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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

ANTHONY LEMONT WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000543

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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

The State,

Plaintiff,

VS.

Anthony Wilson

Defendant.

Transcript of Record

Marlboro, South Carolina
August 2, 2016

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. David Fernandez, Esquire
Attorney for the Plaintiff

Mr. Justin M. Kata, Esquire
Attorney for Defendant, Mr. Wilson

Lisa Carter
Circuit Court Reporter

I N D E X

WITNESSESPAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(NO EXHIBITS INTRODUCED DURING HEARING)

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

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

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

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

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

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

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

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

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

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

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

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

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

14 MR. WILSON: I do.

15 THE CLERK: Mr. Johnson?

16 MR. JOHNSON: I do.

17 THE CLERK: Thank you.

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

19 MR. FERNANDEZ: Correct, Your Honor,

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

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

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

1 MR. FERNANDEZ: This would be their first.

2 THE COURT: It would be their first. All right.

3 Mr. Johnson and Mr. Wilson, let me make sure I've got the
4 right one, this is Mr. Johnson?

5 MR. JOHNSON: Yes, sir.

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

9 MR. KATA: Yes, Your Honor.

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

12 MR. KATA: I heard.

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

18 MR. WILSON: Yes, sir.

19 MR. JOHNSON: Yes, sir.

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

23 MR. WILSON: Yes, sir.

24 MR. JOHNSON: Yes, sir.

25 THE COURT: You're doing this after consultation

1 with your attorney, correct?

2 MR. WILSON: Yes, sir.

3 MR. JOHNSON: Yes, sir.

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

8 MR. WILSON: Yes, sir.

9 MR. JOHNSON: Yes, sir.

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

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

1 concerned. If you decide that you want to exercise your
2 right to a jury trial, then the burden of proof would fall
3 on the State of South Carolina to convince that jury of
4 guilt beyond a reasonable doubt. The State would have to
5 convince all twelve jurors of your guilty. In other words,
6 the jury verdict would have to be unanimous one before you
7 can be found guilty of any of these charges. Your attorney
8 would have the right to confront any witnesses that testify
9 against you at that trial. In other words, your lawyer can
10 cross examine or ask questions of any witness that
11 testifies during the course of a trial against you.

12 Further, you have the right to put forth a defense on your
13 own behalf if you so desire. Included in the defense is
14 your right to testify on your own behalf. However, if you
15 wish to remain silent throughout the entire trial, you
16 have that right as well. If you exercise the right to
17 remain silent that can not be held against you in anyway
18 whatsoever. And, of course, at this stage I'm sure this
19 has already been accomplished but for the record, you have
20 the right to discover. Which means, you have right to
21 obtain from the State any and all evidence that it has in
22 it's possession that can benefit you in the preparation of
23 your defense. Now, do you gentlemen understand this
24 explanation of your rights?

25 MR. JOHNSON: Yes, sir.

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

5 MR. WILSON: Yes, sir.

6 THE COURT: Mr. Johnson?

7 MR. JOHNSON: Yes, sir.

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

10 MR. WILSON: Yes, sir.

11 MR. JOHNSON: Yes, sir.

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

14 MR. WILSON: No, sir.

15 MR. JOHNSON: No, sir.

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

19 MR. WILSON: Yes, sir.

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

22 MR. WILSON: Yes, sir.

23 THE COURT: Is that in Williamsburg County?

24 MR. WILSON: Yes, sir.

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

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

3 MR. WILSON: Yes, sir.

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

7 MR. WILSON: Yes, sir.

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

10 MR. WILSON: Yes, sir.

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

13 MR. WILSON: Guilty.

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

16 MR. WILSON: No, sir.

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

19 MR. WILSON: No, sir.

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

22 MR. WILSON: No, sir.

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

1 MR. WILSON: No, sir.

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

4 MR. WILSON: Yes, sir.

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

7 MR. WILSON: Yes, sir.

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

10 MR. WILSON: Yes, sir.

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

16 MR. WILSON: Yes, sir.

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

20 MR. WILSON: Yes, sir.

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

25 MR. WILSON: Yes, sir.

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

3 MR. KATA: Yes, Your Honor.

4 THE COURT: Is that correct?

5 MR. WILSON: Yes, sir.

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

8 MR. WILSON: Yes, sir.

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

11 MR. WILSON: Yes, sir.

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

14 MR. WILSON: Yes, sir.

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

18 MR. WILSON: Yes, sir.

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

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

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

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

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

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

8 THE COURT: All right. Mr. Wilson?

9 MR. WILSON: Yes, sir.

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

12 MR. WILSON: Yes, sir.

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

16 MR. WILSON: Yes, sir.

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

21 MR. WILSON: Yes, sir.

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

24 MR. KATA: Yes, Your Honor.

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

1 guilty based on the facts and circumstances presented?

2 MR. KATA: Yes, Your Honor.

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

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

12 MR. FERNANDEZ: Yes, Your Honor

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

16 MR. WILSON: Yes, sir.

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

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

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

3 MR. WILSON: Yes, sir.

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

9 MR. WILSON: Yes, sir.

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

12 MR. WILSON: Yes ---

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

15 MR. WILSON: Yes, sir.

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

18 MR. WILSON: Yes, sir.

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

21 MR. WILSON: Yes, sir.

22 THE COURT: Anything else from the State?

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

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

1 MR. FERNANDEZ: It is.

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

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

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

5 MR. JOHNSON: Yes, sir.

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

7 MR. JOHNSON: Thirty-six.

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

9 And you live in Nesmith, South Carolina?

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

11 THE COURT: Where is that?

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

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

15 MR. JOHNSON: Yes, sir.

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

19 MR. JOHNSON: Yes, sir.

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

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

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

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

4 MR. JOHNSON: Yes, sir.

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

9 MR. JOHNSON: Yes, sir.

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

13 MR. JOHNSON: Yes, sir.

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

17 MR. JOHNSON: Yes, sir.

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

20 MR. JOHNSON: Guilty.

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

23 MR. JOHNSON: Yes, sir.

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

1 MR. JOHNSON: Yes, sir.

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

4 MR. JOHNSON: Yes, sir.

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

7 MR. JOHNSON: Yes, sir.

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

10 MR. JOHNSON: Yes, sir.

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

13 MR. JOHNSON: Yes, sir.

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

18 MR. JOHNSON: Yes, sir.

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

25 MR. JOHNSON: Yes, sir.

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

3 MR. JOHNSON: Yes, sir.

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

8 MR. JOHNSON: Yes, sir.

9 THE COURT: Okay. You clearly understand that?

10 MR. JOHNSON: Yes, sir.

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

12 MR. JOHNSON: Yes, sir.

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

14 MR. JOHNSON: Yes, sir.

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

17 MR. JOHNSON: No, sir.

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

20 MR. JOHNSON: No, sir.

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

23 MR. JOHNSON: No, sir.

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

1 being able to understand things clearly?

2 MR. JOHNSON: No, sir.

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

5 MR. JOHNSON: Yes, sir.

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

8 MR. JOHNSON: Yes, sir.

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

12 MR. JOHNSON: Yes, sir.

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

15 MR. JOHNSON: Yes, sir.

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

18 MR. JOHNSON: Yes, sir.

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

21 MR. JOHNSON: Yes, sir.

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

24 MR. JOHNSON: Yes, sir.

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

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

3 MR. JOHNSON: Yes, sir.

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

6 MR. JOHNSON: No, sir.

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

9 MR. JOHNSON: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 THE COURT: Mr. Johnson?

23 MR. JOHNSON: Yes, sir.

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

1 charges?

2 MR. JOHNSON: Yes, sir.

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

5 MR. JOHNSON: Yes, sir.

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

10 MR. JOHNSON: Yes, sir.

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

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

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

17 MR. BARTH: I do, Your Honor.

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

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

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

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

5 MR. JOHNSON: Yes, sir.

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

15 MR. FERNANDEZ: Yes, Your Honor.

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

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

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

1 sentencing will be deferred. Anything else?

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

6 THE COURT: Thank you, gentlemen.

7 MR. KATA: Thank you, Your Honor.

8 THE COURT: Thank you.

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

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CERTIFICATE

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

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

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

September 4, 2017

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-GS-47-00022
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Anthony L. Wilson,	)	
	)	
Defendant.	)	
	)	

November 16, 2016
 Florence, South Carolina

B E F O R E:

The Honorable Roger E. Henderson, Judge

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

David Fernandez, Esquire
 Attorney for the Plaintiff

Justin Kata, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

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(No Exhibits Presented)

1 NOVEMBER 16, 2016

2 (WHEREUPON, the defendant was present along with his
3 counsel of record and the proceedings began at 2:57
4 p.m.)

5 THE COURT: All right. Mr. Fernandez?

6 MR. FERNANDEZ: Thank you, Your Honor. The State would
7 call Anthony Wilson.

8 THE CLERK: Mr. Wilson, can you raise your right hand?
9 Do you swear to tell the truth, the whole truth, and nothing
10 but the truth, so help you God?

11 THE DEFENDANT: Yes, I do.

12 THE CLERK: Thank you.

13 MR. FERNANDEZ: Your Honor, Mr. Wilson was indicted
14 under 2015-GS-47-22, Counts I, III, and IV. Count I would
15 be the general trafficking conspiracy. Counts III and IV
16 would be substantive counts of distribution of heroin.

17 He pled guilty to the charge of Count I, a lesser
18 included trafficking heroin, 4 to 14 grams, and then Counts
19 III and IV as indicted, which would be distributions of
20 heroin.

21 The facts are -- and -- and to refresh Your Honor's
22 memory, concerning Count III, this is a November 7th
23 controlled purchase where law enforcement utilized a
24 confidential informant. \$180 was provided to Mr. Wilson.
25 In return, seven packets of heroin were exchanged.

1 Count IV concerns a November 19th controlled purchase
2 where again \$180 in government funds was exchanged for seven
3 packets of heroin, with both stamps on those heroins being
4 traced to the Timothy Johnson network of heroin. Your
5 Honor, Count I concerns his involvement in the overall
6 conspiracy.

7 Early on, law enforcement identified Mr. Johnson as the
8 head target, as the lead target. As part of that, they
9 identified Mr. Wilson as essentially Mr. Johnson's right-
10 hand man. In many ways, he was. He is related to Mr.
11 Johnson -- I believe they are cousins -- and spent much time
12 around Mr. Johnson. Certainly was a very big part of his
13 heroin network, distribution network.

14 Upon further investigation when we got a hold -- when
15 law enforcement was able to get a bigger understanding of
16 the -- of the picture, we would assess Mr. Wilson's actual
17 product amount moved -- he would probably be about the
18 number three slot in the conspiracy, Your Honor, with the
19 number two slot being Roy Draughn, who Your Honor previously
20 sentenced, as far as drugs moved. However, Mr. -- Mr.
21 Wilson's role was -- was one of dealing, as well as
22 providing logistics, and just being a general accomplice to
23 Mr. Johnson.

24 Mr. Wilson does have a record, Your Honor. A 2014
25 conviction for distribution of heroin, for which I believe

1 he is currently on probation. But that is all, 2014
2 distribution of heroin.

3 The -- Mr. Wilson -- we -- the State originally planned
4 to try Mr. Wilson and Mr. Johnson together. They were the
5 holdouts in this case and identified for trial. Before --
6 you know, I think it was the week before trial they
7 indicated they would like to enter further plea negotiations
8 and discussions about pleading, ultimately accepted the
9 State's offer, and entered a plea agreement.

10 They did meet -- Mr. Johnson and Mr. Wilson did meet
11 with law enforcement and provided information. They did
12 obviously sign the plea agreement to cooperate. We do
13 intend to use Mr. Wilson in the trial against Mr. Skinner.

14 So he, along with many of his other codefendants, will
15 be called as witnesses in those cases and he has agreed to
16 obviously do so as part of this -- the State willing to
17 offer the reduced charges.

18 The State's recommendation, Your Honor, is 15 to 20
19 years.

20 THE COURT: Okay. Mr. Kata, I'd be glad to hear from
21 you, sir.

22 MITIGATION

23 MR. KATA: Thank you, Your Honor. May it please the
24 Court.

25 Your Honor, Mr. Wilson here is not Timothy Johnson.

1 They are not the same type of individual. They're not
2 equal.

3 Your Honor, prior -- Your Honor, I'm trying to figure
4 out a way to say this to where -- you know, we -- our
5 position -- we're accepting responsibility for his role in
6 what he did. When he was initially arrested, Your Honor, he
7 met with law enforcement and confessed to what he had done.
8 He really laid out the whole case for them.

9 THE COURT: Okay.

10 MR. KATA: Gave statements, laid it all out there, Your
11 Honor, but in 2014, he was arrested for distribution. Okay?
12 That's on his criminal record. He was put on probation.
13 That's what he's on probation for.

14 Prior to that, he had no prior record. He'd never been
15 in trouble with the criminal justice system, had never been
16 arrested, had never done -- had never been in juvenile
17 court, nothing.

18 But he had been doing what he confessed to. Okay? He
19 gets in trouble, gets put on probation and, at that point in
20 time, he withdraws from this conspiracy.

21 And when I say withdraw from the conspiracy, not -- not
22 in the sense that we would be successful at trial in beating
23 the charge, but from a mitigation standpoint. That's why I
24 believe when they actually looked at the case, they lowered
25 him from number two to number three because in 2014 when he

1 got put on probation -- okay? -- he removed himself from
2 this and actually did change his conduct and stopped.

3 Your Honor, we think that that's important because the
4 others didn't. Okay? He withdrew. He identified that he
5 was doing something he wasn't supposed to do. At the time,
6 he realized he got a chance. Of course, he didn't know
7 about all this stuff, but he had a chance to stop and our
8 position is that he did.

9 Your Honor, he's 38 years old. He has two children.
10 One is 14 and one is 10.

11 Once he was put on probation, he started working a
12 number of jobs. The first one was at Nan Ya in plaster. He
13 worked at the House of Raeford, a meat-packing plant. He
14 worked at the IG warehouse. He had done landscaping work.
15 I mean he had really -- he started working regular jobs.
16 You know, started doing regular things and was doing pretty
17 well on probation.

18 Your Honor, I'm under the impression that the number
19 two guy in drugs moved received a 13-year sentence. I
20 believe that's correct.

21 Your Honor, my -- Your Honor, we're asking for a
22 sentence less than that. He's lower than number two. Your
23 Honor, we'd ask for a sentence that's lower than that.

24 Your Honor, he's agreed to cooperate and cooperate
25 against the other guy that's still in the trial. I mean

1 that's -- that's not a question. He's here to help any way
2 that he can.

3 Your Honor, his two parents are here. His mother and
4 his father are sitting in the crowd. I know they want to
5 address the Court at the appropriate time.

6 You know, Your Honor, we're asking for mercy. I know
7 my client wants to talk -- talk as well.

8 THE COURT: Certainly. Yes, sir, Mr. Wilson?

9 THE DEFENDANT: Yes, sir. Like he said, I'm sorry for
10 what I did in 2014. Like my lawyer was saying, I give
11 everything up. I was working, trying to take care of my
12 kids because I'm the only child my mom and them have left.
13 My brother died and I was not trying to let them lose two
14 child.

15 My grandma 98 years old. She can't do much for herself
16 and I was trying to be there to help her too. I'm just
17 hoping, Your Honor, you can go less on time here.

18 MR. KATA: Your Honor, he spent 372 days in jail. We
19 would ask for time credit on that. Your Honor, if you'd
20 like to hear from his parents, I'd ask them to come forward.

21 THE COURT: Certainly. Your name, please, ma'am?

22 MRS. ROSA MAE WILSON: My name is Rosa Mae Wilson.

23 MR. JAMES LEROY WILSON: My name is James Leroy Wilson.

24 THE COURT: Thank you. Ms. Wilson?

25 MRS. WILSON: Good evening. Your Honor, I don't know

1 what happened, you know, for him to fall short. It's not
2 that we bring him up that way.

3 We bring him up in the best way we know how. We keep
4 him in the church. He work on the usher board. He work on
5 the choir. And it ain't that nothing that we done and we
6 always teach him to do the right thing, work hard, and God
7 will make a way for you. And that's the only way you can
8 make it in life and we work hard ourself, which he was a
9 premature child. He was 2 pounds, 13 ½ ounces. He lost his
10 brother, his oldest brother, in a car accident, and he the
11 only child left.

12 And I want you, Judge, to please have mercy upon him.
13 This is my only child. And the grandchildren call me and
14 come to me and say, Grandmama, when is their father coming
15 home, and it was sad for me to tell them I don't know, but
16 keep on praying.

17 But it's not that the way that we bring him up. We did
18 all we could to bring him up in the right way. We work hard
19 and we tell them that they always have to do the right
20 thing. That's the only way you can make it and get by. He
21 fall short, but I just want to say thank you, God, we bring
22 him up the way we know how.

23 MR. WILSON: I just want to say he's a good child. We
24 worked hard. We come from a poor family on the farm and he
25 worked on the farm. He went to school. When he was out of

1 school, he went to work. He worked jobs because, like my
2 old man said, you've got to work in order to get what you
3 want in life. You can't do wrong and get by.

4 So we brought him up in the church. He's still in the
5 church. He go to church all the time and I'd say if you can
6 have mercy on him. Like my mother say -- she's 98 and she
7 said please tell the judge have mercy on her grandson
8 because he always be there to help out.

9 Like I said, you know, we had our oldest son, but he
10 got killed. People working in Virginia coming home and then
11 -- I don't know -- driving one of the trucks on the way fall
12 asleep and the truck flip over and break every bone in his
13 body. We had to experience that. Went to McLeod where we
14 see him. He kicked up his right leg; so we stayed there
15 until about 10:30 that night and we were allowed to see him.
16 He had a big hole in the back of his head, blood coming from
17 everywhere.

18 So I mean, you know, all I can say is, you know, he's
19 sinning and falling short, but forgive him because that's
20 all we can say, you know. Just --

21 THE COURT: Thank you, sir.

22 MR. WILSON: Just sorry.

23 THE COURT: Mr. Kata, anything else?

24 MR. KATA: Your Honor, just a couple more things. Your
25 Honor, we would like to just draw the Court's attention to

1 this. They didn't find any guns with him. They didn't find
2 any weapons.

3 I mean that's not an element of him, but there's drug
4 cases where those are found and there's different kinds of
5 attitude. All the recordings that he's on with, I mean he's
6 genuinely a nice guy just doing the wrong stuff and, Your
7 Honor, I do think that that makes a difference.

8 Your Honor, we're just asking for as lenient of a
9 sentence as possible in this case.

10 THE COURT: Okay. Mr. Fernandez?

11 MR. FERNANDEZ: Nothing further. Your Honor, if I
12 could? Sorry.

13 THE COURT: Yes, sir?

14 MR. FERNANDEZ: The -- the timing of the controlled
15 purchases was November of 2014. I don't know when Mr.
16 Wilson went on probation, but law enforcement seemed to
17 believe he was on probation at that time for the controlled
18 purchases, the November 2014 ones.

19 I'd bring that to Your Honor's attention. That's all.

20 THE COURT: Can probation enlighten us?

21 THE PROBATION AGENT: I'm sorry?

22 THE COURT: Was he on probation at the time of the --

23 THE PROBATION AGENT: He's -- I've talked to
24 Williamsburg County. Everything seems to be good. If I
25 just send them the sentence sheets, he'll be good to go --

1 THE COURT: I know, but when --

2 THE PROBATION AGENT: -- since it's been a violation.

3 THE COURT: When was he placed on probation?

4 THE PROBATION AGENT: Probation on this case? It was,
5 like, 2015. Hang on one second and I'll give you the exact
6 date.

7 MR. FERNANDEZ: I don't know, Your Honor.

8 THE COURT: And this buy was when? November of --

9 MR. FERNANDEZ: There were two purchases on November 7th
10 and November 19th of 2014.

11 THE COURT: 2014. That's right.

12 THE PROBATION AGENT: I apologize for the wait.

13 THE COURT: That's all right.

14 THE PROBATION AGENT: Slowest computer in the building.
15 His probation case began March 31st of '15.

16 THE COURT: Okay.

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

19 SENTENCE

20 THE COURT: All right. Mr. Wilson, with regards to
21 Indictment 2015-GS-47-22, Count I, 2015-GS-47-22, Count IV,
22 and 2015-GS-47-22, Count III, as to each and every one of
23 these indictments, the sentence of the Court is you are
24 committed to the State Department of Corrections for a term
25 of 15 years.

1 You're given credit for time served of 272 days. All
2 of these sentences shall run concurrently.

3 Good luck to you.

4 MR. FERNANDEZ: Thank you, Your Honor.

5 MR. KATA: Your Honor, how many days?

6 THE COURT: 272.

7 MR. KATA: It's 372.

8 THE COURT: Oh, I'm sorry. I wrote down 272. I'll
9 make it 372.

10 MR. KATA: Thank you, Your Honor.

11 (WHEREUPON, the proceedings ended at 3:16 p.m.)

12

13 --- END REQUESTED TRANSCRIPT ---

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I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 14, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 16th day of November, 2016.

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

Krystal J. Smith

Court Reporter

20	Florence, South Carolina
----	--------------------------

21 April 15, 2017

AUG 08 2016

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE)
) FOR THE TWELFTH JUDICIAL CIRCUIT

State of South Carolina,)
) **PLEA AGREEMENT**

v.)
) CASE NO.: 2015-GS-47-22
) (COUNTS 1, 3, & 4)

Anthony Lemont Wilson,)
 (A/K/K "Peter Rabbit"),)
 (A/K/A "Rabbit"),)
)
 Defendant.)
 _____)

AGREEMENT made this 2 day of August, 2016, between and among the State of South Carolina, as represented by Attorney General Alan Wilson and Assistant Attorney General David A. Fernandez, the Defendant, and his attorney, Justin M. Kata, Esquire.

1. The Defendant, Anthony Lemont Wilson, agrees to plead guilty to the offense of Trafficking in Heroin 4-14 grams (Conspiracy), first offense, a violation of S.C. Code Ann. §44-53-370(e)(3)(a)(1), a lesser included offense as alleged in Indictment Number 2015-GS-47-22, Count 1, which carries a sentence range from seven (7) years to twenty-five (25) years, and a fine of fifty thousand dollars (\$50,000.00). The State will recommend a sentence range of fifteen (15) to twenty (20) years to run concurrently with the Defendant's sentences on all other counts contained in this agreement. This is considered a violent, serious, and no-parole offense.

2. The Defendant, Anthony Lemont Wilson, agrees to plead guilty to the offense of Distribute of Heroin, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-22, Count 3, which carries a sentence range of up to fifteen (15) years, and a

fine of up to twenty-five thousand dollars (\$25,000.00). The State will recommend a sentence range of ten (10) to fifteen (15) years to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

3. The Defendant, Anthony Lemont Wilson, agrees to plead guilty to the offense of Distribute of Heroin, a violation of S.C. Code Ann. §44-53-370(b)(1), as alleged in Indictment Number 2015-GS-47-22, Count 4, which carries a sentence range of up to fifteen (15) years, and a fine of up to twenty-five thousand dollars (\$25,000.00). The State will recommend a sentence range of ten (10) to fifteen (15) years to run concurrently with the Defendant's sentences on all other counts contained in this agreement.

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

Def.'s Initials: AW Attorney's Initials: IK Prosecutor: DA

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

5. The Defendant, Anthony Lemont Wilson, understands and agrees that any and all assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated by the South Carolina Attorney General, in portions to be determined by the South Carolina Attorney General. The assets so surrendered to South Carolina authorities will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, and real estate. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement agencies in South Carolina of any drug-related assets or portions thereof, either domestic or foreign, which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the

Def.'s Initials: AW Attorney's Initials: JK Prosecutor: DAF

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

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

7. The Attorneys for the State reserve the right to summarize all evidence, which would have been presented at trial to establish a factual basis for the plea.

8. The Attorneys for the State agree to advise any Court or other authority of the extent

Def.'s Initials: AW Attorney's Initials: JK Prosecutor: DA

and value of the Defendant's cooperation if called upon to do so by the Defendant.

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

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

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

Def.'s Initials: AL Attorney's Initials: JK Prosecutor: DAF

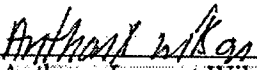
Alan Wilson
Attorney General of South Carolina

8/2/16
DATE

By: 
David A. Fernandez
Assistant Attorney General

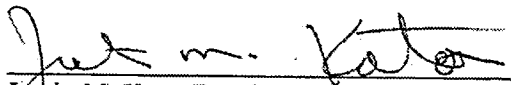
I have read this plea agreement carefully and reviewed each part of it with my attorney. I understand the terms of the plea and voluntarily agree to it, including the waivers of direct appeal and post-conviction relief as set forth herein.

08/02/2016
DATE


Anthony Lemont Wilson
Defendant

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

08/02/2016
DATE


Justin M. Kata, Esquire
Attorney for the Defendant

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

FORM 5

FILED

20 17 CP 21 724

STATE OF SOUTH CAROLINA

COUNTY OF

2017 MAR 20

IN THE COURT OF COMMON PLEAS

ANTHONY Wilson
 (AKA Peter Rabbit)
 Full name and prison number (if any) of Applicant.

LOS O'HAI.
 CC & GS
 FLORENCE COUNTY, S.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

Request For Speedy Remedy
 ART. 11 SECT. 9 SC CONST.

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 Lichon CI Ridgerville SC.
2. Name and location of Court which imposed sentence Florence General Sessions
3. Name(s) of co-defendant(s) (if any) 18 CO-CONSPIRATORS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2015-GS-47-22
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November - 16, 2016
 - (b) 15 YEARS (55%)

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made: Unintelligent AND
 (a) after a plea of guilty ✓ Cthru INVOLUNTARY PLEA
 (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?
 X NO (Plea)
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. _____
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. _____
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____
 (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- A US V. CRONIC 104 S.Ct. (1986) DEFICIENCY OF PICA55
COUNSEL SO EXTREME PREJUDICE ~~is~~ showing is
- (a) NOT REQUIRED.
 - (b) BRADY Rule 5 violations Renda Plea
 - (c) IN VOLUNTARY / UNINTELLIGENTLY MADE.

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

in (10): to be AMENDED per Rule 71.1(d) SCRPC.

- (a) 17-27-10 MARTINEZ V. RYAN (US 2012) by
- (b) PCR COUNSEL to properly I.D. AND
- (c) AMEND COERCE FACTUAL BASIS per Rule 11.

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

- (a) any petition in a State Court under South Carolina Law? NONE
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

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?

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

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) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? NO ARRAIGNMENT COUNSEL
 (b) your trial, if any? STAND BY PLEA COUNSEL
 (c) your sentencing? ↓
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO ASSISTANCE
 18. If you answered "yes" to one or more parts of (17), list: @ ANY STAGE
 (a) the name and address of each attorney who represented you:
 i. JUSTIN M. KATA 250 1315 BLANDIN ST
COLUMBI A SC 07201
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. HE NEVER REPRESENTED APPLICANT AT
 ii. ANY STAGE EXCEPT OPEN COURT PLEA
 iii. AS STAND-BY COUNSEL
US. V. CRONIC / STRICKLAND V. WASHINGTON
 19. State clearly the relief you seek in filing this application:
SENTENCE / CONVICTION REVERSED
 20. Are you now under sentence from any other court that you have not challenged? VACATED
or otherwise
CORRECTED.

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, _____, 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.

X Anthony Wilson

SWORN to and subscribed before me this 16th
day of March, 2017.

Linda K. B. (L.S.)
Notary Public

My Commission Expires: 6-20-26

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

I, _____, 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.


Applicant

SWORN or affirmed to and subscribed before me this

16th day of MARCH, 2017.


Notary Public

My Commission Expires: 6-20-26

STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

WARRANT FOR ARREST

vs.

ANTHONY LEMONT WILSON
A/K/A PETER RABBIT, RABBIT

CASE NUMBER: 2015-GS-47-22

TO: Any Law Enforcement Officer of this State, or
Any County or Municipal Officer Within his Jurisdiction

YOU ARE HEREBY COMMANDED to arrest ANTHONY LEMONT WILSON, a/k/a PETER RABBIT, RABBIT and bring him or her forthwith before me to answer an Indictment of the State Grand Jury of South Carolina charging him or her with:

TRAFFICKING HEROIN GREATER THAN 28 GRAMS (CONSPIRACY)
DISTRIBUTION OF HEROIN (2 COUNTS)

in violation of 1976 Code of Laws of South Carolina, as amended, Section(s) 44-53-370(e)(3)(c), 44-53-370(b)(1). A copy of this Warrant or Arrest shall be delivered to the defendant at the time of its execution, or as soon thereafter as practicable.

November 9, 2015

Date

Robert E. Hood

Name of Presiding Judge

Columbia, SC

Location

Re Hood

Signature of Presiding Judge

RETURN

This warrant was received and executed with the arrest of the above-named defendant at 6119 Friendfield Road, Effingham, SC. A copy of this warrant was delivered to the defendant on November 11, 2015.

Date Received: _____

Name and Title of Arresting Officer

Signature of Arresting Officer

Date of Arrest: 11-11-2015

S/A Glenn Wood

Glenn Wood

THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:

DEFENDANT'S NAME: ANTHONY LEMONT WILSON

ALIAS: PETER RABBIT. RABBIT

LAST KNOWN RESIDENCE: HEMINGWAY SC 29554

LAST KNOWN EMPLOYMENT: _____

PLACE OF BIRTH : _____

DATE OF BIRTH: _____

DRIVER'S LICENSE NUMBER: _____

SOCIAL SECURITY NUMBER: _____

HEIGHT: 5' 9"

WEIGHT : 195

SEX: M

RACE: B

HAIR: BLACK

EYES: BROWN

SCARS, TATTOOS, OTHER DISTINGUISHING MARKS: _____

FBI NUMBER: _____

COMPLETE DESCRIPTION OF AUTO: _____

INVESTIGATIVE AGENCY AND ADDRESS: _____

State Grand Jury of South Carolina



JAMES R. PARKS
CLERK OF COURT

Office of the Clerk

1000 Assembly Street
Rembert Dennis Building
Suite 519
Columbia, South Carolina 29201

POST OFFICE BOX 11508
COLUMBIA, SC 29211-1508
TELEPHONE: 803-734-0497
FAX: 803-734-0513

STATE OF SOUTH CAROLINA

vs

WILLIE WILSON
NICHOLAS WILSON
ROY DRAUGHN JR
ASHLEY COKER
BRANDON MORRIS
DAWN RILEY
JOSEPH COKER
TRAVILLE WATERMAN
ROBERT DAVIS

JEFFERY WITHERSPOON
ERIC HOLMES JR
ARKELIOUS ADAMS
SHEILA WEBB
KARLA PROSSER
GEORGE SKINNER
ANTHONY WILSON
ANDERSON COOPER JR

CASE NO: 2015-GS-47-21
2015-GS-47-22

NOTICE FOR COURT HEARING

You are hereby notified that PLEAS in this case has been set for the place, date and time set forth below. You will receive no other notice. If you fail to appear on this date a Bench Warrant will be issued for your arrest. You must contact your attorney as soon as possible regarding this notice.

PLACE: Darlington County Courthouse 1 Public Square Darlington SC 29532	DATE & TIME: Friday, July 22, 2016 @ 9:00AM
--	--

To: Honorable Roger E. Henderson
Circuit Court Judge

Honorable Alan Wilson
South Carolina Attorney General

FILED

7-25 yrs

STATE OF SOUTH CAROLINA

NOV 16 2016

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE

JAMES R. PARKS

CLERK, STATE GRAND JURY

STATE

INDICTMENT/CASE#: 2015 -GS- 47 - 22 (Count 1)

VS.

ANTHONY LEMONT WILSON

A/W#: DIRECT PRESENTMENT

AKA: Peter Rabbit, Rabbit

Date of Offense: 1/1/2011 - 10/22/2015

Race: B Sex: M Age: 38

S.C. Code §: 44-53-370(a)(3)(c)

DOB: SS#:

CDR Code #: 0149

Address:

City, State, Zip: HEMMINGWAY, SC 29554

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☒**SENTENCE SHEET**In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: **TRAFFICKING HEROIN 4-14G, CONSPIRACY, FIRST OFFENSE**

In violation of § 44-53-370(a)(3)(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2361

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

ATTEST:

Assistant Attorney General SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 272 days total credit☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine: \$

Random Drug/Alcohol Testing ☐

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

Fine may be pd. in equal consecutive weekly/monthly

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

pmts. of \$ Beginning

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

\$ Paid to Public Defender Fund

\$58-5-2995 (DUI Assessment) \$12 \$

\$58-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$ 500.00

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

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

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

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

3% to County (if paid in installments) \$ 23.25

TOTAL \$ 798.25

Clerk of Court/Deputy Clerk Maryandy J. Self
Court Reporter: Kristal Smith☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

• Presiding Judge Judge Code: 2754

• Sentence Date 11-16-16

9C) STATEMENT OF FACTS

I

INEFFECTIVE ASSISTANCE OF COUNSEL

THAT, TRIAL COUNSEL WAS INEFFECTIVE FOR FAILURE TO INVESTIGATE, OR INVOKE RULE 51 OR BRADY, WHEN HE ACTED MERELY AS STANDBY COUNSEL AND PERFORMED NO EFFORT TO PROVIDE COMPETENT ADVICE AS TO WIEGHT OF STATE EVIDENCE" IN STATE GRAND JURY HE FAILED TO REVIEW CO-~~CONSPIRATORS~~ DEFENDANTS RULES (ETC) * INVOLUNTARY PLEA * II
 PUR. TO HILL V. LOCKHART

(1984)

AND GIBSON V. STATE

SEAC

(1999)

THE GUILTY PLEA WAS INVOLUNTARY. AND PRODUCT OF I.A.C. / PROSECUTORIAL MISCONDUCT IN FAILURE DISCLOSE ANY EVIDENCE ON FAVORABLE EVIDENCE PUR TO BRADY.

10 of 2

II

I.A.C. / BRADY / Rule 5

9^c ANTHONY WILSON ASSENTS HIS 6th & 14th AMEND. RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL VIOLATED WHEN COUNSEL MERELY ACTED AS STAMIN BY COUNSEL TO ALLOW STATE TO NOT DISCLOSE ANY Rule 5 BRADY MATERIAL (BANKS V. DRETKE 504 US - 2005). AND THUS THE PLEA WAS UNINTELLIGENT AS HE COULD NOT WEIGH STATE EVIDENCE - VS. HIS RIGHT TO TRIAL.

THE ENTIRE PROCESS WAS A SHAM
PRETENSE TO COERCE APPLICANT TO
WAIVE HIS CONSTITUTIONAL RIGHTS AND
INCRIMINATE CO. CODEFENDANTS

TO BE AMENDED BY COUNSEL
R/c 71.1(d) SECRET

2062

Florence Co. Clerk of Court,
180 N. Liberty ST.

Anthony Wilson
LCI
Ridgeville SC 29472

Florence, SC

2015 ES 47 22

ST. V. Anthony Wilson
STATE GRAND JURY

(IN CASE NUMBER (ABOVE) PLEASE FILE PCR, AND
PLEASE PROVIDE ME WITH THE GRAND JURY
EMPOWERMENT DOCUMENTS, PETITION, SUPPORTING
MATERIAL (E.G. EVIDENCE, AFFIDAVITS, VIDEO ETC.)
EMPOWERMENT JUDGE ORDER, PUR. TO

EVANS V. STATE SS2d 2005

AND FREEDOM OF INFORMATION ACT, § 30-4-10
SC CODE OF LAWS (1976).

to include TRUE BILL INDICTMENT, STATE ATTORNEY
AND COURT REPORTER NAME

Thank you


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Anthony Wilson, SCDC #370483	)	Case No.: 2017-CP-21-0724
	)	
Applicant,	)	
	)	RETURN AND PARTIAL
	)	MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed March 20, 2017, Respondent ("the State") would show this Court:

I.

Anthony Wilson (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the State Grand Jury. On October 22, 2015, the State Grand Jury indicted Applicant for one count of trafficking heroin greater than 28 grams (conspiracy) and two counts of distribution of heroin (2015-GS-47-0022). as part of a multi-count, multi-defendant indictments stemming from an investigation into a heroin trafficking ring. Justin M. Kata, Esquire, represented Applicant. Assistant Attorney General David Fernandez, of the South Carolina Attorney General's Office, prosecuted the case.

On August 2, 2016, Applicant entered into a written plea agreement, in which he agreed to "fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of importation, possession, and distribution of controlled substances and related unlawful activities," in exchange for a recommended sentence range of an aggregate fifteen to twenty years

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

The same day, Applicant appeared in the Florence County Court of General Sessions before the Honorable Roger E. Henderson, circuit court judge, and pursuant to the signed plea agreement, pled guilty to two counts of distribution of heroin as indicted, and to the lesser-included trafficking in heroin (4-14 grams) (conspiracy). Judge Henderson accepted Applicant's plea and deferred sentencing.

On November 16, 2016, Applicant again appeared before Judge Henderson for a sentencing proceeding. At this hearing, Judge Henderson sentenced Applicant to an aggregate fifteen years imprisonment. Applicant did not file a notice of appeal.

Attached herewith and incorporated herein by reference are the records of the South Carolina State Grand Jury Clerk of Court regarding the subject conviction, the transcript from Applicant's plea and sentencing hearings, and Applicant's records for the Department of

Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective assistance of counsel for failure to investigate and failure to require the State to comply with Brady/Rule 5
2. Involuntary Guilty plea

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

III.

Respondent asserts Applicant's allegation that his attorney was ineffective is without merit. Respondent asserts Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. 668).

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

IV.

Respondent argues his guilty plea was involuntary. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, an applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was

induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

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

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

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

V.

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

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

However, recent South Carolina case law holds that, while appellate waivers are enforceable, a criminal defendant who has waived his appellate rights is still entitled to raise the very narrow issue of challenging his attorney's conduct in advising him to enter into the waiver. Sanders v. State, 412 S.C. 611, 617, 773 S.E.2d 580, 583 (2015) ("Consequently, we hold that although a defendant may waive his right to collateral review, he is nevertheless still entitled to challenge whether the advice he received in agreeing to that waiver was constitutionally defective."). Therefore, Respondent requests an evidentiary hearing be held for the sole purpose

of determining whether Counsel was ineffective *only* in his representation surrounding his advice to waive Applicant's appellate rights. All other allegations should be summarily dismissed.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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

10/6, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2017-CP-21-0724

ANTHONY WILSON, #370483)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Michael Charles Abbott, Esquire
 Abbott, McKissick & Hopewell, LLC
 Post Office Box 148
 Florence, South Carolina 29503

DATED this 6th day of October, 2017.



Caroline Collins, Administrative Coordinator
 For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2017-CP-21-00724
	)	
Anthony Lemont Wilson,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

February 2, 2018
Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Michael C. Abbott, Esquire
Attorney for the Applicant

Megan H. Jameson, Esquire
Attorney for the State

Krystal J. Smith
Circuit Court Reporter

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(No Exhibits Presented)

COURT REPORTER LEGEND

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

1 FEBRUARY 2, 2018

2 (WHEREUPON, the proceedings began at 10:00 a.m.)

3 THE COURT: Yes, ma'am.

4 MS. JAMESON: Good morning, Your Honor. May it please
5 the Court.

6 THE COURT: Yes.

7 MS. JAMESON: Megan Jameson on behalf of the State. The
8 first matter of the day is Anthony Wilson versus the State of
9 South Carolina, Docket No. 2017-CP-21-0724.

10 On October 22nd, 2015, the state grand jury indicted Mr.
11 Wilson for one count of trafficking heroin greater than 28
12 grams as part of a conspiracy and two counts of distribution
13 of heroin as part of a multi-count, multi-defendant
14 indictment that stemmed from an investigation into heroin
15 trafficking throughout the state. Justin Kata represented
16 him.

17 On August 2nd, 2016, he entered into a written plea
18 agreement in which he agreed to fully and truthfully
19 cooperate with the Office of the Attorney General of South
20 Carolina and any local, state, and federal law enforcement
21 agents in their investigation of importation, possession, and
22 distribution of controlled substances and any related
23 activities in exchange for a negotiated sentence range for an
24 aggregate term of 15 to 20 years' imprisonment.

25 As part of this plea agreement, Mr. Wilson expressly

1 waived his right to both a direct appeal and post-conviction
2 relief. Mr. Wilson initialed each page of this written plea
3 agreement and signed this plea agreement, and a copy of this
4 plea agreement is in the packet that's before Your Honor
5 today.

6 On the same day, he appeared in the Florence County
7 Court of General Sessions before the Honorable Roger
8 Henderson and, pursuant to the signed plea agreement, pled
9 guilty to two counts of distribution of heroin as indicted
10 and for the lesser included offense of trafficking in heroin,
11 4 to 14 grams, as part of a conspiracy. Judge Henderson
12 accepted his plea and deferred sentencing.

13 On November 16th, 2016, he again appeared before Judge
14 Henderson for sentencing. Judge Henderson sentenced him to
15 an aggregate 15 years' imprisonment. He did not file a
16 notice of appeal. However, he did file a timely post-
17 conviction relief action on March 20th, 2017. In his
18 application, he alleged ineffective assistance of counsel for
19 failure to investigate his case and failure to require the
20 State to comply with Brady and Rule 5 and involuntary guilty
21 plea.

22 On October 6th, 2017, the State made a return and partial
23 motion to dismiss seeking summary dismissal of all claims
24 beyond whether counsel was ineffective for advising him to
25 enter into the written plea agreement, waiving his right to

1 challenge his conviction through direct appeal or PCR
2 pursuant to that written plea agreement.

3 He is represented in this action by Michael Abbott and,
4 at this time, the State would renew our motion to dismiss for
5 the reasons set forth in our written motion to dismiss.

6 Pursuant to Sanders v. State, the State would submit
7 that the plea agreement is binding on the applicant.
8 However, pursuant to the Supreme Court case from 2015,
9 Sanders v. State, he is able to challenge whether counsel was
10 ineffective for advising him to enter into this plea
11 agreement. So the State would move to dismiss all
12 allegations beyond that.

13 THE COURT: Mr. Abbott, you're recognized.

14 MR. ABBOTT: Your Honor, I agree with the case law and
15 actually the plea agreement itself carves out an exception
16 for claims that directly attack the effectiveness of the
17 advice of counsel to agree to the waiver. So yes, that's the
18 issue we're here about.

19 THE COURT: Okay. Very good. All right. Well, you may
20 call your first witness.

21 MR. ABBOTT: Your Honor, I would call Justin Kata.

22 THE COURT: All right. Mr. Kata, if you could have a --
23 place your left hand on the Bible and raise your right hand
24 as the clerk administers the oath.

25 THE CLERK: Do you swear or affirm that the testimony

JUSTIN KATA - DIRECT BY MR. ABBOTT

1 you give will be the truth, the whole truth, and nothing but
2 the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you.

5 THE COURT: Now, I call you Kata. They're calling you
6 Kata. Which one is it?

7 MR. ABBOTT: You're correct, Your Honor. It is Kata.

8 THE COURT: That's what I thought.

9 MR. ABBOTT: You're right.

10 THE COURT: That's what I thought.

11 MS. JAMESON: I apologize.

12 THE WITNESS: That's all right.

13 THE COURT: I like to be right. Go ahead, Mr. Abbott.

14 MR. ABBOTT: Thank you, Your Honor.

15 THE COURT: Mr. Abbott.

16 JUSTIN KATA, being first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ABBOTT:

20 Q: Now, Mr. Kata, is it correct that you represented
21 Anthony Wilson in the matter we're here about today?

22 A: That's correct.

23 Q: And would you agree that the Sixth Amendment to the
24 Constitution entitles Mr. Wilson to effective assistance of
25 counsel?

JUSTIN KATA - DIRECT BY MR. ABBOTT

1 A: I would agree to that.

2 Q: And knowing that the issue we're here about today is
3 your advice to Mr. Wilson to waive his right to post-
4 conviction relief, did you explain to him what the
5 ramifications of that were?

6 A: Yes. Yes, I did.

7 Q: Did you describe for him examples of what ineffective
8 assistance of counsel may be?

9 A: I did. Yes. I mean we discussed it.

10 Q: Well, did you tell him that ineffectiveness could
11 include -- could include not raising -- and these are just
12 examples. I'm not suggesting that you did or didn't do this,
13 but obvious suppression issues, failing to do any independent
14 investigation in the case, failing to research any law
15 applicable to the case, representing co-defendants in the
16 same case, those types of things. Did you -- did you tell
17 him examples of ineffective assistance of counsel so he would
18 know what he was waiving?

19 A: I mean I didn't sit and say here's an example, this
20 would be one, here's example number two, this would be the
21 other, but no, I mean we discussed what he wouldn't be able
22 to do if he agreed to that term.

23 Q: Well, did you even go give an absurd example and tell
24 him that no matter how bad you may have performed your
25 duties, even if let's say you were drunk that day, that he

JUSTIN KATA - DIRECT BY MR. ABBOTT

1 couldn't challenge your effectiveness once he signed that
2 waiver?

3 A: I mean I did not give the example that if I was drunk,
4 but I mean we went over, you know, the fact that if he didn't
5 feel that I did a good job or that if I didn't do the --
6 fulfill the duties that I needed to do, then he would have
7 some challenges with challenging that.

8 Q: Okay. Would you agree that one of the tests to
9 determine whether counsel was ineffective in representing a
10 criminal defendant is that the representation fell below an
11 objective standard of reasonableness?

12 A: Yes.

13 Q: And is it also true that a legal malpractice claim is a
14 reasonable attorney standard as well?

15 A: Sure.

16 Q: Now, would you agree that because essentially that if
17 you're ineffective -- if Mr. Wilson would have proven that
18 you were ineffective in representing him in his criminal case
19 that that would have formed the basis for a professional
20 negligence action against you as his attorney?

21 A: I mean if he were to prove that.

22 Q: Yes.

23 A: Sure.

24 Q: Well, you know, you -- would you agree that, as an
25 attorney, you are bound by the Rules of Professional Conduct?

JUSTIN KATA - DIRECT BY MR. ABBOTT

1 A: Absolutely.

2 Q: And would you agree that Rule 1.7 relates to conflict of
3 interests in that said rule states that there's -- that there
4 will be a conflict of interest if there is a significant risk
5 that the representation of one or more clients will be
6 materially limited by the lawyer's responsibilities or by a
7 personal interest of the lawyer, and in this case the
8 personal interest would be whether he could bring a
9 malpractice claim against you; correct?

10 MS. JAMESON: Your Honor, I would object to this line of
11 questioning. The plea agreement only limits his ability to
12 file a PCR action in civil court, not sort of malpractice
13 claims otherwise.

14 THE COURT: I'm going to allow him to ask that question,
15 but I don't think that there's anything in that plea
16 agreement that would prevent him from filing a civil action,
17 I don't think.

18 MR. ABBOTT: Your Honor, this doesn't relate to that.
19 It's -- I'll be glad to explain it or I can to continue
20 asking.

21 THE COURT: You can explain it and then ask the
22 question.

23 MR. ABBOTT: Okay. Well, the explanation is, Your
24 Honor, counsel has an inherent conflict of interest in
25 advising Mr. Wilson to waive his right to PCR counsel for

JUSTIN KATA - DIRECT BY MR. ABBOTT

1 ineffective assistance because it's the personal interest of
2 him.

3 If he can prove ineffective assistance, then there's a
4 malpractice claim against counsel. So he has a conflict in
5 advising him to waive that right to prove ineffective
6 assistance so I don't get sued.

7 THE COURT: I understand what you're saying, but, of
8 course, the Supreme Court has already said that you can enter
9 into these type agreements. Me and you might have a
10 differing opinion about whether or not you can waive review,
11 appellate review, and post-conviction relief. The federal
12 courts have been doing it for a long time.

13 I might not agree with it, but the Supreme Court says
14 that you can do that. And how else would you do it unless a
15 lawyer said you could or allowed you to get the benefit of a
16 plea bargain by giving up these reviews?

17 MR. ABBOTT: With my next question, if I may?

18 THE COURT: Well, I -- my -- that was a question I had
19 for you.

20 MR. ABBOTT: The rule -- the rule allows -- the rule
21 allows the attorney and the client to waive the conflict of
22 interest if it's explained and in writing.

23 THE COURT: Well --

24 MR. ABBOTT: So if there's a signed writing explaining
25 the potential conflict of interest and advising him of this

JUSTIN KATA - DIRECT BY MR. ABBOTT

1 --

2 THE COURT: Okay. Very good. That makes sense. Go
3 ahead.

4 MR. ABBOTT: Yeah.

5 THE COURT: You can ask that question.

6 BY MR. ABBOTT:

7 Q: So the next question is did you explain to Mr. Wilson
8 that he was potentially giving up his right to bring an
9 action against you if -- not necessarily that, but you had a
10 potential conflict of interest in advising him to waive his
11 PCR rights, and did you get that in writing?

12 A: No. No, I did not discuss that, that line of a conflict
13 with him. I mean I'm not of the opinion that -- I mean
14 explaining to him his right to waive his PCR rights would
15 have any preclusion on him filing suit and claiming that I've
16 committed legal malpractice.

17 So I didn't. No, I did not discuss that, what you say
18 is to be a conflict. I mean I didn't -- it wasn't even in my
19 mind. I mean I did not sit with him and say, Mr. Wilson, you
20 know, you need to -- you need to sign these PCR waiver rights
21 over and in the back of my mind was thinking I'm going to get
22 out of a -- this is going to help me if he ever sues me. No,
23 I didn't. I didn't even have that in my mind.

24 Q: But it would, wouldn't it?

25 A: I don't know if it would. I mean he could call all the

JUSTIN KATA - DIRECT BY MR. ABBOTT

1 same witnesses in that. Okay. Let's say he sued me. He
2 could call all the same witnesses. I mean he could discuss
3 all those issues. I mean what would he not be able to use?

4 Q: The easiest avenue would be to prove ineffective
5 assistance of counsel to form the basis of his claim, would
6 it not?

7 A: I mean I don't know if it would be the easiest or not,
8 but I mean --

9 Q: Suffice it to say you didn't have a -- you didn't have a
10 conflict waiver signed by Mr. Wilson, did you?

11 A: No. No, I didn't.

12 THE COURT: Let me ask you this, Mr. Abbott. Do you
13 think that -- if there was a finding of ineffective
14 assistance of counsel, do you think that that could be used
15 in a legal malpractice case?

16 MR. ABBOTT: Absolutely.

17 THE COURT: I don't think so because it would be almost
18 like if you were -- were involved in an automobile accident
19 and the driver was charged with DUI. If he goes to trial and
20 wins that DUI, you can't -- you can't bring that up in the
21 civil case that he won the DUI. If he loses the DUI,
22 likewise, you can't bring that up in the civil action. If he
23 enters a plea, then indeed he can.

24 And the whole concept behind that is you can't use the
25 find -- the findings of fact in a separate proceeding against

JUSTIN KATA - DIRECT BY MR. ABBOTT

1 -- in a -- in a subsequent one. Do you understand that, that
2 reasoning?

3 MR. ABBOTT: Your Honor, I don't --

4 THE COURT: You really believe that if you filed a legal
5 malpractice that it would be admissible that the judge made a
6 factual finding that he was ineffective?

7 MR. ABBOTT: I do.

8 THE COURT: I don't.

9 MR. ABBOTT: And I think on the DUI instance, I think if
10 he's found -- if he goes to trial in a DUI and is found
11 guilty, I think he can use that. The burden -- the standard
12 --

13 THE COURT: I'm absolutely positive you cannot.

14 MR. ABBOTT: The standard of proof is beyond a
15 reasonable doubt.

16 THE COURT: I'm almost --

17 MR. ABBOTT: And that issue --

18 THE COURT: I'm almost 100 percent positive you cannot.

19 MR. ABBOTT: I think if he's found not guilty, you can't
20 -- you can't use it.

21 THE COURT: I think the only thing you can use if it's a
22 -- if it is a -- if it's a forfeiture, you can't. A not
23 guilty, can't. And a guilty, can't. A plea where you admit
24 your guilt, can. But you might be right and I might be wrong
25 and we'll see.

JUSTIN KATA - CROSS BY MS. JAMESON

1 All right. Very good.

2 MR. ABBOTT: I have no further questions.

3 THE COURT: Okay. Very good.

4 MS. JAMESON: Thank you, Your Honor. May it please the
5 Court.

6 THE COURT: Yes.

7 CROSS-EXAMINATION

8 BY MS. JAMESON:

9 Q: How long have you been practicing law?

10 A: Seven years.

11 Q: What percentage of your practice is criminal defense
12 work?

13 A: 99.8.

14 Q: So almost exclusively criminal defense?

15 A: Yes.

16 Q: Were you appointed or retained in this case?

17 A: I was appointed.

18 Q: Do you recall approximately when you were appointed?

19 A: January 2016.

20 Q: So approximately eight months before the plea agreement
21 was entered into?

22 A: Correct.

23 Q: How many times did you meet with Mr. Wilson?

24 A: I -- I had two -- two big meetings with Mr. Wilson. We
25 did not receive discovery until April. You know, we got

JUSTIN KATA - CROSS BY MS. JAMESON

1 appointed on this case and then really nothing happened until
2 the Attorney General's Office scheduled a status conference
3 in April and they put out a scheduling order, and then we
4 didn't even get the discovery until after that.

5 I started reviewing the discovery shortly after that,
6 and this was one of those cases -- you know, these AG cases,
7 statewide grand jury cases, I mean they ran them down the
8 pipe. I mean you get appointed, you have a status
9 conference, and a lot of times you get set for trial. You
10 know, they've already blocked the dates off before you even
11 get the file.

12 So the way that I usually handle these is I do a lot of
13 prep on the front end and then that way when I get a chance
14 to actually meet with the client, I mean we're really ready
15 to meet and we'll spend, you know, a good day, you know,
16 really going over everything. And then that way hopefully
17 I'm in a position at that point to field their questions, you
18 know, and advise them on how we should react and, you know,
19 go from there.

20 Q: So this wasn't your first state grand jury case?

21 A: No.

22 Q: Is that what you did here that you did the prep on the
23 front end and then --

24 A: Correct.

25 Q: Do you recall how long that first big meeting lasted?

JUSTIN KATA - CROSS BY MS. JAMESON

1 A: It was -- it was 5 ½ hours.

2 Q: And you reviewed all discovery with him?

3 A: Yes.

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

5 A: It was a conspiracy to traffic heroin, the count that
6 would carry the 25 years.

7 Q: And that had a mandatory minimum 25-year sentence?

8 A: Correct.

9 Q: Did you explain to him that he was facing the mandatory
10 minimum of 25 years?

11 A: Yes. We discussed that a lot.

12 Q: And this plea agreement allowed him to avoid the 25-year
13 sentence?

14 A: It did.

15 Q: Did he ask you to enter into plea negotiations with the
16 State?

17 A: He did.

18 Q: Do you recall -- what was the initial offer you got from
19 the AG's office?

20 A: The initial offer was insane. I mean it was, like, 20
21 years. It had to be negotiated. I mean it wasn't much of a
22 reduction from what he was looking at if he went to trial.
23 You know, Mr. Fernandez, you know, normally does that. He'll
24 give you an initial first offer that a lot of times you can
25 shake it.

JUSTIN KATA - CROSS BY MS. JAMESON

1 Q: And ultimately, you were able to get it to a negotiated
2 15 to 20 years?

3 A: Correct. I thought it was recommended 15 --

4 Q: Recommended?

5 A: 15 to 20.

6 Q: Recommended range of 15 to 20 years?

7 A: Yes.

8 Q: And you entered into a written plea agreement?

9 A: That's correct.

10 Q: In these previous state grand jury cases, have you had
11 clients that have entered into similar written plea
12 agreements?

13 A: Correct.

14 Q: Did you give Mr. Wilson a copy of the plea agreement and
15 go over it with him?

16 A: I did.

17 Q: Did you review and explain all portions of the plea
18 agreement with him?

19 A: I did.

20 Q: Did you explain that he was waiving his right to file a
21 direct appeal?

22 A: Yes, I did.

23 Q: Did you explain what a direct appeal was?

24 A: I did.

25 Q: And I believe you testified before you explained what

JUSTIN KATA - CROSS BY MS. JAMESON

1 post-conviction relief was and you described what ineffective
2 assistance of counsel would be; correct?

3 A: Correct.

4 Q: And you discussed what a PCR action is?

5 A: Yes.

6 Q: Did he appear to understand these discussions with you?

7 A: He did.

8 Q: And he initialed each page of the plea agreement;
9 correct?

10 A: He did.

11 Q: Did he ever ask you to remove the portion about waiving
12 his right to a direct appeal?

13 A: No, he didn't.

14 Q: Did he ever ask you to remove the portion waiving his
15 right to file a post-conviction relief action on anything
16 other than the claim that directly attacked your
17 effectiveness in advising him to enter into this plea
18 agreement?

19 A: He did not.

20 Q: And so -- so we're clear for the record, the waiver
21 isn't absolute. He can still file a PCR, like he did here
22 today, and challenge whether or not you were effective in
23 advising him to enter into this plea agreement; correct?

24 A: Correct.

25 Q: And did you explain that to him?

JUSTIN KATA - CROSS BY MS. JAMESON

1 A: I did.

2 Q: And he appeared to understand that?

3 A: He did.

4 Q: And that was something after explaining to him that he
5 wanted to waive?

6 A: Correct.

7 Q: And ultimately, he signed the plea agreement in addition
8 to initialing each page; correct?

9 A: Correct.

10 Q: And ultimately, he received a 15-year sentence?

11 A: Correct.

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

13 THE COURT: Any redirect?

14 MR. ABBOTT: No, Your Honor.

15 THE COURT: Okay. You may call your next witness.

16 MR. ABBOTT: Thank you. Mr. Wilson.

17 THE COURT: Might counsel approach the bench for a
18 moment?

19 MS. JAMESON: Yes, Your Honor.

20 (WHEREUPON, a bench conference was held off the record,
21 after which the proceedings resumed as follows.)

22 THE COURT: Place your left hand on the Bible and raise
23 your right hand as the clerk administers the oath.

24 THE CLERK: Do you swear or affirm that the testimony
25 you give will be the truth, the whole truth, and nothing but

ANTHONY WILSON - DIRECT BY MR. ABBOTT

1 the truth, so help you God?

2 THE APPLICANT: Yes, I do.

3 THE COURT: Have a seat in the witness chair. I'm going
4 to ask that you pull up real close to the microphone and
5 speak loudly, clearly, and slowly in order that we can hear
6 everything that you have to say.

7 MR. ABBOTT: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 ANTHONY WILSON, being first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ABBOTT:

13 Q: Mr. Wilson, you were present when your attorney, Mr.
14 Kata, testified just now. How many times do you recall
15 meeting with Mr. Kata?

16 A: One time.

17 Q: You need to speak up.

18 A: One time.

19 Q: And how long did that one meeting last?

20 A: About 15 minutes.

21 Q: And when did that meeting take place in relation to you
22 appearing in court to address the Court on the guilty plea?

23 A: Like, a month before.

24 Q: Okay. And on the day of your guilty plea, did you have
25 another opportunity to meet with Mr. Kata?

ANTHONY WILSON - DIRECT BY MR. ABBOTT

1 A: No, sir.

2 Q: Did you ever see any of the evidence the State had
3 regarding the charges that were brought against you?

4 A: No, sir.

5 Q: When you were presented with the signed plea agreement
6 or when you were presented with the plea agreement that you
7 ultimately signed, how much time did you have to review that
8 document before you had to initial and sign it?

9 A: Just when he came that day.

10 Q: Well, when he came that day, how much time did you and
11 he spend together talking about that document?

12 A: About 15 minutes.

13 Q: And was it your understanding that if you didn't sign
14 that document that day that you were going to go to trial
15 that day?

16 A: Yes, sir.

17 Q: Specifically, what did Mr. Kata advise you about you
18 giving up your right either to appeal whatever happened that
19 day or to enter into post-conviction relief?

20 A: The only thing he had told me that I would have got --
21 he told me that I would have got seven years for showing him
22 -- telling him about my cousin, and I don't know nothing
23 about my cousin.

24 Q: Well, again, I'm asking you about when he presented you
25 the plea agreement to sign and initial.

ANTHONY WILSON - DIRECT BY MR. ABBOTT

1 A: Uh-huh.

2 Q: What did he tell you, if anything, about you waiving
3 your right to appeal whatever happened that day or to bring a
4 post-conviction relief action?

5 A: No, he really didn't explain nothing to me. He ain't
6 explain no situation to me.

7 Q: Did he ever advise you that -- about your right to post-
8 conviction relief?

9 A: No. He never explained nothing about it.

10 Q: Did he ever give you any examples of ineffective
11 assistance of counsel?

12 A: No, sir.

13 Q: Did he ever discuss with you that if it was determined
14 that he was ineffective in his representation of you that you
15 might have a civil action against him for legal malpractice?

16 A: No. He never explained that to me.

17 Q: If you had known -- if you had more information about
18 your right to post-conviction relief and/or Mr. Kata's
19 potential conflict in advising you about post-conviction
20 relief and his relationship to that, would you have entered
21 into this plea agreement?

22 A: No, sir.

23 Q: And is it your desire to have the ability to bring a
24 full action for post-conviction relief with all issues beyond
25 just whether he properly advised you to waive your right to

ANTHONY WILSON - CROSS BY MS. JAMESON

1 post-conviction relief?

2 A: Yes, sir.

3 MR. ABBOTT: Thank you, Your Honor. I don't have any
4 further questions.

5 THE COURT: Very good. Cross-examination.

6 MS. JAMESON: Yes. Thank you, Your Honor. May it
7 please the Court.

8 CROSS-EXAMINATION

9 BY MS. JAMESON:

10 Q: Mr. Wilson, you originally started your testimony by
11 saying you only met with your attorney one time a month
12 before trial; correct?

13 A: Yes, ma'am.

14 Q: And then you testified you didn't meet with him the day
15 of the guilty plea?

16 A: I met with him one -- just one time.

17 Q: Okay. But -- but then you testified you did meet with
18 him the day of the guilty plea to sign your plea agreement;
19 correct?

20 A: That was the only one time we had met. We only met one
21 time.

22 Q: But you testified before you met a month before for 15
23 minutes too. So did you meet with him two times or one?

24 A: Just one.

25 Q: Okay. So you're testifying you never met with your

ANTHONY WILSON - CROSS BY MS. JAMESON

1 attorney at all until August 2nd when you signed the plea
2 agreement?

3 A: Yes, ma'am.

4 Q: And that meeting only took 15 minutes?

5 A: Yes, ma'am.

6 Q: Okay. And I believe you testified you signed the plea
7 agreement so that you would get seven years. You thought you
8 were going to get seven years; correct?

9 A: Yes, ma'am.

10 Q: Do you remember signing the plea agreement?

11 A: I remember he showed it to me and tried to explain it to
12 me. He said you could get seven years. I'm thinking seven
13 years nonviolent. So that's the only reason why I plea to
14 that.

15 Q: You did sign the plea agreement; correct?

16 A: Yes, ma'am.

17 Q: And you initialed at the end of each page; correct?

18 A: Yes, ma'am.

19 Q: And it clearly says on your plea agreement that the
20 State is going to recommend a sentence of 15 to 20 years;
21 correct?

22 A: I thought it was seven.

23 Q: Sir?

24 A: I thought it was seven.

25 Q: So your testimony to the Court is that you didn't

ANTHONY WILSON - CROSS BY MS. JAMESON

1 understand anything in this plea agreement, your attorney
2 didn't explain anything in this plea agreement, yet you
3 initialed each page and signed at the end of it?

4 A: Yes, ma'am.

5 MR. ABBOTT: Objection, Your Honor. That's not what his
6 testimony was.

7 THE COURT: Well, I think it's a legitimate question.
8 She's asked it, and he's -- he's answered. He said that was
9 a correct categorization of it. So the objection is
10 overruled.

11 BY MS. JAMESON:

12 Q: Do you recall when you entered your guilty plea before
13 Judge Henderson?

14 A: Say that again?

15 Q: Do you recall when you entered your guilty plea before
16 Judge Henderson? When you pled guilty?

17 A: Not right offhand.

18 Q: You don't remember it?

19 A: Not right now.

20 Q: You don't remember telling Judge Henderson you hadn't
21 been threatened or promised anything to get you to plead
22 guilty?

23 A: I mean he had told me --

24 Q: I need a yes or a no, sir.

25 A: No.

ANTHONY WILSON - CROSS BY MS. JAMESON

1 Q: You don't remember that?

2 A: No, ma'am.

3 Q: Do you remember telling Judge Henderson that you had
4 plenty of time to speak with your attorney?

5 A: No, ma'am.

6 Q: Do you remember telling Judge Henderson you were
7 satisfied with your attorney's services?

8 A: No, ma'am.

9 Q: Do you remember telling Judge Henderson that your
10 attorney had done everything you had asked him to do?

11 A: No, ma'am.

12 Q: Do you remember telling Judge Henderson that he hadn't
13 refused to do anything you'd asked him to do?

14 A: No, ma'am.

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

17 THE COURT: All right. Any --

18 MR. ABBOTT: Just one, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. ABBOTT:

21 Q: Mr. Wilson, isn't it true Judge Henderson never asked
22 you anything about Mr. Kata advising you to waive your right
23 to post-conviction relief?

24 A: No, sir.

25 MR. ABBOTT: Thank you, Your Honor.

1 THE COURT: Very good. You may step down.

2 MR. ABBOTT: That's Mr. Wilson's case.

3 THE COURT: Anything from the State?

4 MS. JAMESON: No, Your Honor.

5 THE COURT: Very good. All right.

6 MS. JAMESON: Brief argument if Your Honor will allow.

7 THE COURT: Yes.

8 MS. JAMESON: I guess the State would go first?

9 THE COURT: No. They have the burden of proof. I'll
10 let them go first, then you can speak, and I will let him
11 reply. I think that's the way it's supposed to go.

12 MR. ABBOTT: Thank you, Your Honor. Your Honor, as you
13 could gather from the questioning I had of Mr. Kata, it's our
14 belief that by our Rules of Professional Conduct, unless Mr.
15 Kata got a written waiver of the conflict of interest that's
16 inherent in him advising him to waive his right to PCR for
17 ineffective assistance of counsel, that by its very nature it
18 can't be a knowing and intelligent voluntary waiver of that
19 right. Your Honor, it's our -- and there's federal case law
20 that supports that.

21 In addition, Your Honor, one of the --

22 THE COURT: Federal law that supports what?

23 MR. ABBOTT: That premise, that Rule 1.7 is -- that it's
24 inherent conflict.

25 THE COURT: Do you have a federal case that says it's an

1 inherent conflict to enter into one of these agreements or
2 are you just talking about just a standard conflict between
3 co-defendants?

4 MR. ABBOTT: Not between co-defendants. A standard --
5 it's a conflict between the attorney representing --

6 THE COURT: What I'm saying is is the federal case --
7 does it specifically address this issue that it's -- in order
8 for there to be a valid waiver of the PCR, there needs to be
9 a signed waiver of the conflict? That's what I'm asking.

10 MR. ABBOTT: Your Honor, in the same --

11 THE COURT: Normally, these federal cases deal with --
12 with a person representing two co-defendants and them waiving
13 that conflict.

14 MR. ABBOTT: Your Honor, there's the Sanders case that
15 counsel represented that established this principle about
16 waiving the effectiveness in plea agreements. In footnote
17 number 2, there are several blurbs in there that reference
18 both other states' law and federal law that say basically
19 it's an inherent conflict and they're troubled by it. I
20 think the easy answer is to get a written waiver like Rule
21 1.7 says.

22 THE COURT: Okay.

23 MR. ABBOTT: And that addresses the issue, but we don't
24 have that here.

25 THE COURT: Right.

1 MR. ABBOTT: And I think the remedy is that he -- you
2 know, it doesn't -- that he gets the right to bring a PCR
3 action for all those issues, which is -- which by the
4 contract, and it's upheld, precludes that right. But again,
5 the issue here is whether he knowingly and intelligently
6 waived that right. And because of the inherent conflict, it
7 wasn't knowing and intelligent.

8 In addition to that, the other waiver factors, Your
9 Honor, in addition to age, education, but it's the time to
10 consider the waiver, and here the testimony is he only had 15
11 minutes. The time, whether it was right before trial began,
12 his testimony was that it was right before trial was supposed
13 to begin. And whether he was duressed or whether it was
14 fully explained.

15 So I think beyond the Rule 1.7 issue, there's also those
16 other factors that point to a not knowing and intelligent
17 waiver of his rights.

18 THE COURT: Very good. Yes, ma'am?

19 MS. JAMESON: Yes, Your Honor. The State would move
20 again to dismiss all claims beyond the claim of ineffective
21 assistance of counsel pursuant to Sanders, and I believe at
22 the beginning of the hearing applicant actually conceded
23 that. So the State submits we're here today just on that
24 limited issue.

25 And starting first with the testimony and argument we

1 had regarding the Rules of Professional Conduct, in Langford
2 v. State, which is a Supreme Court case from 1993, the
3 Supreme Court made it clear that the Rules of Professional
4 Conduct have no bearing on the constitutionality of a
5 criminal conviction.

6 So the State would submit nothing precludes Mr. Wilson
7 from being able to file a civil malpractice action against
8 Mr. Kata for his representation, but it has no bearing on the
9 constitutionality of his criminal conviction or on this post-
10 conviction relief action.

11 Furthermore, the credible testimony we have from counsel
12 is that they met extensively, including a first meeting for
13 5 ½ hours after counsel had already spent significant time
14 prepping this case. He testified he'd been involved with
15 many statewide grand jury cases and was used to these plea
16 agreements with his client.

17 That he explained what post-conviction relief was. He
18 explained that it would be a waiver of post-conviction
19 relief. And that his client didn't ask him to have that
20 portion removed and agreed to it in exchange for a very
21 favorable plea agreement, reducing his exposure from the
22 mandatory minimum of 25 years down to 15 to 20, for which he
23 ultimately got a 15-year sentence.

24 And the State would also submit that the testimony we
25 had for Mr. Wilson here just simply isn't incredible. He

1 testifies that he signed the plea agreement thinking he was
2 getting a seven-year sentence, but the plea agreement is
3 before the Court and it clearly says in there it's for a
4 sentence range of 15 to 20 years. He initialed each page.
5 He acknowledged he initialed each page. He signed at the end
6 of it. He acknowledged his signature there.

7 And his testimony that he only met with counsel once for
8 15 minutes just isn't credible. His testimony changed
9 between direct and cross-examination. He started out saying
10 he only met with him once a month before and then on cross-
11 examination said, oh, no, I didn't actually meet with him
12 once a month before. I only met with him for 15 minutes the
13 day of the plea agreement.

14 So the State would submit that his testimony just is
15 completely incredible, that we have credible testimony from
16 counsel here, and that this application should be denied.

17 THE COURT: Okay. Any reply?

18 MR. ABBOTT: No, sir, Your Honor. Thank you.

19 THE COURT: This does present an interesting question of
20 law, and I anticipate that we'll probably have further
21 clarification of this situation here shortly.

22 But I do find in this particular case that all post-
23 conviction relief claims with the exception of the advice of
24 entering into the plea agreement is indeed dismissed pursuant
25 to the agreement and the terms of the plea agreement.

1 I specifically find that the circumstances created by
2 this plea agreement does not create a conflict of interest
3 and -- because, number one, the defendant can file an action
4 for -- you know, for legal malpractice. And I might be wrong
5 on this, but I specifically think that it would be -- if
6 there were a post-conviction relief granted that it would not
7 be admissible in a legal malpractice because that would
8 require the findings of a judge, the findings of fact by the
9 post-conviction relief judge, be substituted for the
10 discretion of a jury, and I don't think you can do that.

11 However, if the -- in a particular given -- given post-
12 conviction relief proceeding, if the lawyer got up and said
13 that he was ineffective and he didn't do what he was supposed
14 to do, that would be admissible. It would be an admission
15 against interest.

16 But a judge sitting there and making a finding that it
17 was ineffective or was not ineffective I think is
18 inadmissible in a subsequent legal mal -- legal malpractice
19 action. I might be wrong on that, but that's -- that's the
20 way I think and, therefore, I don't believe that it's a
21 conflict.

22 The Supreme Court has already made a determination as to
23 whether or not these agreements are constitutional and fair.
24 I might have a different opinion about that, but they have
25 said that and that's the law of South Carolina.

1 But based on those reasons, I'm going to deny the post-
2 conviction relief and I would ask that in the order that you
3 certainly make reference to the plea transcript and his
4 understanding of what was transpiring, and the terms of the
5 plea agreement itself, the fact that it was signed and
6 initialed, and there was a conflict of -- I mean a conflict
7 -- a factual question with regard to how much time was spent
8 preparing the case and advising the applicant with regard to
9 his constitutional rights and with regard to his potential
10 defense in this case.

11 The testimony of the applicant and the -- and the trial
12 attorney were diametrically opposed. I've had the
13 opportunity to view the witnesses, and I specifically find
14 that the testimony of Mr. Kata is credible and I find that
15 his -- that there was adequate preparation and adequate
16 advice with regard to this plea agreement.

17 And I'm going to ask, if you could, to prepare that
18 order and send that to Mr. Abbott in order for him to ensure
19 that that's -- that the language that you put in there
20 adequately reflects my ruling. And I want you to talk with
21 him about that before you send it to me.

22 And when you send it to me, I will assume that Mr.
23 Abbott doesn't have a -- I know he probably disagrees with
24 the -- with the effect of the order, but I will assume that
25 he does not have an objection as to the language put in the

1 order.

2 MR. ABBOTT: Fair enough.

3 THE COURT: All right. Very good.

4 MS. JAMESON: Thank you, Your Honor.

5 THE COURT: Thank you, all.

6 (WHEREUPON, the proceedings ended at 10:39 a.m.)

7

8 --- END REQUESTED TRANSCRIPT ---

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

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 35, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 2nd
13 day of February, 2018.

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

16
17 Krystal J. Smith
18 Court Reporter
19

20 Florence, South Carolina

21 June 10, 2018
22
23
24
25

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF FLORENCE 2018 MAR 20 PM 3:36 FOR THE TWELFTH JUDICIAL CIRCUIT

DORIS POULOS O'HARA
 CCCP & GS
 FLORENCE COUNTY, SC

Case No.: 2017-CP-21-724

Anthony Wilson, SCDC #370488
 Applicant,
 v.
 State of South Carolina,
 Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed March 20, 2017, by Anthony Wilson (Applicant). On October 6, 2017, the State (Respondent) made its return and partial motion to dismiss, seeking summary dismissal of all claims beyond whether counsel was ineffective for advising him to enter the written plea agreement waiving his rights to challenge his conviction through post-conviction relief pursuant to the written plea agreement. An evidentiary hearing into the matter was convened February 2, 2018, at the Florence County Courthouse. Applicant was present at the hearing and represented by Michael C. Abbott, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. Following the hearing, this Court denied the application from the bench. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for the South Carolina State Grand Jury. On October 22, 2015, the State Grand Jury indicted

1 of 9

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

Applicant for one count of trafficking heroin greater than 28 grams (conspiracy) and two counts of distribution of heroin (2015-GS-47-0022), as part of a multi-count, multi-defendant indictments stemming from an investigation into a heroin trafficking ring. Justin M. Kata, Esquire, represented Applicant. Assistant Attorney General David Fernandez, of the South Carolina Attorney General's Office, prosecuted the case.

On August 2, 2016, Applicant entered into a written plea agreement, in which he agreed to "fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of importation, possession, and distribution of controlled substances and related unlawful activities," in exchange for a recommended sentence range of an aggregate fifteen to twenty years imprisonment. As part of this plea agreement, Applicant expressly waived his right to both a direct appeal and post-conviction relief action. ("The Defendant, Anthony Lemont Wilson, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, Anthony Lemont Wilson, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, Anthony Lemont Wilson, understands that he has a right to file a post-conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post-conviction relief action except for claims that directly attack the effectiveness of advice to agree to this waiver.") Applicant initialed each page of this written plea agreement and signed this plea agreement.

The same day, Applicant appeared in the Florence County Court of General Sessions before the Honorable Roger E. Henderson, circuit court judge, and pursuant to the signed plea agreement, pled guilty to two counts of distribution of heroin as indicted, and to the lesser-included trafficking in heroin (4-14 grams) (conspiracy). Judge Henderson accepted Applicant's plea and deferred sentencing.

On November 16, 2016, Applicant again appeared before Judge Henderson for a sentencing proceeding. At this hearing, Judge Henderson sentenced Applicant to an aggregate fifteen years imprisonment. Applicant did not file a notice of appeal.

ALLEGATIONS RAISED

In his application, Applicant alleged the following allegations:

1. Ineffective assistance of counsel for failure to investigate and failure to require the State to comply with Brady/Rule 5
2. Involuntary Guilty plea

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or

she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to his allegations of ineffective assistance of counsel.

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

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

At the start of the evidentiary hearing, Respondent renewed its motion to dismiss all allegations beyond whether counsel was ineffective for advising Applicant to enter into the portion of the plea agreement waiving his rights to challenge counsel's representation in a post-conviction relief action. Respondent argued that Applicant's plea agreement was valid and enforceable, but that pursuant to Sanders v. State, 412 S.C. 611, 617, 773 S.E.2d 580, 583 (2015), Applicant was entitled to raise the narrow issue as to whether counsel was ineffective for advising him to enter into the plea agreement waiving his right to pursue post-conviction relief. Applicant agreed with the arguments set forth by Respondent in its motion to dismiss and conceded the only issue before this Court was whether counsel was ineffective for advising Applicant to enter into a plea agreement that waived his right to post-conviction relief.

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

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

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

As this Court granted Respondent's motion to dismiss all other allegations pursuant to Sanders, Applicant proceeded forward at the evidentiary hearing on the claim of whether counsel was ineffective for advising him to waive collateral review of his convictions through post-conviction relief in exchange for the favorable terms as set forth in the signed plea agreement.

In support of this allegation, Applicant testified on his own behalf and presented testimony from plea counsel, Justin Kata (counsel). Counsel testified first. Counsel testified he was appointed to represent Applicant and that this was not his first State Grand Jury case or case with a cooperation and plea agreement. He testified he had two long meetings with Applicant, including a five-and-a-half hour meeting where they reviewed all discovery and discussed the case. He testified he and Applicant discussed potential sentences, including the mandatory

minimum sentence of twenty-five years Applicant faced based on the indicted charges. Counsel testified the initial plea offer from the State was for twenty years imprisonment, but after counsel's continued negotiation with the State, was able to secure a plea offer for a recommended range of fifteen to twenty years imprisonment. He testified the plea agreement was deduced to writing, which he reviewed thoroughly with Applicant. He explained to Applicant that he was waiving his right to file a direct appeal and post-conviction relief action and explained what both of those actions were to Applicant. However, counsel testified he did not provide specific examples of potential post-conviction relief claims to Applicant, but rather, explained the post-conviction relief process generally, including most claims would be related to his performance. He testified Applicant appeared to understand these conversations and willingly waived these rights in exchange for a favorable plea agreement. He testified Applicant initialed each section of the plea agreement, including the waiver of direct appeal and post-conviction relief, and signed the plea agreement.

Applicant questioned counsel as to whether counsel believed Applicant would be prevented from pursuing a legal malpractice claim against him pursuant to the waiver agreement and counsel stated he did not believe so. Applicant also questioned counsel whether he believed it was an inherent conflict of interest pursuant to Rule of Professional Conduct 1.7 to advise Applicant to waive his PCR rights as counsel has a self-interest in not being found ineffective in a post-conviction relief proceeding due to potential legal malpractice claims. In response, counsel indicated he saw no conflict, thus did not secure a written waiver from Applicant. He testified he does not believe this waiver would prevent Applicant from filing a legal malpractice

claim against him and based on recent case law, would still allow Applicant to file a post-conviction relief action on the limited issue before the Court currently.

Applicant testified on his own behalf. Applicant testified he only met with counsel once for approximately fifteen minutes and that this meeting took place approximately one month before he entered his guilty plea. He testified he never saw any of the State's evidence or discussed his case with counsel. He testified he met with counsel to sign the plea agreement and the meeting lasted less than fifteen minutes. He testified counsel did not explain the waiver of direct appeal or post-conviction relief to him. He testified he accepted the plea offer because counsel informed him he would receive a seven year sentence if he provided law enforcement with information on his co-defendant. He acknowledged that he initialed and signed the plea agreement. He denied recalling any of the plea hearing, including telling the plea court he was satisfied with counsel and had not been forced or threatened to enter his guilty plea.

After reviewing the record and listening to the testimony presented, this Court finds counsel performed competently in advising Applicant to enter into the plea agreement including the waiver of post-conviction relief. This Court finds that counsel's testimony is credible and finds that Applicant's testimony is not credible. This Court notes that counsel had significant experience with handling similar cooperation and plea agreements and State Grand Jury cases. Counsel's credible testimony establishes counsel adequately and fully explained all portions of the plea agreement to Applicant including the waiver of post-conviction relief remedies and that Applicant knowingly and voluntarily waived his rights after these conversations with counsel. This Court also finds there was no inherent conflict of interest in advising Applicant to enter into the favorable plea agreement in exchange for the waiver of post-conviction relief remedies. This

Court also finds that counsel was thoroughly prepared and competent in his representation of Applicant generally. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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

James, South Carolina

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

2018 MAR 20 PM 3:36
 DORIS PULIS O'HARA
 CDP-GS
 FLORENCE COUNTY, SC

FILED

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

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

CASE NO.: **2015GS 47 227**

VS.)

TIMOTHY LEVERNE JOHNSON (A/K/A)

"TIMMY", "FAT BOY"),)

WILLIE JAMES WILSON (A/K/A "FAT)

DADDY", "FATS"),)

ANTHONY LEMONT WILSON (A/K/A)

"PETER RABBIT", "RABBIT"),)

ANDERSON COOPER, JR. (A/K/A)

"STINKY"),)

ERIC HOLMES, JR. (A/K/A "E"),)

ROBERT EARL DAVIS (A/K/A)

"BOBBY"),)

DANIEL MARQUIS BARR (A/K/A)

"BLACK"),)

JOSEPH WILLIAM COKER (A/K/A)

"JOE BRICKS"),)

ASHLEY BROOK COKER,)

GEORGE SKINNER,)

BRANDON GERALD MORRIS,)

- KARLA OLIVIA PROSSER,)

ARKELIUS DWAYNE ADAMS (A/K/A)

"SLIM"),)

DAWN MARIE RILEY,)

SHEILA RENEE WEBB,)

CRAIG SHAWN AVANT (A/K/A)

"BOOGER"),)

JEFFREY WITHERSPOON,)

NICHOLAS WILSON (A/K/A "LURCH"),)

ROY DAVIS DRAUGHN, JR. (A/K/A)

"SNOWMAN", "LITTLE ROY"),)

TRAVILLE CHAVIS WATERMAN)

(A/K/A "VELLIE"),)

DEFENDANTS.)

**INDICTMENT FOR
UNLAWFUL DRUGS**

) Trafficking Heroin (Conspiracy)

) Greater Than 28 grams

) S.C. Code Ann. § 44-53-370 (e)(3)(c)

) (1 Count)

) Distribution of Heroin

) S.C. Code Ann. § 44-53-370 (b)(1)

) (7 Counts)

FILED

OCT 22 2015

JAMES R. PARKS
CLERK, STATE GRAND JURY

At a session of the State Grand Jury of South Carolina, convened in Columbia,

South Carolina, on October 22, 2015, the State Grand Jurors present upon their oath:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A True Bill



FOREMAN


ALAN WILSON (daf)
ATTORNEY GENERAL