

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Aiken County

James R Barber, III, Circuit Court Judge

---

RECEIVED

JUN - 8 2012

SC Supreme Court

ALONZO KEY,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

---

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

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF AIKEN ) SECOND JUDICIAL CIRCUIT

ALONZO KEY, )  
) )  
PLAINTIFF, )  
) 10-GS-02-0458  
VS )  
) )  
STATE OF SOUTH CAROLINA, )  
) )  
DEFENDANT )  
\_\_\_\_\_ )

March 15, 2010  
AIKEN, SOUTH CAROLINA

B E F O R E

THE HONORABLE DOYET A EARLY, JR , JUDGE

A P P E A R A N C E S

STEVE KODMAN, ESQUIRE  
ATTORNEYS FOR THE STATE

CHARLES DAVID HAYES, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

HILDA M JORDAN, CVR  
CIRCUIT COURT REPORTER

Key v State 3/15/10

2

1 ALONZO KEY V STATE OF SOUTH CAROLINA

2 10-GS-02-0458

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7 THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING  
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Key v State 3/15/10

3

1 THE CLERK Mr Key, raise your right hand

2 (WHEREUPON, Alonzo Key was sworn to

3 tell the truth )

4 MR KODMAN Your Honor, before the Court is Mr

5 Alonzo Key He is charged in indictment 2010-GS-02-458,

6 with possession with intent to distribute cocaine base The

7 state has reached an agreement where he will plead guilty on

8 that indictment after waiving presentment to a new charge

9 with possession with intent to distribute within the

10 proximity of a school In exchange for his plea the state

11 will be dismissing a separate indictment for possession of

12 cocaine base That would be -- we will be dismissing

13 indictment 10-GS-02-459

14 THE COURT This is a negotiated sentence?

15 MR KODMAN The negotiated sentence, Your Honor,

16 is 12 years suspended to eight years with three years of

17 probation And, again, all other charges currently pending

18 will be dismissed

19 THE COURT Prior record?

20 MR KODMAN Your Honor, in 1989, he has a

21 possession of cocaine Also in '80 -- in 1990, he has a

22 shoplifting He had a PWID within proximity of a school in

23 1993, and he has a PWID cocaine second, that's also from

24 that same 1993 It appears on that charge he was sentenced

25 by Judge Peeples to 30 years and a \$100,000 suspended to 25

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4

1 years and \$50,000, with five years probation to follow

2 Your Honor, we think he got out of jail around 2004 on  
3 that charge

4 THE COURT What's the substance that we're dealing  
5 with here?

6 MR KODMAN It was 2 75 grams in one location  
7 This was a trash pull where they subsequently executed a  
8 search warrant Had 2 75 grams in one location and another  
9 location 2 22 grams

10 THE COURT Who was the arresting agency?

11 MR KODMAN Aiken Department of Public Safety,  
12 Your Honor

13 THE COURT And are they in agreement with this?

14 MR KODMAN They are, Your Honor

15 THE COURT I assume that PWID proximity was a  
16 serious charge?

17 MR KODMAN Your Honor, I don't believe it was a  
18 serious charge, because distribution second, he didn't do 85  
19 percent of He obviously did something less than 85 percent  
20 if he got 25 years

21 THE COURT How is it an 85 percent This isn't an  
22 85 percent sentence?

23 MR KODMAN No, sir, but it is a strike

24 THE COURT So why wouldn't the other one be a  
25 strike?

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5

1 MR KODMAN I haven't looked into that, Judge, but  
2 I can find out

3 THE COURT Well, '93 might have been before the  
4 strike laws I'm not sure

5 Well, this is a lot easier sentence compared to the one  
6 he got before

7 MR KODMAN Yes, Your Honor

8 THE COURT All right, Mr Hayes, have you advised  
9 your client of his charges contained in the indictment,  
10 i e , possession with intent to distribute near a school  
11 with crack cocaine?

12 MR HAYES I believe this one wasn't indicted,  
13 Your Honor He was actually going to waive presentment on  
14 this one

15 THE COURT He wasn't indicted with possession with  
16 intent to distribute cocaine

17 MR KODMAN Yes, sir, and he's pleading to the  
18 proximity

19 THE COURT Right

20 MR HAYES Yes, sir, I have

21 THE COURT You advised him of his right to have  
22 this sent to the Grand Jury before we move forward?

23 MR HAYES I have, Your Honor

24 THE COURT Have you advised him it carries a  
25 minimum of 10 up to 15 years?

Key v State 3/15/10

6

1 MR HAYES I have, Your Honor

2 THE COURT Have you advised him that this is  
3 classified as serious?

4 MR HAYES I have, Your Honor

5 THE COURT Have you advised him of that  
6 constitutional strike?

7 MR HAYES Yes, sir

8 THE COURT Have you advised him of his right to a  
9 trial by jury?

10 MR HAYES I have, Your Honor

11 THE COURT How does he wish to plead?

12 MR HAYES Guilty, Your Honor

13 THE COURT Do you agree with that decision?

14 MR HAYES I do

15 THE COURT Mr Key you stand before me, you were  
16 initially indicted for possession with intent to distribute  
17 crack and they're allowing you to plead to possession with  
18 intent to distribute in proximity, which carries 10 to 15  
19 years, do you understand that?

20 MR KEY Yes, sir

21 THE COURT That indictment has not been sent to  
22 the Grand Jury You have the right to have it heard by the  
23 Grand Jury before we move forward Do you understand that?

24 MR KEY Yes, sir

25 THE COURT Do you wish to give that right up and

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7

1 go forward today?

2 MR KEY Yes, sir

3 THE COURT Do you understand that this is  
4 classified as a serious offense?

5 MR KEY They told me it was going to be non-  
6 violent

7 THE COURT Well, it is non-violent But did you  
8 know it's classified as serious?

9 MR KEY Yes, sir Yes, sir

10 THE COURT Do you know what that means?

11 MR KEY A strike A strike

12 THE COURT Correct Do you know what it means if  
13 you get three of these strikes?

14 MR KEY I think you get a life sentence, right?

15 THE COURT You are subjecting yourself with the  
16 possibility of life imprisonment without the possibility of  
17 parole Do you understand that?

18 MR KEY Yes

19 THE COURT Understanding the charges, possible  
20 sentence, the classification of serious, how do you wish to  
21 plead guilty or not guilty?

22 MR KEY Uh -- classification of serious --

23 THE COURT Sir?

24 MR KEY Classification of serious, I --

25 THE COURT Listen to my question, please

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8

1 Understanding this is classified as serious You  
2 understand that?

3 MR KEY Yes

4 THE COURT You can get anywhere from 10 to 15  
5 years Do you understand that?

6 MR KEY Yes, sir

7 THE COURT Understand what you're charged with?

8 MR KEY Yes, sir

9 THE COURT Understanding all of that, how do you  
10 wish to plead guilty or not guilty?

11 MR KEY Guilty

12 THE COURT When you plead guilty you will give up  
13 your right to remain silent, do you understand that?

14 MR KEY Yes, sir

15 THE COURT You will further give up your right to  
16 a jury trial You can ask for a trial the state will give  
17 you one, at which time you would have the right to cross-  
18 examine everybody who testified against you You would have  
19 the right to present your own case, calling your own  
20 witness, introduce relative exhibits You can testify in  
21 your own defense if you wanted to If you chose not to  
22 testify I will tell the jury they cannot hold your failure  
23 to testify against you in any manner whatsoever And in  
24 fact I will instruct them that they cannot even consider the  
25 fact that you did not testify when they are deliberating

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9

1 your guilt or innocence You would be presumed innocent  
2 throughout the trial, and the state of South Carolina would  
3 have the burden of proving you guilty beyond a reasonable  
4 doubt to a jury of 12 people, and in order for that jury to  
5 convict you all 12 people would have to unanimously agree  
6 that you were, in fact, guilty Even if you were found  
7 guilty you would still have the right to an appeal

8 Do you understand your rights to a trial by jury?

9 MR KEY Yes, sir

10 THE COURT Understanding those rights, do you  
11 still wish to plead guilty or do you want me to set this  
12 matter for trial?

13 MR KEY Plead guilty

14 THE COURT Other than the negotiations, has  
15 anybody promised you anything, held out any hope of reward  
16 or threatened you with anything in any manner in order to  
17 make you plead guilty?

18 MR KEY No, sir

19 THE COURT Are you satisfied with the  
20 representation provided to you by Mr Hayes?

21 MR KEY Yes, sir

22 THE COURT In your opinion, has he had enough time  
23 to spend with you, enough time to research the law, enough  
24 time to investigate the facts so that he can properly defend  
25 you here, today?

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10

1 MR KEY Yes, sir

2 THE COURT Is there anything else you want him to  
3 do for you today before we move forward other than speak up  
4 on your behalf?

5 MR KEY No, sir

6 THE COURT And are you pleading guilty of your  
7 free will and accord?

8 MR KEY Yeah

9 THE COURT All right, sir Today are you under  
10 the influence of any alcoholic beverages, drugs, or  
11 prescription medication?

12 MR KEY No, sir

13 THE COURT Did you, sir, here in Aiken County on  
14 or about September 21, 2009, have in your possession a  
15 quantity of crack cocaine with intent to distribute it  
16 within the proximity of the --

17 MR KODMAN Fairfield Middle School, Your Honor

18 THE COURT Fairfield Middle School

19 MR KEY Well, they said it was in the house, in  
20 the walls I'm the owner of the premises so they charged me  
21 with it

22 THE COURT All right Are you pleading guilty to  
23 that?

24 MR KEY They said the warrant was good

25 THE COURT I didn't ask you that You lived in

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11

1 the house?

2 MR KEY Yes, sir

3 THE COURT The substance was in the house?

4 MR KEY Yes, sir

5 THE COURT Are you pleading guilty to possession  
6 of crack cocaine with the intent to distribute?

7 MR KEY Uh -- I can't say I was in possession

8 THE COURT Can't say you were in possession?

9 MR KEY No

10 THE COURT Okay Set a date for trial

11 MR KODMAN It's on the trial list, Your Honor

12 MR HAYES Can I talk with him in the back for a  
13 few minutes?

14 THE COURT Yes

15 (Off the record Recess while Mr Key confers with his  
16 attorney )

17 (On the record )

18 MR KODMAN His attorney is requesting that he be  
19 allowed to plea under North Carolina verses Alford And I  
20 was just saying I could tell the court what the facts were  
21 before the court decided if they wanted to take the Alford  
22 plea on it

23 MR HAYES I believe, Your Honor, the confusion  
24 was on whether it was a serious issue I explained it as a  
25 strike and I think it was hanging him up He indicated to

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12

1 me in the back that he wishes to accept the offer, but I'm  
2 wondering --

3 THE COURT The offer or the Alford?

4 MR HAYES The offer, as it was, but I'm wondering  
5 if it would be more appropriate if it was North Carolina  
6 verses Alford

7 MR KODMAN We don't have any objection to it,  
8 Your Honor

9 THE COURT We're all the way through it He's  
10 already pled guilty up one side and down the other Tell  
11 him to come back out I'll ask him some questions  
12 (Mr Key reenters the courtroom )

13 THE COURT All right, Mr Key, let's see if we can  
14 get back on track

15 MR KEY Yes, sir

16 THE COURT When you plea guilty you have to admit  
17 your guilt?

18 MR KEY Yes, sir

19 THE COURT You have to give up your right to  
20 remain silent You give up your right to trial by jury  
21 We've been through all of that Then I have to find out if  
22 you're pleading guilty because you are guilty I don't want  
23 you pleading guilty if you're not guilty The law in this  
24 state is if you live somewhere and you find drugs in the  
25 walls you are deemed to be in, at least, constructive

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13

1 possession of those drugs, and if you were tried and the  
2 state were able to prove that, and the jury would find you  
3 guilty, and I imagine you were living in that house and they  
4 find drugs in that house, then that's what you're pleading  
5 guilty to

6 MR KEY Yes

7 THE COURT Pardon?

8 MR KEY I plead guilty to that, sir

9 THE COURT All right Don't -- are you pleading  
10 guilty because you are guilty of that?

11 MR KEY I'm guilty, sir

12 THE COURT All right You understand what the  
13 negotiations are?

14 MR KEY Yes, sir

15 THE COURT All right I'll listen to it, and if I  
16 can accept it I will, and if I can't I'll tell you and you  
17 can talk to your lawyer Is that fair enough?

18 MR KEY Yes, sir

19 THE COURT Any questions you want to ask me about?

20 MR KEY No

21 THE COURT Once again, are you pleading guilty  
22 because you are guilty?

23 MR KEY Yes

24 THE COURT All right I'll accept it

25 MR KODMAN Thank Your Honor This is an Aiken

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14

1 Department of Public Safety case Narcotics officers with  
2 the department received numerous complaints of drug sales at

3 They instructed the solid waste  
4 supervisor for the Aiken Department of Public Works to  
5 conduct a trash pull The trash can was taken in on the  
6 normal day outside the -- from outside the front of the  
7 house where it was normally placed when they were ready for  
8 pickup

9 Narcotics investigators went through the can that  
10 included items, mail addressed to the defendant, and an  
11 Angela Pollard, a baggie that contained a quantity of a  
12 green plant-like material that was tested and found to be  
13 marijuana, and a baggie that contained crumbs of white,  
14 rock-like material that was field tested and found to be  
15 cocaine And numerous twisted and torn baggies that  
16 indicated the packaging of narcotics for distribution

17 Based on this information officers sought and received  
18 a search warrant in this matter, and on September 21, 2009,  
19 a search warrant was executed It began at  
20 in the city of Aiken This was found to be the resident of  
21 the defendant, Alonzo Key When they executed the search  
22 warrant he was the only person at the residence and he said  
23 that he was the only resident of the address

24 During the search of the residence the officers located  
25 digital scales in the kitchen drawer and in the front

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15

1 bedroom Rolling papers in Mr Key's bedroom, two crack  
2 pipes, and a push rod in his bedroom A Pyrex measuring cup  
3 with cocaine residue in the kitchen A bag of crack cocaine  
4 in Mr Key's bedroom and a bag of crack cocaine in the  
5 kitchen cabinet

6 All the evidence was collected by the investigators and  
7 Detective Sawyer, and Mr Key was arrested and placed in the  
8 Aiken County Jail

9 Your Honor, I mentioned previously it was a -- the  
10 quantities of the crack cocaine, it did come back positive  
11 for cocaine base, 2 75 grams from one of the bags The  
12 other bag that was found had 2 2 grams of cocaine base

13 MR HAYES May it please the Court, Your Honor  
14 Mr Key is 50 years of age He is self-employed In the  
15 past has worked as a carpenter, a plumber, heavy equipment  
16 operator, and auto-mechanic, yet he does not hold a  
17 certificate in any of those He's been self-taught He's  
18 not criminally on any probation, Your Honor He did attend  
19 Aiken High School and graduated in 1979, which he graduated  
20 from high school and enlisted in the Army from 1979 to 1981  
21 He was a PFC and he had an honorable discharge, Your Honor  
22 He is divorced, Your Honor He has two children who are  
23 grown now and live currently in the city of Aiken He's got  
24 fair health Your Honor, in this case we've done extensive  
25 looking and research regarding the search warrant and it

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16

1 concerns my client I've explained those issues with him

2 We were prepared today to go forward with a trial and

3 pick a jury The offer from the solicitor this morning

4 After discussing that offer with my client and discussing

5 what the options were with trial, take the offer or plea

6 straight up He indicated to me that he wished to take this

7 offer and negotiation and we'd ask that the Court

8 respectfully to accept it

9 THE COURT Anything you want to say, Mr Key?

10 MR KEY No, sir

11 MR HAYES Your Honor, my client did want me to

12 ask to make sure that on record it was noted that the

13 mistake as to where it was checked as violent was corrected

14 to non-violent

15 THE COURT It is

16 MR HAYES Thank you, Your Honor Your Honor,

17 he's been in jail for 175 days

18 THE COURT Sentence of the Court is that you be

19 committed to the Department of Corrections for 12 years

20 I'll suspend it on the service of eight Or upon service of

21 eight, I'll suspend it and put you on probation for three

22 I'll give you credit for time served Condition of

23 probation you pay the public defender, do random alcohol and

24 drug tests and substance abuse counseling, and 100 hours of

25 public service

Key v State 3/15/10

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Good luck to you

MR KODMAN Thank Your Honor

MR Thank Your Honor

(This proceeding was concluded )

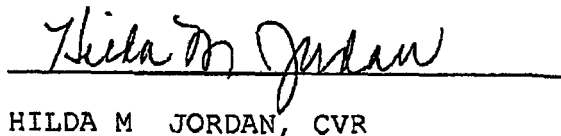
Key v State 3/15/10

18

CERTIFICATE

1  
2 1, THE UNDERSIGNED HILDA M JORDAN, CVR, OFFICIAL COURT  
3 REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF  
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A  
5 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE  
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF  
7 THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF  
8 GENERAL SESSIONS, AIKEN COUNTY, SOUTH CAROLINA, ON THE 15TH  
9 DAY OF MARCH, 2010

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,  
11 NOR INTEREST IN ANY PARTY HERETO

12  
13  
14   
15 HILDA M JORDAN, CVR

16  
17  
18 COLUMBIA, SOUTH CAROLINA

19 OCTOBER 14, 2010  
20  
21  
22  
23  
24

1

- (c) \_\_\_\_\_
- 5 The date upon which sentence was imposed and the terms of the sentence
- (a) Sentence date 3/15/10 term of 12 Years upon
- (b) the service of 8 Years + suspended term of 3
- (c) Years probation
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
- 7 Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
- 8 If you answered "yes" to (7), list.
- (a) the name of each Court to which you appealed
- i N/A
- ii \_\_\_\_\_
- iii \_\_\_\_\_
- (b) the result in each such Court to which you appealed
- i N/A
- ii \_\_\_\_\_
- iii \_\_\_\_\_
- (c) the date of each such result
- i N/A
- ii \_\_\_\_\_
- iii \_\_\_\_\_
- (d) if known citations of any written opinion or orders entered pursuant to such results
- i N/A
- ii \_\_\_\_\_
- iii \_\_\_\_\_
- 9 If you answered "no" to (7), state your reasons for not so appealing
- (a) Counsel did not advise of such avenue
- (b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Violation U.S.C.M. Const. Amend. 4, 5, 6, 14
- (b) Violation U.S.C.A. Const. Amend. 4, 5, 6, 14
- (c) Violation U.S.C.M. Const. Amend. 4, 5, 6, 14
- 11 State concisely and in the same order the facts which support each of the grounds set out in (10)
- (a) Warrantless entrance of his home and without Probable Cause.
- (b) Warrantless Seizure and arrest of person without Probable Cause.
- (c) Warrantless Search of Home and Seizure of Contraband evidence without Probable Cause.
- 12 Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
- 13 If you answered "yes" to any part of (12), list with respect to each petition, motion or application
- (a) the specific nature thereof
- i N/A
- ii \_\_\_\_\_
- 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 N/A

ii \_\_\_\_\_

iii \_\_\_\_\_

(b) the proceedings in which each ground was raised

i N/A

ii \_\_\_\_\_

iii \_\_\_\_\_

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

(a) Court. Howard. 4, 5, 6, 14 plead guilty  
 (b) Court. Howard. 4, 5, 6, 14 plead guilty  
 (c) Court. Howard. 4, 5, 6, 14 plead guilty

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

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

- 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 MR. David Hayes, Second Judicial Circuit  
Public Defender P.O. Box 2247 Kitter, SC 29802

ii \_\_\_\_\_  
 iii \_\_\_\_\_

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

i Preliminary Hearing  
Guilty Plea

ii \_\_\_\_\_  
 iii \_\_\_\_\_

19 State clearly the relief you seek in filing this application

Defendant request Dismissal of all Charges and  
expungement from his record, and request immediate release  
from his unconstitutional Confinement and returned back to Society

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

NO

STATE OF SOUTH CAROLINA )

County of Albemarle )

VERIFICATION

I, Alonzo Key #192844, 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

Alonzo Key

SWORN to and subscribed before me this 30th  
 day of August, 2011

Barnd D. H. H. H. (L.S.)  
 Notary Public

My Commission Expires 3/1/2011

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

I, Alonzo Kay #192814, 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.

Alonzo Kay  
Applicant

SWORN or affirmed to and subscribed before me this  
30th day of August, 2010  
Pamela D. Hathfield  
 Notary Public

My Commission Expires 3/15/2011

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF  
GENERAL SESSIONS

INDICTMENT CASE # 200GS0200458

STATE

AW# 1091944

VS

Date of Offense 9/21/09

Alonzo Key

SC Code § 44-53-0375(B)(1)

COR Code # 3014

CERTIFICATE OF MAILING

I Alonzo Key #192814, certify that on the 30<sup>th</sup>  
day of August 2010, I served the original of a Post-Conviction  
Relief With Memorandum in Support of in the above referenced  
matter upon Aiken County Clerk of Courts, and the Attorney General's  
Office by depositing same in the U.S. Mail in an envelope with  
sufficient postage affixed there to for first class delivery address-  
ed as follows

Liz Gardard  
Clerk of Court  
P.O. Box 583  
Aiken South Carolina 29802

Attorney General  
Post Office Box 11549  
Columbia, South Carolina  
29211-11549

Sl. Alonzo Key  
Alonzo Key #192814  
WRCI 0-1-20  
P.O. Box 189  
Rembert, SC 29128

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

STATE

VS

Alonzo Key

IN THE COURT OF  
GENERAL SESSIONS

INDICTMENT CASE

#2010GS0200458

AW # 10 91944

Date of Offense 9/21/09

SC Code § 44-53-0375(B)(1)

C D R Code # 3014

IN FORMA PAUPERIS

I Alonzo Key #192814 hereby apply for leave to proceed in this case, Post-Conviction Relief with Memorandum in Support of, without prepayment of fees or costs or security there for in support of there for 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 declare and believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security there for.

Sworn or affirmed to and Subscribed  
before me this 30th day of

August, 2010

Notary Public Permelia D. Hill

My Commission Expires 3/6/2011

Date 8/30/10

APPLICANT

S/Alonzo Key

Alonzo Key #192814

W R C I D-1-20

P O Box 189

Rembert, SC 29128

STATE OF SOUTH CAROLINA IN THE COURT OF  
 COUNTY OF AIKEN GENERAL SESSIONS  
 INDICTMENT CASE #  
 STATE 2010GS0200458  
 VS AW# 1091944  
 Alonzo Key Date of Offense 9/21/2009  
 SC Code § 44-53-0375(B)(1)  
 CDR Code # 3014

POST-CONVICTION RELIEF  
 MEMORANDUM IN SUPPORT OF

Preliminary Hearing date 1/27/2010

Court Reporter  
 Mrs Hilda Jordan  
 SC Court Administration  
 1015 Sumter Street 2nd Floor  
 Columbia, SC 29201-3739

Attorney for defendant  
 Mr David Hayes  
 Second Judicial Circuit  
 Public Defender  
 P.O. Drawer 2247  
 Aiken South Carolina 29802

Sentencing date 3/15/2010

PRESIDING JUDGE  
 Mr Jack Early

Date August 30, 2010

APPLICANT  
Alonzo Key  
 Alonzo Key #192014  
 WRCE D-1-20  
 P.O. Box 189  
 Rambert, SC 29828

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## EXHIBITS

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## AUTHORITY

|                      |         |                          |
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## SENTENCING

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## ISSUES

- (1) Whether Counsel ineffective assistance when he failed to challenge warrantless entry of Defendant's Home and Bed room without probable cause. 3
- (2) Whether Counsel ineffective assistance when he failed to challenge warrantless seizure and arrest of person without probable cause. 5
- (3) Whether Counsel ineffective assistance when he failed to challenge warrantless search of House and seizure of Contraband and Drug evidence without probable cause. 8

## Conclusion

Counsel's ineffective assistance was unreasonable under the prevailing professional norms. Had not been for Counsel's unprofessional representation, defendant would not have plead guilty.

WHEREFORE Based upon all the above allegations, defendant request Dismissal of all charges and an affidavit, Search Warrant, Warrants, and request expungment of all charges from his record, and request his immediate release from his unconstitutional confinement, and restore him back to Society

Date August 30, 2010

Alonzo Key  
 Alonzo Key #192814  
 WRCI D-1-20  
 PO BOX 189  
 Rembert, SC 29128

## INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that his attorney's ineffective assistance of counsel when he failed to raise and motion to reserve, motion to suppress or exclude evidence in violation of Fourth, Fifth, and Fourteenth Amendment claims at preliminary hearing, dated 1/27/10

Defendant argues that Fourth, Fifth and Fourteenth Amendment claims are Meritorious

Counsel's performance was unreasonable under the prevailing professional norms. Had not been for Counsel's unprofessional representation, defendant would not have plead guilty Cherry v State 300 SC 115, 117-118, 386 S E 2d 624, 625 (1989) Strickland v Washington 466 US 668, 104 S Ct. 2052, 80 L Ed 2d 674 (1984), USCA Cont Amend 15, 6, 14

[<sup>1,2</sup> Exhibit] Defendant argues that on the date of 10/14/09, while he was at the Arden County Detention Center that he asked his Attorney in writing after outlining the day of his arrest 9/29/09, for a Motion to Suppress Evidence prior to trial, Brady discovery, and Dismissal against him of all charges on the date of 11/11/09, defendant again wrote his attorney another letter outlining the day of his arrest 9/29/09, the avail to to any of the above

[<sup>3</sup> Exhibit] Defendant argues that on the day of 1/28/10, one day after his preliminary hearing date at 1/27/10 that he wrote his attorney outlining a few of the Fourth, Fifth, and Fourteenth Amendment Violations that occurred on the day of his arrest 9/29/09. He requested from his attorney why did he not challenge any of the above allegations or Motion to Suppress or exclude evidence prior to trial, he claimed at the preliminary hearing that he had no motions.

[<sup>4</sup> Exhibit] On 2/02/10 I wrote De Grant Gibbons Circuit Defender, addressing the issues of ineffective assistance of counsel, referring to Mr David Hayes, and De Grant Gibbons. Stated that he felt that I was receiving competent representation and he saw no reason to change attorney the issue of Suppression motion is an issue that has

- to be taken up the week of trial and ~~can~~ not be addressed before then

[<sup>5</sup>Exhibit] On the date of 3/15/10 I Alonzo Key plead guilty to charges  
Case # 1-091222 1091944 1091945 I was sentenced to 12 years  
Suspended to 8 years with 3 years probation I was represented  
by attorney David Hayes. The presiding Judge was Judge Early

## POST-CONVICTION RELIEF DAY OF ARREST

Defendant argues that on the day of 9/20/09 at  
Aiken, SC at approximately 8:30 o'clock,  
that he was asleep in his bed when his outside door was broken in  
then his bed room door was broken in. he was then told don't move  
by one of the officers, there was about five (5) or more officers  
standing over him with guns drawn and pointed at his head and  
and chest area officers then put hand cuffs on him and led him  
to his front porch area and seated him in a chair on the porch  
to see forty (40) or more unidentified officers standing in his  
front yard with guns also, with an armed truck, and two police  
cars, one pointed at his house officers began to search  
his house for contraband and drug evidence, after officers  
findings he was rearrested and transported to town to  
the booking and finger printing room After being booked and  
finger printed he was read the Search Warrant and Warrant  
for his arrest for contraband and drugs. Upon the reading of the  
Warrants defendant was transported to the County Jail in hand cuffs,  
Search Warrants and Warrants was transported with him, but placed  
in the Arken County personal property rather than given to  
defendant

## INEFFECTIVE ASSISTANCE OF COUNSEL

1 WHETHER COUNSEL INEFFECTIVE  
ASSISTANCE WHEN HE FAILED TO CHALLENGE  
WARRANTLESS ENTER OF DEFENDANT'S HOME  
AND BED ROOM WITHOUT PROBABLE CAUSE

[<sup>6289</sup>EXHIBITS] Defendant argues that officers actions constituted a warrantless enter of his home and warrantless enter of his bed room. When officers failed to produce a search warrant or a warrant prior to or shortly after entering his home, but first announce want or production of a search warrant or warrant was at booking and finger printing room officers lacked probable cause

Defendant argues that the affidavit upon which the search warrant was issued was insufficient to show that the affiant's informant was reliable, that information was based on personal knowledge hearsay or suspicion

Affidavit reads as follows.

Detective Medline has received numerous complaints of drug sales and use at

Defendant argues that the above statement is a mere conclusory statement and allege no facts as to the reliability of an informant or corroborate informant's allegations and did not provide magistrate with sufficient information concerning informant's liability upon which magistrate could base probable cause determination USCA Const Amend 14, 5, 6, 14

Affidavit further reads as follows.

Det Medlin instructed Bill Martin, Solid Waste Supervisor for the Alameda Department of Public Works, to collect the trash cans from - on Tuesday, September 8, 2009 this day was the scheduled day for trash collection from this residence due to the labor day holiday. Mr Martin collected the two trash cans from the road side in front of the house which is the normal location for the cans to

be placed when they are ready for pick up Mr Martin transferred the cans to Det Medlin at ADPS HQ Detective Medlin and Detective Sawyer searched the contents of the cans and found evidence of the use or sale of illegal narcotics. The items found include mail that indicates that the trash was from 824 Barnwell Ave NE, addressed to Angelina Pollard and Alonzo Key at 824 Barnwell Ave NE a baggie that contained a quantity of green plant material that was tested and found to be marijuana, a baggie that contained crumbs of white rock like material that was field tested and found to be cocaine, and numerous twisted and torn baggies that indicate the packaging of narcotics for distribution. This officer Verity believes that probable cause exists as to the presence of illegal narcotics at this residence.

Defendant further argues that the affidavit upon which the Search Warrant was based and issued was insufficient to show that the Detectives was reliable, that information accumulated from a trash pull and based on personal knowledge and hearsay or suspicion, that Detectives erred in attempting to use contraband or drug evidence found in trash can after a trash dump as evidence under the "abandonment" exception to the warrant requirement of the Fourth Amendment, as probable cause to seek a Search Warrant. USCA Const Amend. 4

Defendant argues that once trash cans are placed outside of premises on the roadside that trash can contents are "abandoned" in law of Search and Seizure, however, question is whether defendant has in disregarding property, relinquished his reasonable expectation of privacy so that it's seizure and search is reasonable within Fourth Amendment limits. USCA, Const Amend. 4, State v Dupree 462 SE 2d 279, 319 SC 459 certiorari denied 116 S Ct 951, 516 US 1131, 1331 L Ed 2d 875. In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein.

Defendant argues that affidavit was defective because it did not set forth any information as to the reliability of the informant nor was the information corroborated. Id in State v. Johnson, 302 S.C. at 247, 395 S.E. 2d at 169 (1990)

Affidavit was defective under the "abandonment" exception to the warrant requirement of the Fourth Amendment. See State v. Dupree, 461 S.E. 2d 279 S.C. (1995) at 281

Affidavit does not include sufficient information to allow a magistrate to determine probable cause.

A search warrant may issue only upon a finding of probable cause. State v. Weston, 329 S.C. 287, 494 S.E. 2d 801. The United States Supreme Court adopted a totality of the circumstances test to assess informant information as to the basis for a probable cause affidavit in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed. 2d 527 (1983). Under this test, the task of the issuing magistrate is simply to make a practical common sense decision whether the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had substantial basis for concluding that probable cause existed. State v. Philpot, 317 S.C. 458, 454 S.E. 2d 905 (Ct. App. 1995)

Defendant argues that without any information concerning the reliability of informant "the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached magistrate, as the Constitution requires, but instead, by a police officer engaged in often competitive enterprise of ferreting out crime, or, as in this case, by an unidentifiable informant. See State v. Johnson, 393 S.E. 2d 167 S.C. (1990) pg. 169-170. The courts must insist that magistrate purport to perform his 'neutral and detached' function and not serve as a rubber stamp for the police. State v. Leon, 468 U.S. 897, 920, 104 S.Ct. 3405, 3419, 82 L.Ed. 2d 677 (1984). State v. Weston, 494 S.E. 2d 801 (S.C. 1997)

## Conclusion

Counsel, ineffective assistance when he failed to challenge warrantless entrance of home and bed room of defendant, without probable cause. Counsel, ineffective assistance when he failed to challenge the first announcement and reading of Search Warrant and arrest warrant at booking and finger printing room. Counsel, ineffective assistance when he failed to challenge affidavit in support of Search Warrant and the Search Warrant, when affidavit and Search Warrant failed to contain sufficient underlying facts and information upon which the Magistrate can make a probable cause determination. USCA Const Amend 45 § 14

Wherefore Based upon the above allegations, defendant request Dismissal of all charges and all affidavit Search Warrant, warrants and request expungement of all charges from his record, and request his immediate release from his Unconstitutional Confinement, and restore him back to Society.

## 2. WHETHER COUNSEL INEFFECTIVE ASSISTANCE WHEN HE FAILED TO CHALLENGE WARRANTLESS SEIZURE AND ARREST OF PERSON WITHOUT PROBABLE CAUSE TO ARREST

[Exhibits] 6029 Defendant argues that officers Warrantless entrance into his home and warrantless entrance into his bed room lacked probable cause to immediately seize and arrest him when they had no reasonable trustworthy information sufficient to warrant a prudent man in believing that he had committed - an offense. Defendant argues that Officers Warrantless entrance into his bed room where he was asleep in bed, and pointed and presented guns at his head and chest area, and said don't move, that officers restrained his liberty to a point where he was not free to leave and that he was ~~immediately~~ immediately handcuffed. Defendant argues that officers action were Unconstitutional and caused a Seizure and an arrest without probable cause. USCA Const Amend 45, 14

See State v. Robertson 518 SE 2d 269 (SC. 1999) P.9-276

[14.15] When determining the Constitutional Validity of an arrest a Court must consider, at the moment the arrest was made, the officers had probable cause to make it - whether at moment the facts and circumstances within their knowledge and of which they had reasonable trustworthy information were sufficient to warrant a prudent man in believing that the arrestee had committed -- an offense. See Beck v. Ohio, 379 U.S. 89, 91 & 5 S Ct 223, 13 L Ed 2d 142 (1964)

Whether probable cause existed depends upon totality of the circumstances surrounding the information at the officers disposal State v. George 723 S.C. 496, 476 SE 2d 903 (1996)  
USCA Const Amend 4, 5, 14

Defendant argues that the only information at the officers disposal is said information in affidavit and search warrant sworn to on the date of 9/11/09, served on the date of 9/11/09. Affidavit and search warrant was read to him for the first time at the booking and finger printing room. After a warrantless entrance of home and seizure of person, arrest of person, and search of home for contraband and drug evidence in undisclosed areas, he was rearrested without probable cause to arrest Sibron v. New York, 392 U.S. 40, 88 S Ct 1889, 20 L Ed 2d 917 (1968). The fruits of such a search, however, cannot be used to justify the arrest. See State v. Moultrie 451 SE 2d 34 (SC App 1994)

WHEREFORE, Based upon all the above allegations defendant request dismissal of all charges and all affidavit, search warrant, and warrants, and request expungement of all charges from his record, and request his immediate release from his unconstitutional confinement, and restore him to society.

### 3 WHETHER COUNSEL INEFFECTIVE ASSISTANCE WHEN HE FAILED TO CHALLENGE WARRANTLESS SEARCH OF HOUSE AND SEIZURE OF CONTRABAND AND DRUG EVIDENCE WITHOUT PROBABLE CAUSE

[<sup>648,9</sup> EXH. 12] Defendant argues that contraband and drug evidence should be suppressed or excluded as evidence, when officers performed a warrantless arrest of person prior to search of home, that probable cause did not exist to immediately seize and arrest him, that first announcement of affidavit and search warrant was at book up and finger printing room. He argues that affidavit and search warrant is insufficient on its face to establish probable cause and not properly supplemented by sworn oral testimony at preliminary hearing dated 1/27/10. He argues that officers warrantless entrance of his home, and warrantless entrance of his bedroom, lacked probable cause to immediately seize and arrest him, when warrantless seizure and arrest of person precedes a search of home for contraband and drug evidence to state an offense, when no prior offense had been committed. He argues that fruits of such a search, however, cannot be used to justify the arrest. State v. Moultrie, 451 SE 2d 34 (SC App 1994) Sibron v. New York, 392 US 40, 88 S Ct 1889, 20 L Ed 2d 917 (1968)

Counsel's ineffective assistance and his representation fell below professional norms. Const Amend 4<sup>th</sup>, 5<sup>th</sup>

WHEREFORE Based upon the above allegations defendant request Dismissal of all charges and all affidavit, search warrant, and warrants, and request expungement of all charges from his record, and request his immediate release from his unconstitutional confinement, and return him back to Society

## Conclusion

Counsel's ineffective assistance when he failed to challenge warrantless entrance of home and bed room of defendant, without probable cause. Counsel's ineffective assistance when he failed to challenge warrantless seizure of person and arrest of person without probable cause. Counsel's ineffective assistance when he failed to challenge warrantless search of house and seizure of contraband and drug evidence without probable cause. Counsel's ineffective assistance when he failed to challenge first announcement and reading of search warrant and arrest warrant at booking and fingerprinting room.

Counsel's ineffective assistance when he failed to challenge affidavit in support of search warrant, and search warrant when affidavit and search warrant, failed to contain sufficient underlying facts and information upon which the Magistrate can make a probable cause determination. D.S.C.A. Cont'd Amend 4, 5 6, 14

Counsel's ineffective assistance was unreasonable under the prevailing professional norms. Had not been for Counsel's unprofessional representation, defendant would not have pleaded guilty.

WHEREFORE Based upon all the above allegations, defendant request dismissal of all charges and all affidavit, search warrant, warrants, and request expungement of all charges from his record, and request his immediate release from his unconstitutional confinement, and restore him back to society.

Date August 30, 2010

APPLICANT  
S. Alonzo Key  
 Alonzo Key #192814  
 WRCI D-1-20  
 P O Box 189  
 Rembert, SC 29128

De...  
 No Dord cases  
 PC... Date 10/24/07  
 Motion to Dismiss

If I may please the Court

In re: ...

I the Defendant ... I would like to make a remark  
 on the ... of Defendant ...  
to the ... ... Motion to Suppress  
as the ... Pursuant to my ...  
 Seized against Defendant ... evidence of which ...  
 on ... of ... the ...  
 Defendant's home at 424 Burnside N - 53 ...  
out a ... ...

... a motion  
 for Brady Disclosure ... of  
 defendant's pending charges

Defendant ... these ...  
 ... and ... be ...  
 to Society, ...

...  
 illegal, ...  
 ...











1/28 1972  
11 3 01 5

(4) Webster, L's 21, came entered into my bed room  
and pointed and presented gun in my face, and  
chest area, and stated don't move, and placed me  
in hard words, being I was not a 21's age,  
Should that be a 21's age to be allowed.

All the above is a prior to Se cure so any and all  
evidence

Defender + 1972 10, 11, 12 Court 10 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 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2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203,

Page 2 of 3  
 2/10/10 PG 1 of 3  
 2

2/10/10 PG 1 of 3

Dear Mr Givens,

This is to inform you that on 21, 12, 2009  
 12/21/09, the Attorney General representing the  
 Attorney General 361, 21, 12, 2009

After my first meeting with the Attorney General of  
 Council, because of failure to raise pertinent issues to  
 1/1/10.

He failed to make proper representation.

To that the Attorney General is not perfect, to raise  
 a suppression motion, prior to trial, he failed to reserve  
 the issue.

On 1/25/10, I wrote Mr David Hayes a letter out-  
 lining the issues & some of the day of, and again,  
 I requested, and the prosecution to suppress any and  
 evidence so that it is not used against me.  
 The charges, to reword, I am not prepared to trial, he  
 said, a plea entered, and said he would reserve the issue.

I am not perfect, I am not perfect, I am not perfect  
 4

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                                    |
|                          | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF AIKEN          | ) |                                    |
|                          | ) |                                    |
|                          | ) | 2010-CP-02-2124                    |
|                          | ) |                                    |
| Alonzo Kev #192814,      | ) |                                    |
|                          | ) |                                    |
| Applicant                | ) |                                    |
|                          | ) |                                    |
| v                        | ) | <b>RETURN</b>                      |
|                          | ) | (Appointment of Counsel Requested) |
| State of South Carolina, | ) |                                    |
|                          | ) |                                    |
| Respondent               | ) |                                    |
|                          | ) |                                    |

---

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 3, 2010, would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted for Possession with Intent to Distribute ("PWID") Cocaine Base (2010-GS-02-0458). Applicant was represented by Charles David Hayes, Esquire. On March 15, 2010, pursuant to a plea agreement, Applicant waived presentment and pled guilty to PWID within Proximity of a School.<sup>1</sup> The Honorable Doyet A. Early, III, sentenced him to the negotiated term of twelve (12) years, provided that upon the service of eight (8) years the balance would be suspended with probation for three (3) years. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

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<sup>1</sup> An additional charge of Possession of Cocaine Base (2010-GS 02 0459) was *nolle prossed* pursuant to the plea agreement.

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II

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

1. Ineffective assistance of counsel
  - a. "failed to challenge warrantless entry of defendant's home and bedroom without probable cause"
  - b. "failed to challenge warrantless seizure and arrest of person without probable cause to arrest"
  - c. "failed to challenge warrantless search of house and seizure of contraband and drug evidence without probable cause"

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

## III

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, 334 S.E.2d 813 (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, 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, 466 U S 668 The Applicant must overcome this presumption in order to receive relief Cherry v State, 300 S C 115 386 S E 2d 624 (1989)

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel First, the Applicant must prove that counsel's performance was deficient Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms " Cherry, 300 S C at 117, 386 S E 2d at 625, citing Strickland Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different " Cherry, 300 S C at 117-18, 386 S E 2d at 625 With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial Hill v Lockhart, 474 U S 52, 106 S Ct 366, 88 L Ed 2d 203 (1985)

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

#### IV

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

#### V

WHFREFORE, having made its Return, the State requests that an evidentiary hearing be held

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W McINTOSH  
Chief Deputy Attorney General

SALLEY W ELLIOTT  
Assistant Deputy Attorney General

MARY S WILLIAMS  
Assistant Attorney General

By Mary S Williams  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P O Box 11549  
Columbia, SC 29211

March 24, 2011

## FORM 5

|                                                   |   |                              |
|---------------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                           | ) |                              |
|                                                   | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF AIKEN                                   | ) | SECOND JUDICIAL CIRCUIT      |
|                                                   | ) |                              |
| ALONZO KEY # 192814                               | ) |                              |
| Full name and prison number (if any) of Applicant | ) |                              |
|                                                   | ) | FIRST AMENDED                |
| v                                                 | ) | APPLICATION FOR              |
|                                                   | ) |                              |
| State of South Carolina                           | ) | POST-CONVICTION RELIEF       |
|                                                   | ) | CASE NO 10-CP-02-02124       |

**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 Wateree River Correctional Institution D-1-20 P O Box 189, Rembert, SC 29128
- 2 Name and location of Court which imposed sentence Aiken County Court of General Sessions P O Box 583, Aiken, SC 29802-0583
- 3 Name(s) of co-defendant(s) (if any) N/A
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed
  - (a) 2010GS0200458
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 5 The date upon which sentence was imposed and the terms of the sentence

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUN 30 2011

*Liz Godard* 2011  
 CCCP & G.A., Aiken County, S.C.  
 Deputy Clerk

(a) The sentence was imposed on March 15, 2010 Mr Key received 12 years provided that upon the service of eight years the balance is suspended with probation for three years

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

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

6 Check whether a finding of guilty was made

(a) after a plea of guilty X

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

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

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

No

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

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

1 N/A

11 \_\_\_\_\_

111 \_\_\_\_\_

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

1 N/A

11 \_\_\_\_\_

111 \_\_\_\_\_

(c) the date of each such result

1 NA

11 \_\_\_\_\_

111 \_\_\_\_\_

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

1 \_\_\_\_\_

11 \_\_\_\_\_

111 \_\_\_\_\_

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

(a) Counsel did not advise of such avenue

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

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

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

(a) Violation United States Constitutional Amendments 4,5,6,14

(b) Violation United States Constitutional Amendments 4,5,6,14

(c) Violation United States Constitutional Amendments 4,5,6,14

(d) Ineffective assistance of counsel

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

(a) Counsel failed to challenge warrantless entrance of defendant's home and bedroom without probable cause

(b) Counsel failed to challenge warrantless seizure and arrest of person without probable cause to arrest

(c) Counsel failed to challenge warrantless search of house and seizure of contraband and drug evidence without probable cause

(d) But for counsel's erroneous advice to plead guilty PCR Applicant would not have plead guilty and would have insisted on going to trial

\_\_\_\_\_ Counsel was ineffective due to the following

\_\_\_\_\_ (1) Counsel failed to reveal warrants and other discovery material to client prior to plea Warrants and discovery material were not revealed to Applicant until more than one year after arrest

\_\_\_\_\_ (2) Counsel told Applicant the warrant was valid and that it was inevitable for warrant to be served Additionally Applicant was informed that warrant could be served at any time including after being fingerprinted

\_\_\_\_\_ (3) Counsel informed Applicant officers did no wrong by entering home without a warrant

\_\_\_\_\_ (4) Counsel refused to attempt to secure a suppression hearing prior to trial or plea after Applicant made several attempts in writing to secure a suppression hearing prior to trial or plea

\_\_\_\_\_ (5) Counsel failed to secure an indictment before the Grand Jury prior to trial or

plea and to challenge the validity of the indictment prior to the plea

(6) Counsel failed to raise subject matter jurisdiction to prove constructive possession

(7) Counsel failed to advise Applicant to go forward with a jury trial, but rather advised to accept the plea

(8) Counsel informed Applicant that if he did not plead guilty that he would receive 30 years at a jury trial

(9) Counsel failed to inform Applicant of the nature of the offense charged and so Applicant did not voluntarily or intelligently enter his guilty plea

(10) PCR Applicant contends that pursuant to all of the above allegations his guilty plea attorney's performance was deficient under professional norms of reasonable representation

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

- (a) any petition in a State Court under South Carolina Law? Yes
- (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 Applicant has not previously filed an application for post-conviction relief except for the original PCR application

ii \_\_\_\_\_

iii \_\_\_\_\_

iv \_\_\_\_\_

(b) the name and location of the Court in which each was filed

i N/A

ii \_\_\_\_\_

iii \_\_\_\_\_

IV \_\_\_\_\_

(c) the disposition thereof

I 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 N/A

II \_\_\_\_\_

III \_\_\_\_\_

(b) the proceedings in which each ground was raised

I N/A

II \_\_\_\_\_

III \_\_\_\_\_

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

previously been presented

(a) These grounds rely on additional facts outside the record which were not presented to any previous court 10 and 11 were not presented to the Court because of ineffective assistance of counsel and can only be addressed in a PCR forum

(b) \_\_\_\_

(c) \_\_\_\_

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

(a) your arraignment and plea? Yes

(b) your trial, if any? N/A

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18 If you answered "yes" to one or more parts of (17), list

(a) the name and address of each attorney who represented you

1 Mr. David Hayes, Second Judicial Circuit Public Defender's Office P.O. Drawer 2247 Aiken, SC 29801

11 \_\_\_\_

111 \_\_\_\_

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

1 preliminary hearing and guilty plea

11 \_\_\_\_

111 \_\_\_\_

19 State clearly the relief you seek in filing this application

Applicant seeks the vacation of his conviction and sentence

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

No

STATE OF SOUTH CAROLINA

)

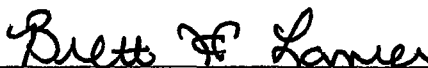
VERIFICATION

)

County of Aiken

)

I, Brett H Lancer, 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 to the best of my knowledge



Brett H Lancer

SWORN to and subscribed before me this 30th  
day of June, 2011



Notary Public

(L S )

My Commission Expires 4/3/13

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT  
2010-CP-02-02124

3  
4 ALONZO KEY,  
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,  
8 Respondent

9 Post Conviction Relief Hearing

10 Heard on Wednesday, July 13, 2011

11 Aiken, South Carolina

12 BEFORE

13 THE HONORABLE JAMES R BARBER III

14  
15  
16 APPEARANCES

17 Counsel on Behalf of the Applicant  
18 Brett H Lancer, Esq

19 Counsel on Behalf of the Respondent, State of SC  
20 Robert Corney, Esq

21  
22  
23 Cheri L Young, RPR  
24 Circuit Court Reporter  
25 P O Box 1154  
Aiken, SC 29802-1154

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| 3           | Letter of January 28, 2010  |     |   | 14  |
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1 ON WEDNESDAY, JULY 13, 2011 AT 10 51 A M

2 MR CORNEY Alonzo Key

3 THE COURT Mr Corney, are you ready?

4 MR CORNEY Yes, sir Your Honor, this is Alonzo  
5 Key, case number 2010-CP-02-2124

6 Mr Key was true bill indicted March 2010 by the  
7 Aiken County Grand Jury for possession with intent to  
8 distribute cocaine base

9 At the plea hearing Mr Key waived presentment on a  
10 possession with intent to distribute within proximity of a  
11 school charge And that plea was on March 15th, 2010,  
12 before Judge Early

13 As part of the negotiations of that plea the  
14 possession, the -- sorry It was a negotiated sentence  
15 The Judge accepted the negotiations and Mr Key was given  
16 12 years suspended to eight years' service with three  
17 years' probation

18 And as part of the plea the possession of cocaine  
19 base, there's a possession of cocaine base, possession  
20 with intent to distribute cocaine base, both nolle  
21 prossed

22 There was no appeal filed and this PCR application  
23 was timely filed September 3rd, 2010 He's represented by  
24 Mr Brett Lancer

25 THE COURT All right Mr Key, you're eligible for

1 parole in January?

2 THE APPLICANT Yes, sir

3 THE COURT And you'll max out in two years?

4 THE APPLICANT Yes, sir

5 THE COURT Do you understand if you're successful in  
6 this effort, the case will go back to the solicitor's  
7 office and you can be prosecuted And if you're  
8 convicted, sentenced to anything that you're charged with,  
9 that you're convicted of --

10 THE APPLICANT Yes, sir

11 THE COURT -- could be a greater sentence than what  
12 you got Do you understand that?

13 THE APPLICANT Yes, sir

14 THE COURT Do you want to go forward?

15 THE APPLICANT Yes, sir

16 THE COURT All right Do you want to call your  
17 first witness?

18 MR LANCER Thank you, Your Honor Before I call my  
19 first witness, I've got a couple of statutes and cases  
20 that I want to give to you I was going to bring them up  
21 at the end of the evidence I'm going to give you a copy  
22 of everything

23 THE COURT Sure

24 MR LANCER Your Honor, we call Mr Alonzo Key

25 THE COURT Mr Key, if you'll come forward

ALONZO KEY - DIRECT

1 ALONZO KEY, having been duly sworn, was examined and  
2 testified as follows

3 THE CLERK Please have a seat on the witness box and  
4 state your full name for the Court

5 THE WITNESS Alonzo Key

6 DIRECT EXAMINATION

7 BY MR LANCER

8 Q Good morning, Mr Key

9 A Good morning

10 Q Mr Key, in the broadest sense your application for  
11 post conviction relief is based on ineffective assistance  
12 of counsel, is that correct?

13 A Yes, sir

14 Q You pled guilty to distribution of controlled  
15 substance within proximity of a school on March 15th,  
16 2010, is that right?

17 A Yes, sir

18 Q And in large part, your application is based around  
19 circumstances taking place on September 21st, 2009, is  
20 that right?

21 A Yes, sir

22 Q At which time a -- law enforcement searched your  
23 residence, is that right?

24 A Yes, sir

25 Q Would you give the Court an overview of that morning

ALONZO KEY - DIRECT

1 and how the search was conducted and the events that took  
2 place, please?

3 A That morning of September 21st, '09, I was at home  
4 sleeping in my bed I heard a loud noise, break in my  
5 front door Another noise breaking in my bedroom door,  
6 and a command from an officer stating to me, don't move,  
7 place your hands where I can see them

8 I was immediately placed in handcuffs I was taken  
9 outside on the front porch to sit in a chair

10 Officer came in, investigated my house And they said  
11 they found drugs in undisclosed areas

12 And after that I was taken to the county jail -- well,  
13 not to the county jail In the fingerprinting room where  
14 they booked me in and everything

15 And at that point they showed me a warrant after about  
16 30 minutes or an hour, a warrant, arrest warrant and a  
17 search warrant also

18 I'm thinking that I should have received a search  
19 warrant at the time of entrance of my home, prior to them  
20 force entry and detaining me, prior to probable cause  
21 At that point I was seized and not free to leave

22 So, I feel like any evidence that was discovered after  
23 that point should be considered as fruit of the poisonous  
24 tree And I think that basically covers the day

25 Q Mr Key, so is it accurate that when the search was

ALONZO KEY - DIRECT

1 conducted you were at your residence?

2 A Correct I was home

3 Q Now when the search was conducted, were you given a  
4 copy of the search warrant and affidavit that it was based  
5 on?

6 A I didn't receive any type paperwork at that time

7 Q So is it accurate that one was not presented to you at  
8 the time of the search?

9 A A warrant was not presented to me for a search warrant  
10 or arrest warrant

11 Q Okay Was -- did the subject of a search warrant ever  
12 come up during the actual search?

13 A No Not to the effect of having a warrant I think  
14 one officer may have said something about that they did  
15 not have one, but a warrant was not issued to me or  
16 discussed

17 Q Okay When you got down to the detention center, at  
18 that point was a warrant read to you?

19 A After being fingerprinted and booked in, about 30  
20 minutes to an hour, I was approached with a warrant

21 Q Okay You were approached with a warrant Was it  
22 read to you?

23 A It was read to me, correct

24 Q Okay Were you given a copy?

25 A No, I did not receive a copy I was in handcuffs the

ALONZO KEY - DIRECT

1 whole while I was there

2 Q Okay

3 A And when they transported me to the county detention  
4 center they transported the warrants also When I got to  
5 the detention center they placed the warrants in the  
6 detention property, rather than give them to me I still  
7 didn't see a warrant

8 Q Okay Mr Key, is there any reason that when that  
9 search was conducted that it was not reasonable or  
10 practical for you to be handed a copy of the warrant?

11 A I would assume it would have been appropriate If  
12 they didn't have a warrant for my arrest, immediate  
13 arrest, that I should have been received of a search  
14 warrant to search the premises

15 Q Is there any -- listen to the question Is there any  
16 reason that a law enforcement officer conducting that  
17 search could not have handed you a warrant during the time  
18 of the search?

19 A Well, only reason I could see why they could not have,  
20 they was busy making, I guess, securing the house and  
21 securing everybody that was in it At that time they  
22 detained me

23 Q Anything about your behavior that would have made it  
24 not practical to hand you a warrant?

25 A It was no, nothing I did that day would warrant a

ALONZO KEY - DIRECT

1 detention or a seizure

2 Q Tell me about how your demeanor was Were you calm or  
3 something other than calm when the search was going on?

4 A At the time when they entered my home, I was in the  
5 bed asleep And at the point where they found me they had  
6 guns already drawn and gave a command of, don't move, put  
7 your hands where I can see them And I was immediately  
8 placed into handcuffs

9 I conformed with their orders

10 Q What was your demeanor? Were you calm or were you  
11 angry, belligerent during the search?

12 A I was not -- I was -- I was calm

13 Q Okay Now who came to represent you on the charges  
14 that you received?

15 A Attorney David Hayes

16 Q Okay And was Mr Hayes representing you on three  
17 separate charges that were actually from two different  
18 incidents?

19 A That's correct

20 Q Now, did David Hayes come and see you on October 4th,  
21 2009, while you were at the detention center?

22 A That would be correct

23 Q Okay Do you remember how that conversation went with  
24 him on that date?

25 A I was discussing the issue of suppression hearing with

ALONZO KEY - DIRECT

1 him, motion for discoveries And I even give him written  
2 notice of intent to -- for motion of discovery and motion  
3 to suppress evidence But I never received a copy of any  
4 discovery or a motion to suppress prior to the  
5 proceedings

6 Q So you -- on that date you said you gave him a letter  
7 from you in person? You handed it to him on that date?

8 A I didn't personally hand it to him I mailed him a  
9 letter

10 Q You mailed it to him?

11 A Correct

12 Q Okay Your Honor, I'd like to have this marked as  
13 Applicant's Exhibit Number One

14 THE COURT Have you showed it to the State?

15 MR LANCER (Complying )

16 THE COURT Moving to admit it?

17 MR LANCER Yes, Your Honor

18 MR CORNEY No objection, Your Honor

19 THE COURT So admitted

20 (Thereupon, letter, was marked as Applicant's Exhibit  
21 No 1, and was received into evidence )

22 BY MR LANCER

23 Q Is this the letter you're referring to, Mr Key?

24 A Yes, sir

25 Q Would you briefly tell the Court what this letter

ALONZO KEY - DIRECT

1 addressed? What's the subject matter?

2 A The letter should have addressed pretrial motion of,  
3 suppression motion and a Brady discovery, and a motion of  
4 dismiss the charges

5 Q The bottom line is you wanted a motion to suppress the  
6 evidence that they found that day, is that right?

7 A That's correct

8 Q Okay Now, were you also making a request that you  
9 wanted to see all the discovery material that they had  
10 against you?

11 A That's correct

12 Q What was Mr Hayes' response to this letter?

13 A Well, he was promising me that he would take care of  
14 the matter but I never got a positive response from that  
15 letter

16 Q Okay Did he give an opinion as to whether or not at  
17 that time he thought a motion to suppress was a good idea,  
18 bad idea or give his feelings at all on it?

19 A He didn't by words tell me whether it was good or bad,  
20 but I thought it was, would be a good idea

21 Q Okay

22 A But he said that he was going to secure the motion  
23 prior to trial but it never happened I never seen a  
24 motion to suppress

25 Q Okay Now, you went on and wrote another letter to

ALONZO KEY - DIRECT

1 Mr Hayes on November the 11th, 2009, is that correct?

2 A Correct

3 MR CORNEY No objection

4 THE COURT So admitted

5 MR LANCER Your Honor, I make a motion to move this  
6 letter into evidence

7 THE COURT All right I beat you to the punch I  
8 admitted it before you moved it

9 MR LANCER Thank you, Your Honor

10 (Thereupon, Applicant's Exhibit No 2, letter of  
11 November 11, 2009, was received into evidence )

12 BY MR LANCER

13 Q Mr Key, this is the letter that you sent Mr Hayes  
14 November 11th, 2009?

15 A That would be correct, sir

16 Q And in large part, was this second letter the same as  
17 the first letter?

18 A Correct

19 Q You were adamant that you wanted a motion to suppress  
20 the evidence, is that correct?

21 A Correct

22 Q Okay Do you recall if you got a response to this  
23 letter from Mr Hayes?

24 A I did get a response from Mr Grant De (sic) Gibbons  
25 Is that his name? Correct? Let me see I should have

ALONZO KEY - DIRECT

1 another letter that I got a response on

2 Q Do you recall if you got a response specifically from  
3 this one --

4 A No

5 Q -- not anything in the future yet?

6 A I didn't get a letter from Mr Hayes No answer from  
7 Mr Hayes

8 Q Would he have come to see you and talked to you about  
9 the letter?

10 A We discussed a suppression hearing but that's as far  
11 as it got with Mr Hayes

12 Q Okay And then, again, on January the 28th, 2010, you  
13 went on to write Mr Hayes a third and final letter, is  
14 that accurate?

15 A That's correct

16 MR CORNEY No objection

17 THE COURT So admitted

18 (Thereupon, Applicant's Exhibit No 3, letter of  
19 January 28, 2010, was received into evidence )

20 BY MR LANCER

21 Q Mr Key, would you look at this document and tell me  
22 if this is the letter that you sent dated January 28,  
23 2010?

24 A That's correct

25 Q Okay And, again, in large part, you were adamant

ALONZO KEY - DIRECT

1 about your requesting the suppression motion, is that  
2 correct?

3 A Correct

4 Q Okay Now, you also were basing your motion to  
5 suppress on the fact that you believed that on August --  
6 excuse me, September 21st, 2009, you were placed under  
7 arrest prior to any evidence, drugs, contraband, being  
8 found, before there was probable cause to make the arrest,  
9 is that correct?

10 A That's correct

11 Q You were placed in handcuffs?

12 A Yes, sir

13 Q Guns were pointed at you?

14 A Guns were pointed at me

15 Q You were told not to move?

16 A Told me not to move

17 Q Okay Next, did you write a letter to Mr Grant  
18 Gibbons on February 2nd, 2010?

19 A I did

20 MR CORNEY No objection, Your Honor,

21 MR LANCER We request this document be placed in  
22 evidence, Your Honor

23 THE COURT So admitted

24 (Thereupon, Applicant's Exhibit No 4, letter of  
25 February 2, 2010, was received into evidence )

ALONZO KEY - DIRECT

1 BY MR LANCER

2 Q Mr Key, would you tell the Court the nature of this  
3 letter to Mr Gibbons, why you sent it to him and so  
4 forth?

5 A I wrote the letter to Mr Gibbons on the fact that  
6 Mr Hayes was not giving me a adequate response to my  
7 letters written to him

8 So I wrote Mr Gibbons Mr Gibbons wrote me back a  
9 letter in response

10 Q Okay Did you get a response from Mr Gibbons?

11 A I did

12 Q Do you remember what that response was?

13 A It was expressing the point to me that he felt  
14 Mr Hayes was giving me adequate representation at the  
15 time And he explained the issue of suppression motion  
16 He said a suppression motion supposed to be held at least  
17 a week before trial and not before then

18 Q Okay

19 MR LANCER Request this document be placed into  
20 evidence, Your Honor

21 THE COURT So admitted

22 (Thereupon, Applicant's Exhibit No 5, letter of  
23 February 4, 2010, was received into evidence )

24 BY MR LANCER

25 Q The response that you got from Mr Gibbons, as you

ALONZO KEY - DIRECT

1 just stated, said that the motion to suppress could only  
2 be heard the week of trial and not before then, is that  
3 right?

4 A That's correct

5 Q Okay Did you ever talk to Mr Hayes about that  
6 letter that Mr Gibbons sent you back?

7 A I don't think, I don't recall talking to him about  
8 that letter, but we had talked about the suppression  
9 hearing

10 Q So you don't recall Mr Hayes coming to you and  
11 addressing the letter with you?

12 A I don't, I don't think he did I don't think he said  
13 anything about that letter

14 Q Now, did you ask Mr Hayes Is that true, can you  
15 only get a motion to suppress hearing the week of, trial?

16 A We talked about suppression And he -- well, I know  
17 that he did secure suppression prior to trial I brought  
18 it to his attention and his superior or supervisor

19 Q Okay Now, did you rely on the accuracy of those  
20 statements that you could only get it the week of trial?

21 A That's what it said on the letter

22 Q Okay

23 A That's

24 Q Now I want to talk about your plea hearing, Mr Key  
25 From the letters that you wrote Mr Hayes it sounds like

ALONZO KEY - DIRECT

1 you had, you requested the discovery material be presented  
2 to you, is that right?

3 A Correct

4 Q Had Mr Hayes reviewed the discovery material with you  
5 prior to the plea hearing?

6 A If I recall correctly, the motion to discovery was not  
7 complete He showed me a chain of custody of the trash  
8 pull It was said that the chain of custody was correct  
9 And he told me that the warrants was good

10 Q Did he present you with the entire case file so you  
11 could review the material before going on to trial --

12 A No, he did not --

13 Q -- or plead?

14 A -- I did not get a review of the discovery

15 Q But did he go over it with you without giving you a  
16 copy?

17 A We didn't go over every issue But the part that we  
18 did go over, I didn't receive a copy

19 Q Okay Had you seen the indictment before your plea  
20 hearing?

21 A I haven't seen no paperwork at all other than being  
22 discussed with

23 Q So you didn't see the arrest warrant?

24 A I didn't see the arrest warrants

25 Q Did you --

ALONZO KEY - DIRECT

1 A Only --

2 Q -- see any investigative reports --

3 A No investigation

4 Q -- from law enforcement?

5 A Only papers he showed me was a copy of the trash pull

6 Q Mr Key, I'm looking at a copy of the transcript from  
7 your plea hearing And that was in front of Judge Early,  
8 is that right?

9 A Correct

10 Q Okay And it looks like Judge Early asked you if on  
11 September 21st, 2009, you had possession of crack cocaine  
12 with intent to distribute within proximity of Fairfield  
13 Middle School Do you recall that?

14 A I do

15 Q Okay Do you happen to recall what your response to  
16 that was?

17 A I think I had a response of, I didn't think I was in  
18 possession They didn't find the drugs on me in my  
19 person

20 And he explained to me that by me being the owner of  
21 the home, that I could be in constructive possession And  
22 I was feeling that even if I was in constructive  
23 possession, that constructive possession should have been  
24 proven beyond a reasonable doubt The drugs was found in  
25 undisclosed areas

ALONZO KEY - DIRECT

1 Q Mr Key, I'm going to hand you a copy from your plea  
2 hearing And just to refresh your memory, I want you to  
3 take a look at line 24 and tell the Court what your  
4 response was to the question that I asked

5 A Line 24 They said the warrant was good

6 Q So, your response to Judge Early's question of,  
7 basically, are you guilty, was They said the warrant was  
8 good?

9 A Correct

10 Q Okay Now, Judge Early asked you again And Judge  
11 Early asked you Are you pleading guilty to possession of  
12 crack cocaine with the intent to distribute

13 And I'm going to hand you the transcript again just to  
14 refresh your memory as to what your response was If you  
15 would read line seven, please, sir

16 A I can't say I was in possession

17 Q And the Court responded with a question of, can't say  
18 you were in possession

19 Immediately after that, do you remember what took  
20 place? What Judge Early said? Did Judge Early say, set  
21 this case up for trial?

22 A He did

23 Q Okay When Judge Early said, set this case for trial,  
24 what happened?

25 A At that time my attorney stopped the proceedings and

ALONZO KEY - DIRECT

1 called me in the back room to talk to me And he  
2 explained to me that I was looking at 30 years, that if I  
3 didn't take the plea the only way I was going to get the  
4 plea was to not say anything about the representation or  
5 the other conduct of the officers That was the only way  
6 the Judge was going to accept the plea

7 Q How long did your conversation last with Mr Hayes,  
8 approximately?

9 A I'd say approximately three to five minutes

10 Q Okay And so in that three to five minutes you had to  
11 make a decision, didn't you?

12 A That's correct

13 Q Whether or not to face 30 years or take the plea, is  
14 that right?

15 A Correct

16 Q Okay And tell me why you ultimately did accept the  
17 plea?

18 A Well, I didn't see a part of the discovery or the  
19 warrants, so I really didn't have anything to go on other  
20 than what my attorney was advising me of And I didn't  
21 know anything else to do other than to accept the plea

22 If I went to trial, I didn't have a suppression  
23 hearing on my side And I didn't have the grand jury on  
24 my side So there was no reasonable fact finder to assist  
25 me in my side of a defense

ALONZO KEY - DIRECT

1 Q Did you take the plea because you had three to five  
2 minutes to decide whether or not you were going to get 30  
3 years or accept the plea and you were -- were you nervous  
4 about that?

5 A I thought about the 30 years and I thought about the  
6 12 years And I know one could be easier done than the  
7 other And I thought maybe I could stand a chance on  
8 appeal

9 Q Okay Now, we know that clearly you wanted a motion  
10 to suppress hearing prior to trial

11 A Correct

12 Q Did you get it?

13 A I didn't get a suppression hearing

14 Q Prior to your plea?

15 A Prior to my plea

16 Q Now, Mr Key, you are also arguing that Mr Hayes  
17 should have challenged the sufficiency of the search  
18 warrant as well, aren't you?

19 A That's correct

20 Q Okay Specifically on the fact that probable cause  
21 was partially based on complaints in the neighborhood from  
22 unknown persons of drug activity, is that right?

23 A Correct

24 Q Now, these unknown persons, were they ever identified?

25 A No identification

ALONZO KEY - DIRECT

1 Q Was their reliability ever brought into question?

2 A No other indication of a person other than the  
3 allegations and speculations

4 Q Nothing about their credibility was brought forth and  
5 questioned --

6 A No credibility

7 Q -- of who they even were?

8 A The only reason why people would even think of illegal  
9 activity or anything

10 Q But did you express your concerns over that to  
11 Mr Hayes?

12 A I did

13 Q Okay Now, looking at the transcript I see that you  
14 also waived presentment of the indictment on the date of  
15 your plea hearing, is that right?

16 A That's correct

17 Q Okay In other words, what you pled guilty to was not  
18 indicted, is that right?

19 A Correct

20 Q Was it ever brought to your attention before the plea  
21 hearing that this charge could be sent to the grand jury  
22 for possible indictment?

23 A It was

24 Q Okay So you, you did know beforehand that you could  
25 send it on to the grand jury if you wanted to?

ALONZO KEY - DIRECT

1 A I knew from the Judge He said it could go to the  
2 grand jury if I wanted to But my attorney didn't advise  
3 me anything about the grand jury

4 In fact, he also suggested it not go to the grand jury  
5 and that I take a plea

6 Q Okay Mr Key, you also alleged that your plea was  
7 not entered into voluntarily and knowingly, is that  
8 correct?

9 A Correct

10 Q I believe you've gone over these reasons already, but  
11 is there anything that you would like to add on the issue  
12 of the plea not being entered into voluntarily and  
13 knowingly?

14 A Well, had the indictments went to the grand jury or  
15 suppression hearing, we would have had a more specific  
16 idea of what we was dealing with, whether the evidence  
17 would have been admissible or inadmissible, could have  
18 made a determination whether -- had I taken a jury trial  
19 or a plea bargain

20 Q Mr Key, had the option been presented to you to have  
21 your motion, and, based on the results of the motion,  
22 either accept the plea or go to trial, would you have done  
23 that?

24 A If I would have had adequate fact-finding decision, I  
25 think I would have went to trial

ALONZO KEY - CROSS

1 Q Was the option ever presented to you to first, before  
2 the plea, have the motion to suppress hearing?

3 A I didn't have an option

4 Q Okay Mr Key, is there anything at all that you  
5 would like to add to the record that we have not already  
6 discussed today?

7 A No I think we covered everything as far as the  
8 evidence and the detention of the person, and not having a  
9 warrant at the time of the entrance of the home

10 Q Mr Key, I've got two more questions for you When  
11 did you get a copy of the search warrant?

12 A I got a copy of the search warrant after I filed for  
13 post conviction I received the motion for discovery and  
14 at that time is when I received discovery motion, all  
15 tangible material

16 Q To be clear, you did not have the search warrant or  
17 discovery until you filed the post conviction relief, is  
18 that right?

19 A That's correct

20 Q Okay

21 MR LANCER No further questions, Your Honor

22 THE COURT Anything, Mr Corney?

23 MR CORNEY I think I'll be pretty brief, Your  
24 Honor

25 CROSS-EXAMINATION

ALONZO KEY - CROSS

1 BY MR CORNEY

2 Q All right Mr Key, so you said you recall discussing  
3 the search warrant with Mr Hayes during his  
4 representation of you?

5 A I think we, we talked about a search warrant

6 Q Okay

7 A And he said the warrant was good

8 Q And Mr Hayes said on the record at your plea that he  
9 did have some concerns about the search warrant, right?

10 A I'm sure he probably would have

11 Q But he also told the Judge he had done extensive  
12 research into the validity and in the end he thought the  
13 warrant was probably a good warrant?

14 A Right He did say that, he did research

15 Q And Mr Hayes told the Court that you were ready to go  
16 to trial until the solicitor made this negotiated offer  
17 which you decided to accept, right?

18 A Right

19 Q Do you recall Mr Hayes coming back to you after he  
20 spoke with the solicitor about the suppression hearing?

21 A No, he didn't talk to me about the suppression hearing  
22 that day before trial

23 Q But do you recall having a conversation with him after  
24 he went to the solicitor and asked about having a  
25 suppression hearing?

ALONZO KEY - CROSS

1 A I don't know anything about him talking about a  
2 suppression hearing any time with me, other than when I  
3 approached him about it

4 Q And so you don't recall having any conversations  
5 with -- telling you about the solicitor saying you could  
6 either take the plea or go to trial If you wanted a  
7 trial you could have your suppression hearing That this  
8 was a negotiated plea they were going to take off the  
9 table if you wanted your suppression to go to trial, do  
10 you recall that conversation?

11 A No, I don't recall that conversation

12 Q After the Judge, Judge Early explained constructive  
13 possession to you, you did at that point, after you met  
14 with Mr Hayes, say you were guilty of this crime, right?

15 A I did

16 Q You said it twice on the record after that?

17 A Right That's correct

18 Q Okay And you said you understood the negotiations  
19 that the State was offering?

20 A I said I understood But at the time I was really  
21 confused what was really going on

22 I was being forced to take a plea without a  
23 suppression hearing or the grand jury on my counselor's  
24 advice He was telling me that if I didn't take the plea  
25 I was looking at 30 years

1 Q Okay But you knew exactly the plea -- you knew  
2 exactly the sentence you were going to get if you pled to  
3 this, right?

4 A I knew from reading the transcript that I wouldn't  
5 have received more than 15 years

6 Q But I'm saying as far as the negotiations, you knew  
7 exactly the sentence that you were going to receive

8 A As far as the negotiations, right Right

9 Q Okay And you had just gotten out of jail several  
10 years before this after doing 25 years on a 1993  
11 possession with intent to distribute charge, right?

12 A Correct

13 Q You got 30 years suspended to service of 25 and a  
14 \$50,000 fine from Judge Peeples on that charge?

15 A That's correct

16 Q And you have other charges on your criminal record as  
17 well, right?

18 A Correct

19 Q A possession of cocaine charge?

20 A Correct

21 MR CORNEY I beg the Court's indulgence for one  
22 moment? (Pause )

23 That's all I have

24 THE COURT Anything?

25 MR LANCER Nothing further from Mr Key, Your

CHARLES DAVID HAYES - DIRECT

1 Honor

2 THE COURT All right Thank you, sir You may step  
3 down Anything further from the Applicant?

4 MR LANCER I'll call David Hayes to the stand, Your  
5 Honor

6 THE WITNESS Do I need to be re-sworn, Your Honor?

7 THE COURT No, you're previously under oath

8 CHARLES DAVID HAYES, having been previously sworn,  
9 was examined and testified as follows

10 THE WITNESS Charles David Hayes, H-A-Y-E-S

11 DIRECT EXAMINATION

12 BY MR LANCER

13 Q Mr Hayes, you're an attorney with the Aiken County  
14 Public Defenders Office, is that right?

15 A Yes, sir

16 Q How did you come to represent Mr Key?

17 A He was an appointed case to Adrian Polit before I was  
18 hired in at the public defenders office Mr Polit was  
19 leaving the office and then I took over most of his  
20 caseload

21 During my representation for that charge, Mr Alonzo  
22 Key was arrested for this offense

23 Q Okay Mr Hayes, as best you can recall, would you  
24 outline to the Court the search of his house on September  
25 21st, '09?

CHARLES DAVID HAYES - DIRECT

1 A What I recall was -- is the photographs and basically  
2 what was in the affiant (sic) It all arose from  
3 anonymous tips, tipsters, who I asked about in prelim but  
4 they were unable to identify, or unwilling, their names  
5 and their previous history with them

6 However, they were complaining about drug activity in  
7 the neighborhood, and the frequently coming and going of  
8 traffic

9 On that information I believe the -- Marty Sawyer and  
10 other investigators had the trash pull When the trash  
11 was pulled, they went through it and found small corner  
12 ends of trash baggies, seeds and particles of marijuana  
13 and I believe some residue of cocaine on some of the stuff  
14 as well as mail addressed to Mr Key

15 Based on that information they went and sought a  
16 search warrant And that's what the search warrant was  
17 based on, was the trash pull

18 I did research on the trash pull Once the trash was  
19 placed on the street it is abandoned property and there  
20 was nothing wrong with that

21 I then did research on the issue of whether or not  
22 Mr Key was to be actually handed a copy of the warrant  
23 And in State V Jones from 1979, according to Shepardize,  
24 it has not been overthrown on this issue, was that it is  
25 not necessary to serve the owner of the premise with

CHARLES DAVID HAYES - DIRECT

1 search warrant prior to commencing the search The search  
2 was inevitable and imminent, therefore application of the  
3 exclusionary rule would be inappropriate in any event

4 Based on that as well as I looked at State V Cherry  
5 Now, I had prepared an argument to go forward on a  
6 suppression argument prior to the new negotiated offer  
7 that was made I was going to argue that under the  
8 statute that you should have a conjunctural reading and  
9 on -- conjunctural reading would determine that if the  
10 person was home and they were able to be handed the  
11 warrant, that we should be able to get -- that the warrant  
12 should be given to them But that is not the current  
13 state of the law in the State of South Carolina

14 Q So to be clear, to your knowledge, Mr Key was not in  
15 fact given a copy of the warrant or supporting affidavit  
16 at his home that day?

17 A He was read the warrant, and then a copy of the  
18 warrant, to my understanding, was placed in his property  
19 box at the jail

20 Q That reading of the warrant did not take place at his  
21 home, correct?

22 A Yes My understanding was that officers read the  
23 warrant to him at his home and then placed a copy of it in  
24 his property box at the county jail

25 And I believe we discussed that at prelim If not, I

CHARLES DAVID HAYES - DIRECT

1 discussed it with him right after the prelim

2 And that would have been a conjectural reading of  
3 17-13-150 and 17-13-140

4 Q Is it your position that he was in fact given a copy  
5 of the warrant at his home, or not?

6 A He was not given a copy at his home, no It was  
7 placed in his property box

8 Q Okay

9 A It was disclosed to him and read to him

10 Q Is there any reason that it was not practical under  
11 the circumstances that he should not have been given a  
12 copy, to your knowledge?

13 A No And that would have been the arguments based on  
14 the statutes, and State V Cherry and I believe State V  
15 Chandler is that he was home He should have been given a  
16 copy He could have been given a copy And that the  
17 necessity of leaving it on the dresser when somebody is  
18 not home really didn't need to apply in this case

19 However, that's not the current state of the law

20 Q Would you agree that the issue with the search warrant  
21 was of major concern to Mr Key?

22 A It was

23 Q And he did bring it to your attention --

24 A Yes

25 Q -- several times?

CHARLES DAVID HAYES - DIRECT

1 A Yes, he did And we had multiple discussions and he  
2 wrote numerous letters And I did not reply in writing  
3 but every time I received a letter, I would go and speak  
4 with Mr Key in person and we would discuss the contents  
5 of each of his letters

6 I did not personally address the letter of the  
7 response from Grant Gibbons I did not feel a need to  
8 address a response from my supervisor, but I did address  
9 the content of the original letter

10 Q So each time you would be written a letter you would  
11 discuss it with him?

12 A Yeah, within, within a matter of days or maybe a  
13 couple of weeks After I got the information together and  
14 the research together, I would go and speak to Mr Key

15 And when we were brought over, we were actually, I  
16 believe, going to do a, either a hearing or go to trial  
17 which of course would have been first followed -- trial  
18 would have been followed by the suppression hearing and my  
19 base, my argument would have been off the two statutes  
20 And, of course, maybe try to change the current law

21 Q Was it the State's position that if Mr Key challenged  
22 the warrant the offer would be taken off the table?

23 A Yes, if -- if we did a suppression hearing which would  
24 be prior to trial, I was told by Bill Weeks that if we  
25 wanted a trial that's fine but at the end of that our

CHARLES DAVID HAYES - DIRECT

1 offer would be revoked and we would go to trial and there  
2 would be no new offer

3 Q Is that appropriate for the State to do?

4 A They can make an offer or don't There's no  
5 constitutional right to an offer or to a plea You only  
6 have a constitutional right to a jury trial

7 Q Okay By that being the State's position, does that  
8 say anything to you about the State's opinion on the  
9 outcome of that motion, maybe they have a weak argument?

10 A No, that was his terms

11 At that time I didn't believe we were going to beat  
12 the warrant argument either I figured that they had a  
13 pretty sound case

14 Q Prior to the plea hearing, in March of 2010, had you  
15 received all of the discovery material in the case?

16 A Yes And everything I had, I gave copies to  
17 Mr Alonzo Key As a matter of fact, I think I actually  
18 kept a copy with everything paper clipped together as to  
19 what I sent him which was everything in the Rule Five and  
20 when the CD -- I first was going to have my paralegal take  
21 the CD over to him and show it to him on a laptop, however  
22 it was much easier just to copy, color copy every one of  
23 the photographs and have them hand delivered And that's  
24 what I did

25 Q Had you gone over all the material with him before the

CHARLES DAVID HAYES - DIRECT

1 plea hearing?

2 A Yes I expressed to him my opinion was that the  
3 suppression hearing would most likely because of the case  
4 law be not in our favor, not be successful

5 However I could argue that the reading of the statutes  
6 in conjunction could require somebody to be actually  
7 physically handed the warrant if they were present

8 Q Okay So, you had researched the issue of the  
9 warrant?

10 A Yes

11 Q Now, the cases that you found through your research,  
12 were they directly on point and directly addressing the  
13 exact issue that you had before you, or was it possible  
14 that a judge could go either way on the issue?

15 A I do not recall exactly I know a lot of it was  
16 whether the person was handed the search warrant  
17 physically or whether it was left

18 I can't remember the name of the case, however they  
19 left a copy of the search warrant on top of a TV when they  
20 were not home And I think that was the beginning of  
21 that's appropriate for service

22 And the Supreme Court of South Carolina's ruling or  
23 point of view at the time was that once the search warrant  
24 is signed and valid, it is inevitable that the search is  
25 going to happen

CHARLES DAVID HAYES - DIRECT

1        So if you're not home, they can search    They just got  
2 to leave a copy

3 Q       But you would agree that's different than the case we  
4 have before us?

5 A       Yes, it's a little bit different

6 Q       Okay    Could the motion to suppress hearing have been  
7 heard prior to the plea?

8 A       Yeah    I was ready to go on that    We had talked about  
9 it the night before    And I talked with the solicitor  
10 right beforehand, and that's when he made the offer    And  
11 I took the offer to my client and explained it to him, and  
12 he accepted

13 Q       Okay    At the plea hearing when Judge Early asked  
14 Mr Key if he was in fact guilty and his response was,  
15 they said the warrant was good, did that throw up any red  
16 flags to you that maybe Mr Key is not in it 100 percent?

17 A       Well, I figure at that point it's falling apart and  
18 that we're going to trial    That's why I asked to have a  
19 few minutes to talk with him

20        And when I went into the back, over here, I sat down  
21 and talked with Mr Key    And what it sounded like what  
22 the hang-up was, was the search warrant    He either got to  
23 let it go or do the hearing

24        The next issue was whether it was violent or not, and  
25 a strike or not    Now what he pled to is violent however

CHARLES DAVID HAYES - DIRECT

1 it's not -- I'm sorry, is not violent but it is a strike

2 And I think he was confused as to what did strike

3 versus violent mean at the time So I went back over that

4 with him in the back to clarify it

5 Q And, in fact, Judge Early said, set this case up for  
6 trial?

7 A He did

8 Q Is that right? So Judge Early --

9 A He didn't have to listen to it again but he agreed --  
10 I asked for a few minutes to speak with him in the back  
11 He took a short recess and I talked with Mr Key in the  
12 back over here

13 Q Okay What was the nature of that discussion with  
14 him?

15 A That was on the strike versus violent and non violent  
16 and what they each meant

17 He was thinking that because it was a strike it was  
18 violent And I went over that with him That was what I  
19 recall from that discussion --

20 Q This --

21 A -- and on the issue with the search warrant was you  
22 got to either let it go and move forward with the plea or  
23 we can go to trial

24 Q Okay Was Mr Key faced with a very short time to  
25 make a decision between 30 years and 12 years if he took

CHARLES DAVID HAYES - CROSS

1 the plea?

2 A The actual negotiation that was given was a fairly  
3 short period of time The case had been pending for quite  
4 a long time

5 We had seen each other numerous times

6 Actually I believe gave him a copy of the case law I  
7 did not give him the actual copy of the case law I took  
8 the case to him on previous visits at Aiken County and  
9 read it to him and explained exactly what the pros and the  
10 cons to each case and my research meant

11 MR LANCER I don't have any further questions, Your  
12 Honor

13 THE COURT Thank you Anything from the State?

14 MR CORNEY Very briefly, Your Honor

15 CROSS-EXAMINATION

16 BY MR CORNEY

17 Q Mr Hayes, did you ever make any promises about  
18 expressing any of this evidence to Mr Key?

19 A I promised nothing I tell them the only thing you're  
20 guaranteed is a jury trial because the Constitution  
21 requires it, if that's what you choose

22 Q And during the plea hearing when you took that moment  
23 in the back with him to discuss whether or not he was  
24 going to say he was guilty of these crimes, did you ever  
25 tell him not to complain about your representation or

1 anything along those lines?

2 A No If he wants to relieve me, I will bring him in  
3 front of whatever judge is present in the area and let him  
4 make his motion

5 I don't hold any begrudges to somebody wanting to  
6 relieve me as counsel and look for other counsel

7 Q Do you feel in any way you threatened him with the  
8 sentence hanging over his head to coerce him to plead  
9 guilty?

10 A No I explained to him what the negotiation meant, if  
11 he were accept it and what the potential outcome could be  
12 if we were to go to trial and lose

13 Q And I think you said a moment ago but you said you  
14 were prepared to go to trial?

15 A I was ready, yes, sir

16 MR CORNEY Okay That's all I have, Your Honor

17 THE COURT Anything, Mr Lancer?

18 MR LANCER Nothing further, Your Honor

19 THE COURT All right Thank you You may step  
20 down Anything further from the State?

21 MR CORNEY Nothing further from the State, Your  
22 Honor

23 THE COURT Thank you all

24 MR LANCER Your Honor, just very, very briefly I  
25 promise

1 If I could just quickly go over two cases that I gave  
2 you copies of, Your Honor State versus Wise State V  
3 Wise discusses minor violations of statutory laws when it  
4 comes to search warrants

5 And basically if we're dealing with administrative  
6 errors --

7 THE COURT Mr Lancer, isn't it a fact that when you  
8 enter your plea you give up your right to contest any  
9 evidence that the State may have through any motions to  
10 suppress and motions in limine?

11 MR LANCER Yes, Your Honor, but our opinion is  
12 Mr Key asked for a hearing at least three or four times  
13 and he didn't get it and he feels --

14 THE COURT Apparently he elected to go forward with  
15 the plea

16 I don't know His lawyer says that that was a  
17 condition of the plea, that you either plead now or let's  
18 go to trial and we'll hear the motion to suppress

19 My experience is rarely do you have motions to  
20 suppress that are heard prior to the time the trial's  
21 conducted Now you might have some different experience  
22 than that, but

23 MR LANCER I would agree, Your Honor, that most of  
24 time that's certainly how it works But I didn't know  
25 of -- I don't know of any reason that it can't be done if

1 it's going to be the same judge

2 THE COURT No reason if that judge is willing to do  
3 it

4 MR LANCER Yes, Your Honor

5 THE COURT But I have your cases

6 MR LANCER Thank you, Your Honor

7 THE COURT I briefly reviewed them and I understand  
8 that I mean, I understand his concerns

9 But the question is Did he give that right up when  
10 he elected to go forward with the plea, for whatever  
11 reason

12 MR LANCER Thank you, Your Honor

13 THE COURT I'll just have to consider it All  
14 right Thank you all

15 END OF CASE 11 45 P M

16 \* \* \* \*

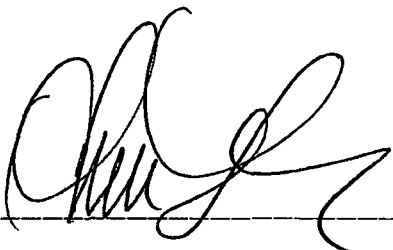
17 CERTIFICATE OF REPORTER

18 I, Cheryl L Young, Registered Professional Reporter,  
19 and Official Court Reporter for the State of South  
20 Carolina, do hereby certify that the foregoing transcript  
21 of proceedings heard on Wednesday, July 13, 2011, in  
22 Aiken, South Carolina, was reported by me using machine  
23 shorthand and realtime computer-aided translation and is a  
24 true, accurate and complete transcript of the proceedings  
25 had and evidence introduced in the hearing of the matter

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

3 I have hereunto set my hand this Saturday, the 19th  
4 day of November, 2011

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Cheri L Young, RPR  
Official Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

2010-CP-02-2124

Alonzo Key, # 192814,

Applicant,

v

State of South Carolina,

Respondent.

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, L. Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original filed in my office this

**ORDER OF DISMISSAL**

AUG 29 2011

CCCCP & G A., Aiken County, S.C.

Deputy Clerk

### PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 3, 2010. The Respondent made its Return on March 24, 2011. An evidentiary hearing into the matter was convened on Wednesday, July 13, 2011, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Brett Lancer, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, C. David Hayes, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Aiken County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted for Possession with Intent to Distribute ("PWID") Cocaine Base (2010-GS-02-0458). Applicant was represented by Charles David

829 2011  
L. Godard  
CCCCP & G S  
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STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

2010-CP-02-2124

Alonzo Key, # 192814,

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AUG 29 2011

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Liz Godard  
CCCP & G.A., Aiken County, S.C.

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Sharon Gaur  
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\_\_\_\_\_  
Liz Godard  
CCCP & G.S.  
Sharon Gaur 829

Hayes, Esquire On March 15, 2010, pursuant to a plea agreement, Applicant waived presentment and pled guilty to PWID within Proximity of a School 1 The Honorable Doyet A Early, III, sentenced him to the negotiated term of twelve (12) years, provided that upon the service of eight (8) years the balance would be suspended with probation for three (3) years Applicant did not appeal his conviction and sentence

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

- 1 Ineffective assistance of counsel
  - a. " failed to challenge warrantless enter of defendant's home and bedroom without probable cause "
  - b. " failed to challenge warrantless seizure and arrest of person without probable cause to arrest "
  - c. " failed to challenge warrantless search of house and seizure of contraband and drug evidence without probable cause "

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S C Code Ann §17-27-80 (1985)

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71 1(e), SCRPC, Butler v State, 286 S C 441, 334 S E 2d 813 (1985) Where ineffective assistance of counsel is alleged 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,

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1 An additional charge of Possession of Cocaine Base (2010-GS-02-0459) was *nolle prossed* pursuant to the plea agreement

466 U S 668, 104 S Ct 2052, 2064, 80 L Ed 2d 674, 692 (1984), Butler, 286 S C 441, 334 S E 2d 813 (1985)

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S C 441, 334 S.E 2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S C 115, 386 S E 2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S C at 117, 385 S E 2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S C at 117-18, 386 S E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S C 354, 527 S E 2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S C 16, 546 S E 2d 417 (2001). A

defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases " Hill v Lockhart, 474 U S 52, 56, 106 S Ct. 366, 369 (1985) A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements Crawford v U.S., 519 F 2d 347 (4<sup>th</sup> Cir 1975), Edmonds v Lewis, 546 F 2d 566 (4<sup>th</sup> Cir 1976)

*Ineffective Assistance of Counsel*

At the PCR hearing, Applicant testified he believed counsel was ineffective in his representation because he failed to properly contest the validity of the search done on Applicant's house and the warrant that was issued for that search Specifically, Applicant stated he was never given a warrant at any time during his arrest or search of his home, and counsel was ineffective for not having a suppression hearing for this evidence Applicant testified that he sent several letters to counsel to discuss a possible motion to suppress, and Chief Public Defender Grant Gibbons responded to one of the letters stating that counsel was working diligently on his case and the suppression hearing would have to be taken up the week of trial Applicant alleged that had a suppression hearing been held, he would have had a better idea of what to do in relation to entering his plea. Additionally, Applicant alleges counsel did not properly review and/or contest the chain of custody of items obtained through a police ordered trash pull, but went on to say that counsel did review the chain of custody of the trash pull with him during one of their meetings Additionally, Applicant testified that counsel did review the discovery file with him, although Applicant alleged he was never given a copy of the file to keep

Upon taking the stand, counsel testified that he did a full review of the trash pull and found nothing to indicate that it was improper. Counsel went on to say he did extensive research into the timing for when a search warrant must be handed to a defendant and, had Applicant proceeded to trial, counsel had case law outlined that he intended to argue to suppress the evidence from the search and arrest. In regards to holding a suppression hearing, counsel testified that the solicitor's office had informed him if Applicant had a suppression hearing on the charges, all plea offers would be off the table after that. Counsel discussed those options with Applicant in depth and told Applicant they could pursue the suppression hearing if Applicant wanted to. Counsel went on to say he sent copies of the entire discovery to Applicant for him to keep in addition to reviewing the entire file with him during their meetings. Counsel stated this case had been pending for a long time and Applicant had sufficient time to decide whether to enter plea, but in the end, it was Applicant's voluntary decision to accept the plea offer from the solicitor.

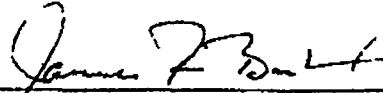
Based on the facts and evidence presented at the hearing, this court finds Applicant failed to prove by a preponderance of the evidence that his trial counsel was ineffective. Further, this court finds counsel's testimony to be credible and Applicant's testimony to not be credible. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including his constitutional rights, the facts giving rise to the charges, the potential sentences he was facing and the discovery file including all evidence against Applicant. Additionally, counsel gave Applicant all the information and advice to make an intelligent and voluntary decision on whether to enter this plea rather than proceed to a suppression hearing and subsequent trial. Further, I find that Applicant's guilty plea was entered knowingly and

denial of PCR. Rule 71 1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

- 1 That the Application for Post-Conviction Relief must be denied and dismissed with prejudice, and
- 2 The Applicant must be remanded to the custody of the Respondent

AND IT IS SO ORDERED this 17 day of August, 2011



James R. Barber, III  
Presiding Judge  
Second Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

INDICTMENT FOR  
POSSESSION WITH INTENT TO  
DISTRIBUTE COCAINE BASE  
(CRACK COCAINE)

§ 44-53-0375

At a Court of General Sessions convened on March 8 2010 the Grand Jurors of  
Aiken County present upon their oath

That ALONZO KEY did in Aiken County on or about September 21, 2009, knowingly  
or intentionally possess with intent to distribute a quantity of Cocaine Base (Crack  
Cocaine) a controlled substance under provisions of §44-53 110 *et seq*, *Code of  
Laws of South Carolina* (1976) as amended such possession not having been  
authorized by law

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

  
J STROM THURMOND SOLICITOR

[EXHIBIT-8]

**WITNESSES**

Aiken Department Of Public Safety

Martin Sawyer

Law Enforcement Case # 10-9296

DOCKET NO 2010GS0200458

**The State of South Carolina**

County of Aiken

**COURT OF GENERAL SESSIONS**

**MARCH TERM 2010**

**THE STATE  
vs**

**ALONZO KEY**

ARREST WARRANT NUMBER  
FILED 1091944

1091944

*L. H. R.*  
RECEIVED

*Deputy Clerk*

**ACTION OF GRAND JURY**

*True Bill*

*L. H. R.*  
Foreperson of Grand Jury  
Date: March 4, 2010

**VERDICT**

Foreperson of Petit Jury  
Date

**CDR # 3039**

**Indictment for**

**POSSESSION WITH INTENT TO  
DISTRIBUTE COCAINE BASE  
(CRACK COCAINE)**

**§ 44-53-0375**

**J STROM THURMOND, SOLICITOR**

[EXHIBIT-8]