to provide legal services to the poor, we regret being unable to pay for this assistance. If there are any questions concerning the above mentioned request, please contact this office immediately so that we can supply whatever information is needed.

HIPAA Release of information
AUTHORIZATION FORM

I, JAMES SHERFIELD hereby authorize DR. MULVHILL and its affiliates, its employees and agents (collectively _____), to release to SUSANNA K. SS [Insert full name of person/organization] my personal health information maintained by DR. ANNE HEALING, e.g., information relating to the diagnosis, treatment, claims payment, and health care services provided or to be provided to me and which identifies my name, address, social security number, Member ID number) except the following information about me:

[DESCRIBE INFORMATION NOT TO BE DISCLOSED, IF ANY] for the purpose of helping me to resolve claims and health benefit coverage issues. I understand that any personal health information or other information released to the person or organization identified above may be subject to re-disclosure by such person/organization and may no longer be protected by applicable federal and state privacy laws.

This authorization is valid from the date of my/my representative's signature below and shall expire the earlier of 12/31/17 [INSERT DATE/EVENT UPON WHICH THIS AUTHORIZATION EXPIRES] or the date my coverage ends with _____.

I understand that I have a right to revoke this authorization by providing written notice to DR. MULVHILL. However, this authorization may not be revoked if _____, it's employees or agents have taken action on this authorization prior to receiving my written notice. I also understand that I have a right to have a copy of this authorization.

I further understand that this authorization is voluntary and that I may refuse to sign this authorization. My refusal to sign will not affect my eligibility for benefits or enrollment or payment for or coverage of services.

Name of Member: JAMES SHERFIELD

Signature of Member: James Sherfield Jr

Date: 2/22/17

If applicable, Legal Representatives sign below:

By signing this form, I represent that I am the legal representative of the Member identified above and will provide written proof (e.g., Power of Attorney, living will, guardianship papers, etc.) that I am legally authorized to act on the Member's behalf with respect to this authorization form.

Name of Legal Representative: _____

Signature of Legal Representative: _____

Date: _____

Name of Witness: _____

Signature of Witness: _____

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

James David Sherfield, #368150,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-5314

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED
2016 NOV 22 AM 10:27
JW

This matter comes before the Court by way of an application for Post-Conviction Relief filed on September 14, 2016. Respondent made its Return on or about January 12, 2017. An evidentiary hearing into the matter was convened on June 29, 2017 at the Greenville County Courthouse in Greenville, SC at which time the Applicant was present in court and represented by Susannah C. Ross, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's wife also testified on his behalf. Applicant's plea counsel, Randall L. Chambers, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return, and Applicant's records for the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. In 2015, Applicant was indicted in Greenville County for one of Unlawful Conduct Towards a Child (2015-GS-23-9182). Applicant was represented by Randall Lee Chambers, Esquire. On May 12, 2016,

Applicant waived presentment to Grand Jury and pled guilty at the recommendation of the State to Unlawful Conduct towards a Child. On May 12, 2016, the Honorable C. Victor Pyle, Jr., revoked Applicant's existing probation and ran it concurrent to ten years imprisonment with the balance suspended upon the service of seven years, and then probation for five years.

ALLEGATIONS

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

1. Sentencing Objections
 - a. "Applicant contends that his sentence constitutes cruel and unusual punishment and disparity in sentencing ... [Applicant] and his wife were charged with the same crime [and received different sentences]"
 - b. "Violation of plea agreement."
2. Ineffective Assistance of Counsel
 - a. "Counsel failed to file notice of motion to appeal or to file a motion for reconsideration for an unreasonable sentence based on his disability.
 - b. "Counsel failed to explain the circumstances for Applicant and wife's arrest that she received four years' probation for the same charge that defendant was promised the same deal."
 - c. "Counsel failed to follow up and represent his client at the preliminary hearing.
 - d. "Counsel failed to state on record that he had an agreement by the state to give Applicant four years' probation along with his wife for the plea."
 - e. "Counsel failed to raise an affirmative defense of a plea of guilty but mentally ill."
3. Involuntary Guilty Plea
 - a. "Applicant was incompetent at the time of his guilty plea and counsel failed to have an evaluation done.
 - b. "Applicant was in an auto accident at the meeting they had before his next court date and

he was taking medication ... Applicant's auto accident, which occurred before charged offenses were committed, [caused] Applicant to suffer cerebral damage ... and psychiatrist testified that Applicant was incompetent and could not participate in his own defense."

4. Lack of Jurisdiction
 - a. "Because no preliminary hearing was held, the court lacked subject-matter jurisdiction to try Applicant ... An indictment returned before the preliminary hearing is anullity."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel to be credible. This Court further finds that the testimony by Applicant is not credible.

Applicable Law

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, 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, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or

wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an applicant’s right to contest the validity of such a plea is usually foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Ineffective Assistance of Counsel

Applicant testified that he was disabled. Applicant further testified that he had been in accident previously in which he was airlifted from the scene. He testified that as a result of the

accident he suffers from memory problems. Additionally, he testified that he only saw his attorney three times. He testified that he told the plea court that he would have failed a drug test if one would have been administered to him that day. He also testified that his wife was charged with the exact same crime but only received a sentence of four years' probation. However the guilty plea transcript indicated the Applicant had a criminal history. Applicant testified on cross-examination that he had no mental health issues. Applicant's wife testified that he suffered from memory problems.

Counsel testified that he has practiced law since 1992. He testified that he went over the discovery with the Applicant and the charges he was facing. He also testified that he was aware of the medical problems Applicant faced with respect to memory loss. However, Counsel testified that he never thought Applicant lacked the ability to comprehend or was incompetent. Additionally, Counsel testified that he did not appeal Applicant's guilty plea because the Applicant never asked him to do so.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant also failed to prove he was prejudiced by the alleged deficiencies. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel:

Allegation #1

Applicant first alleges that his sentence constitutes cruel and unusual punishment and a disparity in sentencing as he and his wife were charged with the same crime but received different sentences. This Court finds Applicant has failed to carry his burden regarding this

allegation. Initially, this court would note that while the Applicant and his wife were charged with the same crime and ultimately received different sentences, Applicant had a criminal history as evident by a review of the guilty plea transcript.

Applicant's discontent regarding his sentence is not grounds for collateral attack on his sentence. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 272 S.C. 563, 257 S.E.2d 748 (1979). Applicant has failed to show his sentence was a result of any of these factors and Applicant's sentence was legal and in the authorized range of the charge he was facing. Accordingly, this Court dismisses this allegation as being without merit.

Allegation #2

Applicant alleges that Counsel provided ineffective assistance of counsel. Counsel testified that he advised Applicant of all the charges and the potential sentences the charges carried. Counsel also reviewed all of the discovery with Applicant. Counsel testified that it was ultimately Applicant's decision to plead guilty, based on their discussions. Counsel testified that he did not appeal Applicant's guilty plea because the Applicant never asked him to do so.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. Therefore, this allegation is denied and dismissed.

Allegation #3

Applicant alleges that his guilty plea was involuntary because he was incompetent at the time of his plea. This Court finds Applicant has failed to carry his burden regarding this allegation. This Court notes that Counsel testified he never thought Applicant lacked the ability to comprehend or was incompetent. This Court finds Applicant has failed to provide any evidence that he was incompetent. “When a PCR applicant raises issues of competency in the context of a plea proceeding, the two-prong Strickland analysis still applies; however, because of the nature of the claim, proof of deficiency of counsel is intertwined with prejudice.” Ramirez v. State. 419 S.C. 14, 21, 795 S.E.2d 841, 844-45 (2017). “Specifically, when establishing Strickland prejudice in the context of plea counsel’s failure to request a mental competency evaluation, ‘the [applicant] need only show a ‘reasonable probability’ that he was ... incompetent at the time of the plea.’ ” Id. (quoting Jeter v. State. 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)); see also Matthews v. State. 358 S.C. 456, 458-60, 596 S.E.2d 49, 50-51 (2004) (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs). This Court finds Applicant has failed to meet his requisite burden of proof as to either deficiency of counsel or prejudice. Counsel testified there was no reasonable basis on which to have Applicant evaluated or doubt his competency. Applicant

testified he understood his proceedings. Therefore, this allegation is denied and dismissed.

Allegation #4

Applicant also alleges the trial court lack jurisdiction because no preliminary hearing was held. This Court finds Applicant has failed to carry his burden regarding this allegation. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant waived presentment. Accordingly, this Court dismisses this allegation as being without merit.

Therefore, Applicant having failed to prove any deficiency by Counsel as required by Strickland, his application is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. *See* Rule 71.1 (g), SCRCR. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 13th day of February, 2018.



DANIEL D. HALL
Presiding Judge
Thirteenth Judicial Circuit

York, South Carolina

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/12/2014

ARREST WARRANT NUMBER
2014A2330210419

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. ⁵ 2014-GS-23-SPE

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2014

THE STATE

vs.

JAMES DAVID SHERFIELD, JR

chapman

Indictment for

2481

UNLAWFUL CONDUCT TOWARDS A CHILD

VIOLATION §63-05-0070

ENTERED ACCT. *REP*

RECEIVED

NOV 02 2015

Clerk of Court
Greenville County

