

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

Honorable Daniel D. Hall, Circuit Court Judge

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May 04 2021

S.C. SUPREME COURT

DENNIS RODGER DAVIS, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2020-001116

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against- 2013-GS-46-2964

7 DENNIS DAVIS, JR.

8 Defendant.

9 -----x

10 May 21, 2014

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE G. EDWARD WELMAKER

15

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

17 HATTIE E. BOYCE, Esquire

18 Attorney for the Plaintiff

19

20 DAVIDA MATHIS, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1	<u>E X H I B I T S</u>			
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3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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1 THE COURT: Mr. Hayes, you represent Mr. Davis in
2 these matters?

3 MR. HAYES: Yes, Your Honor.

4 THE COURT: Have you had an opportunity to discuss
5 with your client the charges pending against him, the
6 possible punishment that he faces and his
7 constitutional rights?

8 MR. HAYES: I have, Your Honor.

9 THE COURT: Do you believe he understands the
10 discussions you have had with him?

11 MR. HAYES: I do.

12 THE COURT: Have you reviewed with your client all
13 the State's evidence.

14 MR. HAYES: I have.

15 THE COURT: Based upon your investigation of all
16 the facts and circumstances do you believe the State
17 could present sufficient evidence to convince the jury
18 of his guilt beyond any reasonable doubt if a trial
19 were held his conviction would be most probable.

20 MR. HAYES: Yes, Your Honor.

21 THE COURT: Mr. Davis, how old are you sir?

22 THE DEFENDANT: Thirty-two.

23 THE COURT: Thirty-two. Are you married sir?

24 THE DEFENDANT: No, but I am in a relationship
25 with my girlfriend right there.

1 THE COURT: Do you have children?

2 THE DEFENDANT: Yes, sir, I've got five.

3 THE COURT: How old are your children?

4 THE DEFENDANT: I got two that are twelve. I got
5 two that is six, and I got one that is nine.

6 THE COURT: How far did you go in school Mr.
7 Davis?

8 THE DEFENDANT: I didn't graduated but I do got my
9 GED.

10 THE COURT: Where did you attend high school?

11 THE DEFENDANT: At Rock Hill High School.

12 THE COURT: What grade were you in when you
13 dropped out.

14 THE DEFENDANT: 11th grade.

15 THE COURT: What type of work have you primarily
16 done since you ever been out of school?

17 THE DEFENDANT: Like warehouse work right now. I
18 was working at Family Dollar Distribution Center at
19 the warehouse.

20 THE COURT: When did you last worked there.

21 THE DEFENDANT: I am currently working there now.

22 THE COURT: How long have you worked there?

23 THE DEFENDANT: Almost three months.

24 THE COURT: What kind of work did you do before
25 that?

1 THE DEFENDANT: I cut hair and mow lawns.

2 THE COURT: Have you ever had any treatment for
3 alcohol or drug abuse in the past?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. Do you have any physical
6 or mental problems that would interfere with you
7 ability to understand what we are doing here today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you have any prescription drugs that
10 you take?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you have any substance in your body
13 today?

14 THE DEFENDANT: No, sir.

15 THE COURT: So you are aware of what we are here
16 for and what these charges are about?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, I have Indictments that state
19 that here in York County, on or about April the 5th,
20 you of 2013 you districted some marijuana. Also on
21 that same date when that distribution was made you
22 were within a half mile radius of Clinton Junior
23 College, that being a private or public school. Are
24 you pleading guilty today to those two charges; the
25 distribution and the proximity to the school on April

1 the 5th, or on or about April the 5th?

2 Are you pleading guilty to that.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You got to speak up. The court
5 reporter has got to pick up everything you say and
6 everything I say.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And also in April, on or about the
9 16th of this April, the Indictment says that you were
10 in possession of a quantity of marijuana. Are you
11 pleading guilty to that today also.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Then I have an Indictment that says on
14 or about March the 8th of 2013, you again distributed
15 marijuana here in York County and that again was
16 within proximity of Winthrop University being, within
17 half mile radius of that educational facility. Are
18 you pleading guilty to that as well today?

19 THE DEFENDANT: Yes.

20 THE COURT: All right, solicitor, I will be glad
21 to hear about the background facts of the case.

22 MS. DESCH: Thank you, Your Honor. Your Honor on
23 March 8 at approximately 3:51 p.m. the officer from
24 the drug enforcement unit here in York County met with
25 a confidential informant. That confidential informant

1 told the drug enforcement unit that he could buy
2 marijuana by a person known as Mack who lived in a
3 house on Stewart Avenue and Rose Street near Winthrop
4 University. They set up a deal. In doing so when
5 they met with the C.I.. He was searched to make sure
6 there was no contraband on him. He was given some buy
7 money from the drug enforcement unit and monitored by
8 video and audio equipment while he went up and met
9 with who he knew as Mack. He bought some marijuana
10 from Mack. Gave him the \$25 dollars of identifiable
11 funds. Got back into his car. Monitored the entire
12 time. He returned to the location to meet up with
13 with drug enforce unit again. Again was searched.
14 He no longer had the buy money but he did have
15 marijuana. It was taken by officers. Officers
16 submitted that. It was tested. It was 6.8 grams of
17 marijuana. It was confirmed to be marijuana by the
18 chemist. This incident did took place within a half
19 mile of Winthrop University Campus.

20 During that investigation it was determined that
21 Mack was legally known as Dennis Davis, the defendant
22 before you. A photo line-up was given to the C.I. and
23 he confirmed the identification of Mack as Dennis
24 Davis. He picked him out of the line-up.

25 The officers met again with that same confidential

1 informant on April 5, 2013. Again they went through
2 the same routine of searching him, wiring him, making
3 sure he was monitored and he didn't have any
4 contraband. The confidential informant called Mack
5 again to set up a deal. He met him at the grocery
6 store on Proper Road. Went out there and in exchange
7 for \$25 in government marked buy money. He got 6.8
8 grams of marijuana. A quarter of an ounce,
9 approximately a quarter of a ounce. Came back, gave
10 that to drug enforcement unit who then submitted into
11 evidence. Confirmed that it was marijuana and it was
12 approximately a quarter of an ounce. That deal
13 happened within a half mile of Clinton College.

14 Your Honor, the defendant was not -- again, it was
15 confirmed that Mack was Dennis Davis.

16 On April 16th, Mr. Davis was arrested on those
17 outstanding warrants from drug enforcement unit. When
18 he is was arrested on those warrants they asked him if
19 he had anything illegal on him. He initially said
20 no. When he got to the jail on those warrants they
21 did a strip search and there it was revealed there was
22 marijuana in a grey baggy in his underwear. He was
23 charged with simple possession of marijuana and
24 contraband. That marijuana was seized from him and
25 tested. It was confirmed to be marijuana. It was

1 13.9 grams.

2 Your Honor, those are essentially the facts for the
3 purposes of this plea. To make these third offense
4 distribution of marijuana as Your Honor knows, there
5 was a conviction from October of 2002 of trafficking
6 crack cocaine 10 to 28 grams. There was also a
7 conviction from that same incident, possession of
8 crack cocaine with intent to distribute near Winthrop
9 College. Your Honor, in February of 2009 he had
10 simple possession of marijuana second or subsequent
11 conviction making both possession of marijuana a
12 second subsequent offense and the distribution of
13 marijuana third offenses and rest of his record is
14 essentially traffic offenses from 2001 and you heard
15 about the pointing and presenting and the possession
16 of stolen pistol. That was around the time of the
17 trafficking charge.

18 THE COURT: Mr. Davis, you heard the facts recited
19 by the solicitor surrounding these incidents that
20 happened in March and April of last year. Are those
21 substantially the facts to which you are pleading
22 today as to what happened on each of of the incidents
23 where the distribution of marijuana took place in
24 March and April. Are you pleading guilty to those
25 facts?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Davis, when you enter a plea of
3 guilty you give up substantial rights that you enjoy.
4 You have a right to have a trial by jury. We
5 selected a jury. They haven't been sworn in yet but
6 you could continue with this trial. The State of
7 South Carolina would have to prove your guilt beyond
8 any reasonable doubt. You would have a right to
9 remain silent. You would be presumed innocent. In a
10 trial you would have a right to confront those
11 witnesses against you and let your lawyer examine them
12 under oath. You would have a right to challenge the
13 evidence the State tries to introduce. You would have
14 a right to call witnesses in your own behalf if you
15 wish to. You have these and other rights under our
16 constitution, but you give all those up by pleading
17 guilty. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you satisfied with the
20 representation of your attorney?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has he done everything to defend you
23 you've asked him to do? Excuse me? You are need to
24 speak up, please.

25 Has he done everything to defend you that you asked

1 him? Did you ask him to do anything that he hasn't
2 done?

3 THE DEFENDANT: No. He said what I asked him to
4 do said he can't do.

5 THE COURT: Asked him to that he can't do as far
6 as investing the case?

7 THE DEFENDANT: Like tell the solicitor trying to
8 work something out.

9 THE COURT: He says he can't work out any better
10 deal for you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you understood the discussions
13 you had with your lawyer.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is there anything else you feel you
16 need to talk with him about?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you have any complaints at all
19 about his representation?

20 THE DEFENDANT: No, sir.

21 THE COURT: Is there any recommendation from the
22 State, solicitor? Any recommendations from the State?

23 MS. DESCH: Your Honor, at this point because we
24 are in the trial posture and the C.I. has been
25 revealed there is no recommendation from the State.

1 THE COURT: Has anyone promised you anything, Mr.
2 Davis to entice you to pleading guilty today?

3 THE DEFENDANT: They didn't promise, but they said
4 if I will plead I will get a whole bunch of time.

5 THE COURT: Do you understand that the charges that
6 you are pleading to would carry 61 years in jail if
7 they all were accumulated? For each of the
8 distribution you could receive up to 20 years in jail,
9 for each of the charges of the proximity of the
10 distribution within an education facility you could
11 get 10 years each on those, and for the possession you
12 could receive one year in jail. Do you understand
13 that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you understand it is up to me to
16 decide what the sentence is?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has anybody threatened you to get you
19 to plead guilty today?

20 THE DEFENDANT: No.

21 THE COURT: Are you pleading guilty Mr. Davis of
22 your own free will?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you doing so because you are
25 guilty of these charges?

1 THE DEFENDANT: Because I don't want to do a whole
2 bunch of time.

3 THE COURT: Well, I just told you that could
4 receive 61 years in jail. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you guilty of these charges.

7 THE DEFENDANT: Yes.

8 THE COURT: You heard what I read from the
9 indictments?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you understood the questions I
12 asked of you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you been truthful in your answers
15 to me?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: The law gives you a right if you meet
18 our Appellant Courts rules to appeal this proceeding
19 within ten days, and if you can't afford an attorney
20 one can be appointed for you. In other words if there
21 is legal matters that the Appellant Court feels that
22 were violated in this proceeding then you could appeal
23 this within ten days.

24 Do you understand that.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I find there is a substantial factual
2 basis for the plea, that it has been freely and
3 voluntarily, knowingly and intelligently made by Mr.
4 Davis with the advice of competent legal counsel with
5 whom he expressed his satisfaction. I will accept
6 your plea sir.

7 Mr. Hayes, I will be glad to hear from you and
8 certainly from your children.

9 MR. HAYES: Thank you, Your Honor. May it please
10 the Court.

11 Mr. Davis as told you, Your Honor, he is
12 32 years old. He does have family that resides in the
13 Rock Hill, Charlotte area. He was working throughout
14 this past year since these incidents in a warehouse in
15 Charlotte. Throughout my representation when I asked
16 Mr. Davis to come up sometimes he had to work. He
17 made time to come up at other times, but he is a hard
18 worker. I know that to be a fact. I also had the
19 opportunity to meet his family who is here in support
20 of him. His girlfriend, is in the first row, his
21 mother and his sister are also in the first row. I
22 believe some other family members are in the courtroom
23 as well. He has got a strong support of loving family
24 who is here and I believe want to see Dennis do well.
25 I believe in the past year he has made some changes to

1 turn his life around. Since the incident he has
2 worked. I believe he has started to go to church and
3 he has cared or tried to care for his family. As he
4 told Your Honor, he has five children that he supports
5 and cares for.

6 Mr. Davis, I think as some people are up against
7 these type of charges, as you can see he is very
8 nervous about the time he could potentially get. I
9 would ask that Your Honor to consider that he has of
10 his own volition in the past year made substantial
11 changes to his life. Has not continued to deal drugs
12 in the past year and I would ask Your Honor to
13 consider that. Not to consider the charges. I would
14 ask you to consider them as whole. This was just one
15 course of conduct. Not penalize him because of the
16 amount of charges. I think that this was a course of
17 conduct that was investigated and he is pleading
18 guilty to them and acknowledging his guilt. But I
19 would ask Your Honor not to give Mr. Davis more time
20 because of the amount of charges in this case.

21 Mr. Davis, I believe would like to address the
22 Court, but I think his mother would also like to
23 address the Court if the Court would be inclined.

24 THE COURT: I would be glad to hear from him or
25 her or anyone else. Thank you.

1 MR. CREIGHTON: Miss Davis.

2 THE COURT: If you would please state your name
3 for the record.

4 MS. DAVIS: I'm Lisa Davis.

5 THE COURT: All right. Miss Davis. Be glad to
6 hear from you.

7 MS. DAVIS: All right. Thank you for the
8 opportunity, Your Honor. I want to talk to you a
9 little bit about the Dennis that I know because I know
10 you heard the Dennis that the Court knows. But
11 Dennis, my son, what they fail to tell you is he is a
12 very loving person. He is a loving person to me,
13 loving person to his family. If you look out among
14 the community I don't think you will find many people
15 that would tell you anything different other than he
16 is loving. He is kind. He is caring. He will give
17 you the shirt off his back if he can. I also want to
18 tell you that my son has a mixed family. Those five
19 children are not five biological children he has. He
20 has two biological children and three children with
21 the girlfriend that he's with. I want to tell you
22 that he treats them all the same. I want to tell you
23 they all very important to him. The 12-year old will
24 be 13-years old this year. I want to tell you that
25 when I came in here and I prayed all night because I

1 came with the attention of taking my son home because
2 -- I understand and I know what the solicitor and the
3 police officers say he did. I will leave it at that
4 on that particular comment. But I also know my son
5 and I also know he have a lot of friends and I know
6 these friends pal around and they are not always doing
7 what is right. Not everybody always does what is
8 right. Sometime they're smoking stuff they shouldn't
9 smoke. And I really believe in my heart this is
10 how he got caught up with this particular situation
11 because that boy is a friend of a friend that I know.
12 You know, like I said, we all make mistakes.
13 Unfortunately mistakes that my son has made is going
14 to cost him. Like Mr. Hayes' said, in over the last
15 year I saw a change in my son and I don't know if he
16 it's admissible in this courtroom, but I am a believer
17 and I believe in Jesus Christ and the power of prayer.
18 I raised my kids in the church. My son when he went
19 down the road, the first time he went down the road,
20 he got tied up with some other guy's religion that I
21 know nothing about and I didn't support that and for
22 those of you who don't believe in religion in here I
23 will ask you to bare with me because I need you to
24 understand what I saw this time.

25 So in November I saw some things happen and I saw

1 my son begin to pray, Your Honor. And I believe in
2 the effectual prayers of a righteous man. That was
3 change number one. All through the years my son went
4 backwards and forward. Me taking him to McDonalds,
5 Burger King, Bojangles, US Foods, all different kind
6 of warehouse to try to get a job. He couldn't get a
7 job, Your Honor, because of his record. So, when
8 he began to pray in November he started getting calls
9 for jobs. He went to work. My son cares about his
10 kids and he is going to provide for them. He may for
11 not provide for them the right way, because that is
12 what happened back when he was first arrested. It
13 wasn't right, but he was providing for them kids. And
14 I believe he is going to continue to provide for them.

15 The only thing else I want to say to you today
16 and to this Court is I ask that you show mercy. I
17 ask that if any way possible and I don't know the
18 right words because I'm not a lawyer, but I know that
19 he cares about his kids. I know he want to see his
20 kids with nice things that other kids have. He has a
21 13-year old. She is in band and she's running track.
22 That takes a lot of money. I work for one of the
23 local health agencies and they just cut my hours down
24 to be part time, so I don't have a lot that I can
25 give. Their mother, the children's mother, she is

1 back there. She works too, but I know her job. She
2 works at McDonalds. Her job is minimal. So -- so,
3 what I'm saying, a man need to be there to take care
4 of his kids.

5 So, in your consideration I ask that you be
6 merciful if you can so that maybe he can get back soon
7 and get back in his place so he can help take care of
8 his kids and if at all possible something that you can
9 do to help him continue to be eligible for employment
10 because I've been through it with him and I took him.
11 And had I not been there I would have said you a
12 ain't looking for no job. But I been there and I saw
13 what he went through and I saw nobody in Rock Hill
14 would give him a chance. But when he went to start
15 applying in North Carolina they gave him a chance. I
16 ask that you give him a chance today.

17 THE COURT: Thank you, ma'am. Mr. Davis,
18 anything you want to tell me.

19 THE COURT: Yes, sir. I got five kids. Like my
20 momma was saying three of them ain't biological, but I
21 love them just like they are mine and nothing in the
22 world I wouldn't do for them. I have five of them and
23 I don't know like however sentencing will go or if
24 there is any way possible that I could get back to
25 them, but I would much like to go home. But if not go

1 home, at least give me something so I won't be gone
2 that long.

3 I got two kids ready to be teenagers and I mean,
4 you were a teenager once, that is when you really
5 start getting in to things and stepping out and
6 eventually trying to see what life about. I feel like
7 me being away from them and at such a critical time
8 it's just going to hurt them more than it's going to
9 help them.

10 That's all I got to say.

11 THE COURT: How old were you when you started
12 using marijuana?

13 THE DEFENDANT: Thirteen.

14 THE COURT: You get it from a friend.

15 THE DEFENDANT: Me and my friends.

16 THE COURT: Your mother didn't approve of you
17 using marijuana as 13-year old, did she?

18 THE DEFENDANT: She didn't, no.

19 THE COURT: You sneaked behind your back so you
20 could do that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: She tells me she was trying to teach
23 you the right thing to do.

24 THE DEFENDANT: She was.

25 THE COURT: You knew smoking marijuana as a

1 13-year old wasn't the right thing to do, didn't you.

2 THE DEFENDANT: Are you saying, did I know?

3 THE COURT: Did you know that when you were 13
4 that you shouldn't be smoking marijuana.

5 THE DEFENDANT: Yes, sir, but you know when you
6 are young you make dumb choices. Dumb mistakes.

7 THE COURT: We all do, but then that just kept
8 going on an on, didn't it?

9 THE DEFENDANT: I just want the best for my kids.
10 I want them to be better then I was, being I've been
11 through some things and not always made the right
12 decisions. Whose a better teacher to tell them then
13 somebody who has been where they are trying to go.

14 THE COURT: Any time served on this solicitor?

15 MS. DESCH: I actually don't know that answer.

16 THE COURT: Minimal time, I guess.

17 MR. HAYES: Yes, sir.

18 THE COURT: He bonded out?

19 Mr. HAYES: Yes, sir.

20 Your Honor, I would ask the Court to consider that
21 this sentence because of the nature of Mr. Davis's
22 record the department will treat as 85 percent before
23 he is eligible to make parole, I would ask the Court
24 to consider that and the fact that the minimum on this
25 sentence is five years. I would ask the Court to

1 consider a sentence somewhere in the range of five to
2 eight years. Somewhere in there. He was originally
3 offered six years, which I think is an appropriate
4 sentence in this case. Considering his record I
5 understand the Court may not be inclined to issue the
6 minimum sentence, but I believe somewhere on the lower
7 end of this range considering that Mr. Davis has come
8 in and acknowledged his guilt before going through
9 with a trial. Man upped so to speak. I think that he
10 should be given some consideration today, Your Honor.

11 MS. DESCH: Your Honor, may I address that
12 briefly?

13 THE COURT: Yes, ma'am.

14 MS. DESCH: I understand why mitigation like that
15 is presented, but we would also just like to address
16 the fact that offer was given prior to the C.I.'s
17 identity be revealed and that is very important to the
18 State. Citizens help us out and we try to make plea
19 offers that reflect protecting there identity. That
20 offer was rejected and the identity was revealed and
21 we are here for trial.

22 THE COURT: Somehow the cycle has got to be broken
23 now Mr. Davis. You care for your children I know
24 and your mom cared for you and she tried to teach you
25 right, and hopefully you teach your children right,

1 while you are away from your children. You are
2 32 years old. You will have some other young people
3 that hopefully you can teach some of your principals
4 that your mom has taught you, a woman of strong faith.
5 Perhaps that can do you well with some of the folks
6 you come in contact in jail and out of jail. And from
7 what I heard today you got great potential to be a
8 productive member of our society. Help mentor, not
9 only your children and your girlfriend's children but
10 other young people around to teach them the errors of
11 your ways and I hope you succeed in that.

12 This is case 2013-GS-46-70. The sentence of the
13 Court is you be committed to the Department of
14 Corrections for a period of 125 months. Case
15 2971, sentence of the Court 125 months to be
16 concurrent. Case, 2966 five year sentence will be
17 concurrent. Case 2964 one year sentence will be
18 concurrent to those previously imposed.

19 I wish you the best Mr. Davis and certainly for
20 your family.

21 MR. HAYES: Thank you, Your Honor.

22

23

24

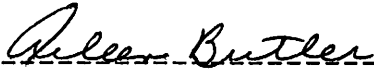
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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 21st day of May, 2014.

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

April 28, 2015

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Certified Court Reporter

STATE OF SOUTH CAROLINA

County of York

IN THE COURT OF COMMON PLEAS

2015CP4600777

Dennis Rodger Davis Jr. 288558

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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: Herschaw Correctional Institution
2. Name and location of Court which imposed sentence York County
General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013 GS460 2971, 2013 GS460 2970,

CERTIFIED TRUE COPY
2015 MAR 16 AM 11:03
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

FILED - RECEIVED
2015 MAR 12 PM 12:30
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

(c) 2013GS4602969, 2013GS4602966, 2013GS4602964

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 2013GS4602971, 2013GS4602970 5/21/2014 125 months

(b) 2013GS4602969, 2013GS4602966 5/21/2014 5 years

(c) 2013GS4602964 5/21/2014 1 year

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ☒

(b) after a plea of not guilty ☐

(c) after a plea of nolo contendere ☐

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

Yes

8. If you answered Ayes@ to (7), list:

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. My appeal was dismissed for failure to provide sufficient explanation as required by Rule (203)(d)(1)(B)(IV).

ii. _____

iii. _____

(c) the date of each such result:

i. It was dismissed 8/11/2014, in which I did not find out about it being dismissed until 1/9/15.

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered Ano@ 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) Ineffective assistance of trial Council.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to Challenge the use of an Invalid Conviction.
- (b) Failure to Challenge the Sufficiency of the Chain of Custody.
- (c) Failure to protect my rights to seek a direct Appeal. Also failure to sign me up with the indigent defense to represent me on appeal.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Court of Appeals
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. It was dismissed.

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. It was dismissed on 8/11/2014 in which I did not know it was dismissed until 1/9/15

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?

No

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) This is my first opportunity.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Craigton Hayes Sixteenth Circuit Public Defender office Moss Justice Center 1675-18 York Highway P.O. Box 691 York, SC 29745
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea arraignment
- ii. Direct Appeal
- iii. _____

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

Remand for a new trial, or any remedy this Court seems just!

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Dennis Rodger Davis Jr., 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.

Dennis Davis

SWORN to and subscribed before me this 9
day of March, 2015.

Catherine A. Omeson (L.S.)
Notary Public

My Commission Expires: My Commission Expires December 31, 2017

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

I, Dennis Rodger Davis Jr., 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.

Dennis Davis
Applicant

SWORN or affirmed to and subscribed before me this

9 day of March, 2015.

Catharine A. Amara
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-0777
Dennis Roger Davis, Jr.,	)	
S.C.D.C. No. 290227,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 12, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the August 2013 term of the York County Grand Jury for Possession of Marijuana (2013-GS-46-2964), two charges of Distribution of Marijuana In Proximity of a School (2013-GS-46-2966, -2969), and two charges of Distribution of Marijuana (2013-GS-46-2970, -2971). Applicant was represented by Creighton Hayes, Esquire. On May 21, 2014, Applicant pled guilty before the Honorable G. Edward Welmaker. He was sentenced to a term of imprisonment for one year for Possession of Marijuana, five years for each charge of Distribution of Marijuana In Proximity of a School, and ten years for each charge of Distribution of Marijuana. All sentences run concurrently.

Applicant timely filed a notice of appeal. By Order filed February 11, 2014, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to file sufficient explanation as required by SCACR 203(d)(1)(B)(iv). The Remittitur was sent September 5, 2014.

II.

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

1. Ineffective Assistance of Trial (Guilty Plea) Counsel
 - a. "Failure to challenge the use of an invalid conviction"
 - b. "Failure to challenge the sufficiency of the chain of custody"
 - c. "Failure to protect my rights to seek a direct appeal. Also failure to sign me up with the indigent defense to represent me on appeal."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits plea counsel rendered effective assistance of counsel. In a Post-Conviction Relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

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

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's guilty plea counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

, 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2015-CP-46-0777

DENNIS DAVIS, JR., #290227

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

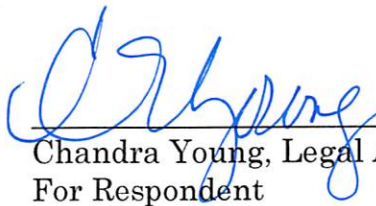
STATE OF SOUTH CAROLINA,

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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
235 East Main Street; Suite 115
Rock Hill, SC 29731

DATED this 6th day of August, 2015.


Chandra Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF YORK) 2015-CP-46-0777

DENNIS DAVIS, JR.)
 APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
 STATE OF SOUTH CAROLINA)
 RESPONDENT)

January 20, 2016
 York, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

LEAH B. MOODY, ESQUIRE
 Attorney for the Applicant

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL
 Attorney for the State

CREIGHTON HAYES, ESQUIRE

HATTIE O. GORDON
 Circuit Court Reporter

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DENNIS DAVIS	
Direct By Ms. Moody	7
Cross By Mr. Hunter	33
CREIGHTON HAYES	
Direct By Mr. Hunter	35
Cross By Ms. Moody	44
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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

MR. HUNTER: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. HUNTER: The last case today is Dennis Davis, Jr. v. the State of South Carolina, 2015-CP-46-0777. Your Honor, he was indicted at the August 2013 term of the York County Grand Jury for possession of marijuana second or subsequent. That's 2013-GS-46-2964 two counts of distribution of marijuana in proximity of a school. Those are 2013-GS-46-2966 and 2969. And also for two counts of distribution of marijuana third offense. That would be 2013-GS-46-2970 and 2971.

He was represented by Mr. Creighton Hayes. On May the 21st 2014 he pled guilty before the Honorable G. Edward Welmaker, and was sentenced to one year for possession of marijuana second or subsequent. Five years concurrent for each count of distribution of marijuana in proximity of a school. And ten years, five months concurrent on each charge of distribution of marijuana third offense.

Your Honor, Mr. Hayes filed a Notice of Appeal and a Rule 2(f), 3(b) explanation saying that he did not believe that there was a good faith basis for appeal. Let's go on to afford Applicant of those rights. By order filed February 11th 2014 the Court of Appeals dismissed the

1 appeal. The remitter was sent September 5th 2014. On
2 March 12th 2015 filed this current action. He is present
3 today, and he is represented by Ms. Lea Moody.

4 THE COURT: Mr. Davis, at the beginning of each
5 hearing in the post conviction relief terms I take just a
6 minute or two to speak with the Petitioners just to make
7 sure you've got an understanding of what I can do as
8 presiding judge hearing your case and also some potential
9 pitfalls.

10 And I have briefly looked at the documents in the
11 file up here. I especially want to take some time to talk
12 with you. First of all, sometimes the rumor goes around
13 the Department of Corrections that you can get your
14 sentenced reduced. I have no authority to do that. I
15 can't -- cannot reduce the sentence.

16 The basic relief in any petition for post conviction
17 relief would be grant a new trial if you convince the
18 trial court of it; that remedy does.

19 Now, pitfalls, dangers of P.C.R. is that you go back
20 to ground zero if your petition is granted. And it caught
21 my eye two things that are a little unusual about your
22 file. You received a ten year sentence, and you had, and
23 I don't know if there is any charges that were nolle
24 prosed or dismissed, but just from the charges in the plea
25 involved you had a potential exposure of 61 years. You

1 realize that if you were to get relief here you could be
2 brought back and you would open yourself up to that
3 possible 61 years should a judge see fit if you were
4 convicted.

5 The other thing that I caught in looking over your
6 file, you're up for parole in three and a half months.

7 MR. DAVIS: Yes, sir.

8 THE COURT: So you may want to take a minute or two
9 and talk with your counsel and make sure that this is the
10 action you want to take.

11 Now, I'm not tell you what you need to do. I'm just
12 telling you what I know from experience that I've seen
13 happen, and I tell everybody about a case over in
14 Darlington County. There was a petitioner over there that
15 received a 20 year sentence on a voluntary manslaughter
16 charge. And he prevailed on his P.C.R. petition and got
17 granted a new trial..

18 He was brought back to Darlington and he was tried
19 and he received a 30 year sentence. So that's a classic
20 example of why I wanted to review this with you because
21 there is a lot of misunderstanding that goes on about what
22 we can do as presiding judge and also those potential
23 pitfalls. So if you want to take a minute or two to talk
24 to counsel you're more than welcomed to.

25 MR. DAVIS: I understand what that says, sir.

1 THE COURT: Okay. All right.

2 MS. MOODY: Your Honor, at this time I call Dennis
3 Davis to the stand.

4 DENNIS DAVIS, after being duly sworn, testified
5 as follows:

6 CLERK OF COURT: Come around and have a seat in that
7 witness box.

8 MR. DAVIS: Yes, ma'am.

9 CLERK OF COURT: Watch your step up.

10 DIRECT EXAMINATION

11 BY MS. MOODY:

12 Q. Would you please state your full name for the record,
13 sir.?

14 A. Dennis Davis, Jr.

15 Q. And where are you currently incarcerated?

16 A. Regional Correctional Institution.

17 Q. And what is the current sentence that you're serving?

18 A. Twenty-five months for two distributions. Well, I
19 got 125 months on two distributions and five years on
20 proximity of a school zone. And I was sentenced to a year
21 for possession of marijuana.

22 Q. Okay. And, so, the total you're serving, ten years
23 charge running concurrent, correct?

24 A. Yes, ten years and five months.

25 Q. Okay. And who was your attorney on those charges?

1 A. Creighton Hayes.

2 Q. Okay. And of those charges there were no charges
3 dismissed, correct?

4 A. I think it was. I was think it was a -- I think it
5 was three distributions and I think three proximities, but
6 they threw one of them out. From my understanding like
7 one of them really wasn't no good any way.

8 Q. So when you got indicted you had charge from
9 March 8th?

10 A. Yes, ma'am.

11 Q. You had a charge from April 5th?

12 A. Yes, ma'am.

13 Q. And then you had one from April 16th?

14 A. Yeah, and it was also one on March the 21st.

15 Q. Okay. So that got thrown out, but the charges that
16 got indicted were two -- well, one distribution on
17 March 8th along with one distribution within proximity of
18 a school, correct?

19 A. Yes, ma'am.

20 Q. Okay, and then the similar charge, but proximity of
21 another school on April the 5th?

22 A. Yes, ma'am.

23 Q. Okay. And then there was a possession of marijuana
24 charge. So that's all of the charges that you have that
25 you're serving your ten years and five months on?

1 A. Yes, ma'am.

2 Q. Okay. And Creighton Hayes represented you on all
3 those charges?

4 A. Yes, ma'am.

5 Q. Did he represent you from the time that you were
6 arrested?

7 A. No, I think -- well, I had to fill out an application
8 for ...

9 Q. An attorney?

10 A. Yeah.

11 Q. Okay. So once you filled out that application for an
12 attorney you got appointed to Mr. Hayes?

13 A. Yes, ma'am.

14 Q. Okay. Now, did you have an opportunity to meet with
15 Mr. Hayes?

16 A. Yeah, we met a couple times.

17 Q. Did you meet while you were in County?

18 A. No, ma'am. I bonded out. I bonded out I think like
19 four maybe five days after I had been locked up on the
20 16th.

21 Q. Okay. And so when you said met with him a couple
22 times you went to his office and met with him?

23 A. Um hum.

24 Q. Yes?

25 A. Yes, ma'am.

1 Q. So when you met with him did you have an opportunity
2 to go over the facts of your case?

3 A. Well, he told me -- he told me the stuff they --
4 yeah, pretty much, I guess. The facts that he had or
5 whatever.

6 Q. I mean did you give him any information from your
7 standpoint? Did you tell him anything about it?

8 A. I told him that I felt that I should have been
9 charged with like a second offense because what they were
10 using to make my third offense was a simple possession of
11 marijuana charge.

12 Q. You told him that you felt like you should be charged
13 with a second offense?

14 A. Yes, ma'am.

15 Q. Okay?

16 A. As a second offender.

17 Q. Okay. And then in that meeting did you all discuss
18 the discovery or the evidence the State had against you?

19 A. Yes, ma'am.

20 Q. Okay. And you discussed you background, your family
21 background, with him as well?

22 A. Yes, ma'am.

23 Q. Did you inform him of your employment status at the
24 time?

25 A. Yes, ma'am.

1 Q. So you pretty much told him everything about yourself
2 and your version of what occurred on these -- with regard
3 to these instances?

4 A. Yes, ma'am.

5 Q. And what if anything happened after going over your
6 discovery and discussing your background?

7 A. What you mean?

8 Q. Well, did you decide or did you all decide together
9 whether or not you were going to be a plea or a trial?

10 A. Well, actually I told him I wanted to go to trial,
11 and the day that I actually pled out we were actually
12 in -- going to trial and what not.

13 Q. Okay. So you were already prepared to go to trial
14 and had you received an offer before getting ready to go
15 to trial?

16 A. The Solicitor offered six years, and I told them -- I
17 told Creighton that I didn't want to plead.

18 Q. All right. So you asking to be going to trial?

19 A. Yes.

20 Q. And so how long was that before you went to trial?

21 A. I know it was like -- I want to say a year. Maybe a
22 year. Like 13 months or something like that before they
23 actually did. We came to go to trial.

24 Q. Okay. So the year before you went to trial you had
25 an offer of six years?

1 A. No. The six years came like right before the trial.

2 Q. Okay. That's what I'm trying to figure out. Did it
3 come the week before your trial?

4 A. Somewhere along those lines. Maybe a week, two
5 weeks.

6 Q. Okay. And so you turned that down and you prepared
7 to go to trial?

8 A. Yes, ma'am.

9 Q. So you got ready to go to trial, and obviously, you
10 pled to the charges, correct?

11 A. Yep, because he advised me to plead. He kept telling
12 me that if I was to go to trial and lose that I could get
13 20 years and it's going to be 85 percent. Or the judge
14 could give me 60 years. Basically, like how I look at it
15 now he was like basically like trying to scare me into
16 taking a plea.

17 Q. Okay. Well, what about it scared you? I mean that's
18 what you were actually facing?

19 A. Yes, ma'am, that's true. That's why I was asking to,
20 but -- well, I just felt like he didn't want to like go
21 forward with the trial. He didn't want to push the issue
22 about the trial. Like he just rather have me plea.

23 Q. Well, what do you mean about you didn't want to push
24 the issue about the trial?

25 A. Because I mean like the things I was telling him

1 right about that I should have been charged with a second
2 offense. Like he never gave any kind of feedback or
3 information on how did he research actually what I had
4 been saying or anything.

5 Q. So when you say, 'second offense' explain to the
6 Court what your prior record was in terms of -- and you're
7 saying the second offense in terms of a drug case?

8 A. Yes, ma'am.

9 Q. Can you tell the Court what was your first offense or
10 your drug -- I withdraw that. Explain to the Judge what
11 was your conviction as it relates to drug charges for your
12 prior record?

13 A. I had a trafficking offense in 2002 of crack, and in
14 2009 I had a simple possession of marijuana, second
15 offense, that I actually did time on.

16 Q. Were you represented on that charge?

17 A. Yes, ma'am.

18 Q. By whom?

19 A. Tawanna Byrd.

20 Q. And that charge was originally a distribution,
21 correct?

22 A. Um hum.

23 Q. It's got to be yes or no.

24 A. Yes, ma'am.

25 Q. Okay. So when you say you pled to simple possession

1 you pled with Tawanna Byrd in this courthouse?

2 A. Yes, ma'am.

3 Q. Okay. And tell the Court what you feel that Mr.
4 Hayes should have investigated about that particular
5 charge?

6 A. Well, from my research the simple possession of
7 marijuana couldn't be used to enhance a third offence
8 because it was a misdemeanor charge. The misdemeanors
9 that I have are not classified in the same classification
10 of felony.

11 And also I have a couple of case laws as well, but it
12 speaks on like a -- counts of misdemeanor conviction. And
13 what makes the conviction invalid is if you didn't have
14 counsel or if you've done time for the conviction. So
15 looking at the case law that I researched I felt like Mr.
16 Hayes should have challenged the conviction.

17 But because I was ignorant to the law and didn't know
18 the law or didn't know how I should have been charged with
19 the second offense I had no other choice but to plead to
20 the charges.

21 Q. So you're saying because -- well, obviously, you just
22 testified that Tawanna Byrd was your attorney for that
23 charge, correct?

24 A. Um hum.

25 Q. So you don't fall in the uncounseled category, do

1 you?

2 A. No, ma'am.

3 Q. Okay.

4 A. But I do fall under the category where I was sent
5 when I actually did time I was actually incarcerated for
6 the misdemeanor conviction.

7 Q. Okay. And so you understand that enhancement --
8 well, you understand what I've told you in terms of what
9 the law is?

10 A. Yeah, I see what you was saying about it.

11 Q. That if you're uncounseled you can't properly waive
12 your right to an attorney?

13 A. Yeah, I get what you're saying.

14 Q. And in this particular case you had your attorney,
15 correct?

16 A. Yes, ma'am, I did. I exercised my right to counsel.
17 That's a constitutional right afforded to you by the
18 Constitution.

19 Q. Right. And you said that attorney advised you on
20 what you were pleading to, correct?

21 A. Yeah, she said I could pay a fine or she said the
22 Judge could have gave me time, but I was looking to pay
23 the fine but the Judge didn't let me pay the fine. The
24 Judge sent me to the Department of Corrections. Gave me a
25 year for it.

1 Q. Okay. And so you're saying here today that because
2 you got a year the State should not enhance you as to the
3 charges that Mr. Hayes represented you on?

4 A. As a third offense, yes, ma'am.

5 Q. Okay. And you're saying that that just doesn't count
6 when the Court convenes?

7 A. I'm saying that being that I asked to be done --
8 actually was incarcerated for this charge that it can't be
9 used to enhance a subsequent offense or the next level
10 offense.

11 Q. Okay. And so you felt like that during the plea that
12 you were entering your plea to these charges that
13 Mr. Hayes should have objected to the State using that
14 2008 ---

15 A. 2009.

16 Q. 2009, I'm sorry. 2009 simple possession second or
17 subsequent, Mr. Hayes should have objected to that?

18 A. It was a simple possession of marijuana charge second
19 offense, and, yeah, he should have objected to that
20 because it was an invalid conviction. By the conviction
21 being invalid that means they couldn't use it. So,
22 therefore, they would have had to charge me a second
23 offense. They would have had to charge me with a second
24 offense of distribution.

25 Q. Okay. Now, you also indicated that you counsel was

1 ineffective for failing to challenge the sufficiency of
2 the chain of custody?

3 A. Yes, ma'am.

4 Q. And how so? This was a plea. What was he supposed
5 to do?

6 A. Well, I mean beforehand, before I took the plea if he
7 had properly investigated it, like he would have seen a
8 lot of key documents was missing. Like there are certain
9 procedures that the arresting officer -- not the arresting
10 officer. Pardon me. The seizing officer and the
11 custodian must follow to actually procure this evidence.

12 And a lot of these documents is missing. Like one
13 would be like the seizing officers. He supposed to, like
14 if something, say the evidence, is altered or changed for
15 some apparent reason, it's supposed to be a note of that.
16 If you look through my motion of discovery or my Rule Five
17 you wouldn't see no notice of why the controlled substance
18 was lost.

19 Q. Well, how was it altered?

20 A. Okay. Well, on one of the case numbers it says that
21 the evidence was approximately 6.8 grams, but when you go
22 to the chemical analysis it says 6.5 grams. I know it's
23 not a gigantic difference, but that's a gram difference
24 from being 6.9 to 6.5 grams, you know.

25 Q. So how does that affect your particular case if it

1 weighed less than what they weighed on the day of arrest?

2 A. Well, okay, because that means somebody tampered with
3 the evidence. The evidence is not very credible. It
4 makes the evidence unbelievable.

5 Q. Okay, so help me understand. You pled guilty and you
6 realized you waived your ability to challenge the State's
7 evidence?

8 A. Well, see, I didn't even come -- I didn't come aware
9 of these certain things about the insufficiency of the
10 chain of custody. I didn't come aware of these things
11 until I actually started looking into the case myself.

12 Q. So the .33 grams, you would have gone on trial and
13 risked getting 61 years?

14 A. If the evidence -- but you said that this is like --
15 if the evidence say that it was 10 grams, and then you
16 come to Court and you got five grams then where the rest
17 of it at.

18 Q. Well, you agree with me that would be something
19 different, right? That's a significant difference?

20 A. Sure is. A difference is a difference, wouldn't you
21 say?

22 Q. Okay. So you would risk 61 years over .33 grams and
23 go to trial?

24 A. I wonder why -- where is the documentation of it of
25 the evidence being offered. I'm saying ---

1 Q. No, no, no. I'm asking you would you have risked
2 going to trial over that amount if he produced that
3 documentation for you?

4 A. If he produced the specific documents then I would
5 know why it was altered or it was changed.

6 Q. But would you have gone to trial is what I'm asking
7 you?

8 A. No, not if he had the documents, but there is no
9 evidence of this document.

10 Q. Okay. And so when you met with him almost -- you met
11 with him a couple of times. You met with him almost
12 within a year span of time, did you all not go over the
13 evidence that the State had against you?

14 A. We talked. We talked about the video and what the
15 officer said and things like that. But did we actually
16 sit down and go through the case file or the Rule Five
17 page for page? No, we didn't.

18 Q. Did he give you a copy of it?

19 A. I believe so. I want to say yeah. I want to say
20 yes, ma'am.

21 Q. Did you go over it yourself?

22 A. No.

23 Q. If there anything else that you feel he should have
24 done with regard to the chain of custody?

25 A. Well, I feel like he should have moved to suppress

1 the evidence. If he had investigated properly and
2 thoroughly as the Rules of Professional Conduct states he
3 would have known that the key documents were missing and
4 the officers did not follow certain rules and properly
5 document in securing the evidence properly.

6 "All evidence custodians shall create or cause to be
7 created a written record concerning the controlled
8 substance evidence within their custody containing at
9 least the following: Name of the evidence custodian, the
10 name of the law enforcement agency employing evidence
11 custodian, the capacity of employment of the evidence
12 custodian.

13 The date when the controlled substance evidence was
14 received, how the controlled substance evidence was
15 received, by mail or in person, from whom the controlled
16 substance was received, the name of the agency employing
17 the law enforcement officer or the law enforcement
18 employee from whom the controlled substances were
19 received.

20 The name of the original seizing officer, the
21 description of the controlled substances or the containers
22 alleged to contain the controlled substance using
23 suspicion with particularity to distinguish it."

24 This document -- like this document is missing
25 completely. Also, Rule Six states, "Each evidence

1 custodian shall create or cause to be created a subsequent
2 chain of custody form. This subsequent chain of custody
3 form shall contain the following information which ---

4 Q. Now, let me ask you this. You're saying that these
5 forms are supposed to be in your discovery, right?

6 A. From my understanding, yes, ma'am.

7 Q. So if there was no change from anyone else's hand or
8 the custodian, that's who you're talking about, do you
9 agree that there might not be a form in there for that?

10 A. Yeah, but it had to be a chain from the custodian
11 cause he had to get to the chemical to analysis, right?

12 Q. I mean, you have a copy of the discovery?

13 A. It's not in there.

14 Q. Okay. So you're saying that it went to S.L.E.D. or
15 the custodian or the chemical analysis here in your county
16 and nothing documented that it was protected?

17 A. That's in there, but as far as the form that they're
18 saying that the custodian supposed to have created or
19 caused to be created is not in there.

20 Q. Okay. Is there any other form that is missing?

21 A. Like I was stating before about the alteration of the
22 evidence.

23 Q. The form that deals with alteration of the evidence?
24 Did they change the amount?

25 A. Yes, ma'am.

1 Q. So that's missing?

2 A. Yes, ma'am.

3 Q. Alteration of the controlled substance evidence must
4 be documented in writing and the record of the alteration
5 must be kept with the chain of custody." These documents
6 are also missing. And, clearly, the evidence has been
7 altered because at first it weighed approximately 6.8
8 grams.

9 A. If I'm not mistaken approximately is something that's
10 exact.

11 Q. No, you're mistaken. Approximately is approximately.
12 It's estimates.

13 THE COURT: Another factor in there, too, all of
14 y'all are aware of it. Normally, it's field tested. So
15 they remove some of the substance and then when it gets to
16 the lab naturally it's going to be a little bit less in
17 most case. But, anyway, I don't know that that's the case
18 here, but possible explanation. Sorry. Go ahead.

19 BY MS. MOODY:

20 Q. Now, as to all of these forms you brought up on this
21 issue, you did not discuss this or your attorney didn't
22 discuss this with the Rule Five -- I mean, excuse me. The
23 chain of custody before y'all were getting ready to go to
24 trial?

25 A. No, ma'am.

1 Q. Okay. And he didn't show you the forms that you're
2 saying were missing, you did not see those before you went
3 to trial?

4 A. No, ma'am. I do have a -- like copies of I would say
5 evidence bags or something, but like you really can't see
6 nothing on it. They, I guess like ---

7 Q. That's what? The marijuana you're talking about?
8 That's what it really ---

9 A. Yeah, something like that. Yes, ma'am.

10 Q. Okay. So you saw that?

11 A. But you can't make out -- you can make out certain
12 physical -- like the names. And the dates and stuff like
13 this, but you can't really make it out.

14 Q. But you saw that in the discovery material that the
15 State gave to your attorney?

16 A. Yeah, the pictures, yes, ma'am. Yes, ma'am.

17 Q. Okay. All right. And your next issue that you took
18 with his representation was he failed to protect your
19 right to seek a direct appeal and also failed to sign you
20 up for indigent ---

21 A. Indigent.

22 Q. Yeah, indigent. I always mess the word up. Indigent
23 Defense to represent you on an appeal?

24 A. Yes, ma'am.

25 Q. Can you explain to the Court what you mean he didn't

1 file your direct appeal?

2 A. Well, I think the thing that he filed is called a ...

3 Q. A notice to ---

4 A. Yeah.

5 Q. --- to appeal?

6 A. Yeah, a notice. He filed a notice to appeal, but he
7 didn't like -- like, all right. He did file a notice to
8 appeal, but like he didn't write a brief for it or he
9 didn't sign me up for Indigent Defense counsel. And from
10 my understanding like a ain't have a ground -- I don't
11 have a ground to stand on the law, but I mean I know the
12 Sixth Amendment says that I have a right to have counsel
13 at every step of the way in the judicial process.

14 So, therefore, if you my attorney and you knew you
15 wasn't going to represent me on this appeal then you
16 should have signed me up for Indigent Defense. But by you
17 not signing me up it violated the Sixth Amendment. As
18 least that's how I'm looking at it. I could be looking at
19 it wrong. I mean if I am y'all let me know.

20 THE COURT: Well, I'll end that right now. That's
21 not a ground. Doesn't work that way in South Carolina.
22 He did everything he was supposed to if he filed the
23 notice. One the trial attorney or the plea attorney signs
24 a notice he is under no other obligation because Appellate
25 Defense in Columbia takes over then. But ...

1 BY MS. MOODY:

2 Q. You recall us discussing that, correct?

3 A. Um hum.

4 Q. Where he was only supposed to file the notice of
5 appeal?

6 A. Um hum.

7 COURT REPORTER: Yes or no?

8 THE WITNESS: Yes, ma'am. Yes, ma'am.

9 BY MS. MOODY:

10 Q. Okay. So is there any other thing that your attorney
11 failed to do that you feel like he should have done in
12 representing you?

13 A. I got two other issues that I had wanted to touch on
14 that I wanted to talk about because I -- he advised me
15 that I would be -- erroneous advice concerning my parole
16 eligibility or me being 85 percent. And, well, matter of
17 fact I'm just going to read it cause I wrote it down.

18 Q. What -- let me stop you right there. When you say,
19 'he failed to give you proper advice', as to which charge
20 because as to possession of marijuana that carried up to a
21 year, correct?

22 A. Um hum.

23 COURT REPORTER: Yes or no?

24 THE WITNESS: Yes, ma'am.

25 BY MS. MOODY:

1 Q. All right. And as to the distribution of marijuana
2 within proximity of a school or park, that carries up to
3 ten years, correct?

4 A. Yes, ma'am.

5 Q. So the charges that you're talking about is the
6 distribution of marijuana which carries five to 20 years?

7 A. I'm talking about the charges in the whole. Just
8 like he was saying that I would have to serve 85 percent
9 of the sentence. Like it was a non-parolable offense or a
10 violent offense when due to the Omnibus Crime Reduction in
11 Sentence Reform Act if my charge was a violent offense
12 that made it no longer be a violent offense.

13 I'm not a violent offender, so therefore, I wouldn't
14 have to serve 85 percent of my sentence before I'm
15 eligible for parole. Like the Judge just stated when we
16 first came in here I would be going up for parole in like
17 three or four months. And so that was the wrong advice
18 right there.

19 Q. All right. Are you familiar with the statute that
20 anything that carries 20 years or A, B and I believe C
21 felonies, if they carry 20 years up to life, that it's
22 85 percent?

23 A. I think.

24 Q. That's a different section?

25 A. I read that, but when the Omnibus in 2010, that

1 changed.

2 Q. Yes.

3 A. The Omnibus Crime Bill changed that because now those
4 offenses, certain offenses that fall up under there --
5 that were described in the Omnibus Crime Bill, which my
6 offense is one of them, it don't make -- it's no longer
7 85. It's no longer a violent offense.

8 Q. But on a third offense, I think when you read that
9 Act, are you familiar that it says if your prior
10 convictions were for possession and you have a
11 trafficking, if it was possession then you would be
12 eligible for parole and a suspended sentence. Are all
13 your prior convictions for possession?

14 A. No, they're not, but I'm eligible for parole now, in
15 a couple months. So an 85 -- a person who is violent for
16 85 they not eligible for parole until they done 85 percent
17 of their sentence.

18 Q. And so you're saying that your attorney should have
19 explained that to you the nuances between violent and the
20 non-violent as well as anything that carries 20 years up
21 to life?

22 A. He didn't explain none of that to me.

23 Q. Did the Judge advise you of your consequences of your
24 plea?

25 A. That I could have -- like the amount of time I could

1 have got?

2 Q. Yes.

3 A. Yes, ma'am.

4 Q. What did -- at the time that you were discussing that
5 with your attorney did you stop and talk to your attorney
6 about it?

7 A. No. I mean cause I was under the impression from
8 what he was saying that you're going to be 85 percent.
9 You're going to be 85 percent. I'm not 85 percent. I'm
10 not a violent offender. If he was familiar with the
11 Omnibus Crime Bill of 2010 he would have knew that I
12 wasn't a violent offender. You know.

13 Q. What else is it that your attorney should have done?

14 A. I felt like he should have objected to when -- at the
15 plea proceeding where the Solicitor advised the Court or
16 the Judge, whatever, to like punishing me for exercising
17 my right to trial. Like it's against the law to punish
18 somebody for exercising their right to trial.

19 Q. What can you tell the Judge about that specifically
20 cause I think that you're summarizing that? You're saying
21 that?

22 A. Okay.

23 Q. Your attorney should have objected to the State
24 making a recommendation of time or what?

25 A. The State didn't incident make a recommendation. The

1 State, when Mr. Hayes said something about the six years
2 that was offered the Solicitor stepped in on Page 22 of
3 the transcript, Lines 14 through 21. And she asked the
4 Court could she address that; Mr. Hayes' comments where he
5 was talking about six years.

6 Q. Well, go back up to Line 14. Can you read that
7 correctly into the record where the Court starts?

8 A. Okay. I'll read that out the transcript, but I had
9 put down right there, too. It say ---

10 Q. You mean Page 21?

11 A. No, it's 22. It's when it starts when it says, "I
12 understand why mitigation like this is presented, but we
13 would also like to address the fact that the offer was
14 given prior to the C.I's identify being revealed, and that
15 is very important to the State. Citizens help us out, and
16 we try to make a plea offer that reflects protecting the
17 identify. That offer was rejected and the identify was
18 revealed and we're here for a trial."

19 Basically, because I chose to exercise my right to a
20 trial, you offered the six years or whatever because you
21 felt like the six years was appropriate for the charge.
22 So now because I exercised my right to a trial now you
23 want to punish me for exercising my right to a trial.
24 That's not right. That's against the law. That's a
25 violation of the constitution. Why have constitutional

1 rights if you can't exercise them.

2 Q. So you feel like Mr. Hayes should have said something
3 on your behalf?

4 A. He should have objected to the comments because it
5 shows from my sentencing that the Judge took in
6 consideration what she said because he didn't give me the
7 six years or didn't give me anything close to the six
8 year. He gave me almost 11 years.

9 Q. And when you entered this plea was this a straight up
10 plea?

11 A. What you mean?

12 Q. There was no recommendation from the State as to the
13 amount of time?

14 A. No.

15 Q. So when you decided to plea on the day of the trial
16 you were just pleaing to the charges as charged?

17 A. Yeah, because that's what I was advised to do.
18 That's what I was coerced into doing.

19 Q. What do you mean coerced?

20 A. Like, basically, if you don't plea I guarantee you're
21 going to get 20 years or you're going to be 50 years or
22 it's going to be 85 percent or it's going to be a long
23 time before you see your family. Like things of that
24 nature right there.

25 Q. And so you feel like he was coercing you to plea?

1 A. Basically, yeah. He intimidated me to take a plea.

2 Q. And so you feel that that's not the normal standard
3 of an attorney practicing criminal law?

4 A. No.

5 Q. And how do you feel you were prejudiced in this case
6 given the fact that you were facing 50 -- up to 51 years?

7 A. You mean how was I prejudiced by ---

8 Q. How were you harmed by taking the plea?

9 A. Well, it wasn't really the plea that harmed me. It
10 was that coercion of the plea. That's what harmed me.
11 That's what.

12 Q. That's what I'm saying. I mean how did your attorney
13 harm your situation from being able to walk outside this
14 court house to you being put in prison? How were you
15 harmed? You're saying his ineffective assistance of
16 counsel harmed would you in some kind of way. How did
17 that harm you?

18 A. Because, One, I was sentenced to a longer sentence
19 based off his advice. And for, Two, if he had of looked
20 at the facts of the use of an invalid conviction he would
21 have seen that I wasn't supposed to be charged with a
22 second offense.

23 For, Three, if he had researched the case properly
24 and in full as far as to the chain of custody he would
25 have seen that there was two things missing. All these

1 things right here is what prejudiced my case. I shouldn't
2 be a third offender. I shouldn't have been charged with a
3 third offense. I shouldn't have been convicted of a third
4 offense. I was convicted to a longer sentence than I
5 would have been subjected to if I was convicted of a
6 second offense. Five to 20 years versus zero to ten years
7 and the sentence can be suspended to probation.

8 Q. What relief are you seeking from the Court here
9 today?

10 A. I would like to be -- what I want is to be charged
11 with a second offense. I would like to get my case
12 overturned and be charged with a second offense like I
13 should have been charged with from the start.

14 Q. Well, you realize based on what the Court told you
15 here today that if you start over, you're granted relief,
16 he cannot change anything. You just start over as
17 charged, as you were originally charged. That's what you
18 can start over?

19 A. So you're saying that even though the second
20 offense -- the second offense conviction, the invalid
21 conviction, you're saying that don't count?

22 Q. I'm not saying that's an invalid conviction. I'm
23 saying if you get the relief that you're requesting from
24 the Court here today; that your attorney was ineffective
25 assistance of counsel and harmed you in some kind of way

1 you start over like everybody hit the reset button and
2 you'd start over?

3 A. Okay, and they -- but they eventually would have to
4 charge me as a second offense because of the invalid
5 conviction, right?

6 Q. Not necessarily. That's your position. You
7 understand that your position is that it's invalid. But
8 if a Court finds that it's not invalid, which I say it's
9 not, you start over from the beginning as if you were
10 arrested for the first time ever on these charges. You
11 understand that?

12 A. Yes, ma'am.

13 Q. And you understand that the 61 years that was on the
14 table before you were going to go to trial they're back on
15 the table. Do you understand that?

16 A. Yes, ma'am.

17 Q. And you still want the Court to grant you relief?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. MOODY: No further questions for the witness,
21 Your Honor.

22 THE COURT: Mr. Hunter.

23 MR. HUNTER: Your Honor.

24 CROSS-EXAMINATION

25 BY MR. HUNTER:

1 Q. Mr. Davis, do you remember during the plea hearing
2 the Judge asked if you were pleading on your own free
3 will, and you said, "Yes."

4 A. Yes, sir.

5 Q. Do you remember when he said, "Are you doing so
6 because you are guilty of these charges," and you said
7 because I don't want to do a whole bunch of time. He
8 explained to you that you're exposed to 61 years. And
9 then he asked you, "Are you guilty of these charges," and
10 you said, "Yes?"

11 A. Yes, sir. That's probably plea protocol.

12 Q. And you remember the Judge going over -- or the
13 Solicitor going over the facts of the case as the State
14 alleged? Do you remember them going over the facts?

15 A. You mean like what the Solicitor said?

16 Q. Yeah, the Solicitor.

17 A. Yes, sir.

18 Q. And you remember what -- the Court asking if you
19 agree we those facts and you said, "Yes?"

20 A. Yes, sir.

21 Q. And you remember the Court asking if you were
22 satisfied with the representation of your attorney, and
23 you said, "Yes?"

24 A. Yes, sir. Proper plea protocol.

25 Q. Okay. And also asked if you had been threatened or

1 promised anything, and you said, "No?"

2 A. I remember that. That's what I had to say in order
3 for the Judge to accept my plea.

4 Q. Okay. Now, any of these evidentiary issues, any
5 issues we the chain, things like that, did you bring that
6 to your counsel's attention before the plea?

7 A. Like I stated when me and Miss Moody was talking
8 about it, until I actually researched the case myself
9 that's when I started noticing the deficiencies in the
10 chain of custody. But I feel like him being a trained
11 professional attorney that should have been an avenue that
12 he researched.

13 Q. I apologize. Now, you rejected the six year offer
14 from the State?

15 A. Yes, sir.

16 Q. Okay.

17 MR. HUNTER: I have no other questions.

18 MS. MOODY: No further questions.

19 THE COURT: You may step down. Thank you.

20 MS. MOODY: No further witnesses.

21 MR. HUNTER: State will call Mr. Creighton Hayes.

22 CREIGHTON HAYES, after being duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. HUNTER:

1 Q. Good afternoon, Mr. Hayes.

2 A. Good afternoon.

3 Q. Now, Mr. Hayes, can you give us a brief background of
4 your law practice history?

5 A. I graduated from the University of South Carolina
6 School of Law in 2011. Clerked for Judge Alford here York
7 County for a year and then worked for the Public
8 Defender's Office from August of 2012 until the end of
9 August 2015 and I've been in private practice in Rock Hill
10 since September.

11 Q. So when you -- you were in the P.D.'s Office when you
12 were appointed for Mr. Davis?

13 A. Yes.

14 Q. Okay. Can you explain how you began your
15 representation?

16 A. I believe it was initially Judith Van Sickle's, who
17 was the prior attorney in the office. There was a change
18 in personnel at the office or a kind of realignment of
19 which attorneys were in which courts, and this became my
20 case in March or early April of 2013.

21 After that he had initial charge that was -- it was
22 possession with intent to distribute marijuana and I think
23 a faulty search. It was -- the search was based on him
24 loitering and smelling like marijuana. We had a
25 preliminary hearing. He challenged the search of that,

1 and that charge was dismissed. And I don't believe it was
2 ever brought back to the prosecutor. Talked about direct
3 indicting the charge or direct indicting the indictment,
4 but I don't believe there was.

5 Shortly after that though found out that Mr. Davis
6 was charged first with the three distribution of marijuana
7 third charges and three proximity charges. And as well as
8 a simple possession of marijuana, second offense I
9 believe.

10 Q. Approximately how many times, I guess in that year
11 leading up to your representation, how many times did you
12 meet with him?

13 A. I took pretty good notes on how many times I met with
14 people. Not necessarily all of it or not necessarily
15 every time was noted, but I would say roughly between 15
16 and 20 times that we met in person or spoke on the
17 telephone.

18 Q. Could you explain what went on during those meetings?

19 A. Well, several of the meetings -- one of the meetings
20 was initial appearance. Discuss briefly the file, what I
21 had received in discovery from the Solicitor at that time.
22 Had a multiple docket appearances. When he was on the
23 docket his case was potential for trial or potentially
24 being called. He was on notice for trial until the spring
25 or until December or January of 2014.

1 But would have been docket roll calls. Would have
2 been discussing the evidence that we were receiving from
3 the State as the case went along. Discussing the plea
4 offer that was made in the case which initially I believe
5 was seven years. After some finagling with the
6 Solicitor's Office then, eventually, it did go down. Late
7 January or early February the offer went down to six
8 years.

9 Q. And was that basically the extent of the State's plea
10 offers?

11 A. I believe seven and six was the extent of the plea
12 offer, but, yes.

13 Q. And you conveyed that --

14 A. To the best of my recollection. I did. We discussed
15 the seven years. That was out of the question to Mr.
16 Davis. The -- in February I have a notation that they
17 called Mr. Davis on February the 11th 2014. After
18 receiving the amended plea offer from Miss Hamilton,
19 Assistant Solicitor, and advised him of the six year offer
20 Mr. Davis advised me that he was not interested.

21 Q. Was he adamant about taking this to trial?

22 A. He was adamant about going to trial in that that was
23 the only option we had at that point because he was
24 adamant that he wasn't taking six years, and that was the
25 only offer we could get. And the discussions continued

1 because the Solicitor's Office in York County has a policy
2 of making their offers contingent on not revealing the
3 identify of the confidential informant.

4 So we had a discussion that if we continued to prep
5 for trial and demanded that we receive copies of the
6 confidential informant information including the video
7 that plea offer would come off the table.

8 So we had multiple discussions about it. I can
9 recall specifically asking Mr. Davis to come in during
10 trial preparation when the offer or leading up to the
11 point where we were going to be going to trial, asking Mr.
12 Davis to come in and speak with myself, Mark McKinnon who
13 was an Assistant P.D. and Phil Smith, who is also a public
14 defender after -- asking them to review the file, his
15 record the evidence in the case.

16 And in order to try to convince him that the plea
17 offer essentially was pretty fair in this case and that
18 still did not got anywhere. So we did prep for trial. We
19 did receive the video evidence along with a redacted
20 statement from the confidential informant. Went over all
21 that with Mr. Davis during the course of trial
22 preparation.

23 Q. Now, as far as the State's evidence goes how would
24 you characterize the State's evidence against him as far
25 as being weak or strong?

1 A. We only received full evidence on the one case that
2 they noticed for trial which I believe was -- which was
3 the April 5th distribution of marijuana charge. And I
4 would characterize the evidence as strong.

5 Q. Now, as far as your discovery goes, the State's
6 discovery, was there anything leading up to this plea that
7 was missing? That you felt like you needed or do you feel
8 like the State complied fully with discovery?

9 A. I feel like the State complied we discovery. We --
10 what's been mentioned today is the chain of custody. I
11 did have an opportunity to inspect the marijuana in
12 evidence. It was a evidence log.

13 Certainly, it would be my position that the
14 opportunity to challenge the chain of custody would only
15 present itself at trial. And, certainly, we would have
16 made sure that they called the necessary witnesses to do
17 so.

18 Q. Okay. At what point did you get the or I guess not.
19 At what point did the State allow you to plea straight up
20 with no recommendation?

21 A. Well, it was always our understanding that, you know,
22 it was a long standing understanding between our office
23 and the Solicitor's Office that once they turned over the
24 full information on the confidential informant the offer
25 was off the table. I can't recall exactly when they

1 turned that over, but it was after I informed the
2 Solicitor that he was not accepting the offer; that this
3 was a trial, and they turned all the remaining evidence
4 that they had relating to the C.I.

5 Q. Now, did you think there were any issues with the
6 enhancement in this case as far as the drug offenses were
7 concerned?

8 A. I think it was a complicated issue. My
9 understanding, certainly as it relates to his record, he
10 had a trafficking cocaine in proximity charge in 2002 and
11 2009. The charge he ultimately pled to was simple
12 possession of marijuana second offense. My understanding
13 of the law is that both of those offenses -- he was
14 represented by counsel. I don't think he did time on
15 neither, but I think on both of those charges are capable
16 of being used to enhance the charges that I represented
17 him on.

18 Q. So you didn't believe that the State was acting
19 inappropriately?

20 A. No, I didn't feel that they were acting
21 inappropriately.

22 Q. Okay.

23 A. I think that issue had been -- that issue is somewhat
24 murky. I certainly don't necessarily believe that they
25 ought to use simple possession of marijuana, but I think

1 they can.

2 Q. Okay. At the plea hearing did you believe that he
3 understood everything that was going on that day?

4 A. Yes. Definitely.

5 Q. And he was aware that he was pleading without
6 recommendation freely and voluntarily.

7 A. He was aware that as soon as we received all the
8 evidence on the C.I. his offer was off the table; that any
9 plea after that would be straight up.

10 Q. Okay. Is there anything else in this case that you
11 feel like you should have done that you did not do?

12 A. No. I mean that I wish that I could have convinced
13 him, as to the original plea offer, I think based on his
14 record that it was a reasonable one.

15 And I certainly don't -- not happy with the sentence
16 he received, but I think it was -- it could have been
17 anticipated under the circumstances.

18 Q. Okay.

19 MR. HUNTER: Beg the Court's indulgence just one
20 second.

21 BY MR. HUNTER:

22 Q. Did you ever give him erroneous advice concerning the
23 parole eligibility?

24 A. My understanding on his parole eligibility would be
25 based on his record, containing a trafficking in cocaine

1 offense. Not as concerned about the simple possession of
2 marijuana conviction, but my understanding at the time was
3 that the Department were treating third offense
4 distribution of marijuana charges with that type of a past
5 record as far as max out date at 85 percent.

6 I don't remember advising him that he would not be
7 parole eligible, but that if he did receive parole that he
8 would have to serve 85 percent in order to max out his
9 sentence; I believe is my advice.

10 Q. Just lastly, did you ever coerce him or threaten him
11 to plead guilty that day?

12 A. No, I did not coerce him to plead guilty. I think we
13 were prepared for trial. I certainly did everything that
14 I knew to do and, you know, believed was appropriate to do
15 in preparing for trial.

16 I did stress to him the judge it was in front of, my
17 awareness of the judge; that if we went through with the
18 trial and that if the judge, you know, anybody who does
19 criminal law, you know, if the judge felt like this was a
20 needless trial, I did tell him.

21 I advised the judge's sentence would be worse after a
22 full trial rather than pleading guilty at the commencement
23 of the trial.

24 Q. So all and all you believe that pleading guilty was
25 in his best interest?

1 A. I still do.

2 Q. Okay. No further questions. Thank you.

3 CROSS-EXAMINATION

4 BY MS. MOODY:

5 Q. Mr. Hayes, as to the invalid conviction I think you
6 said the law was pretty murky. What if anything did you
7 all, you and Mr. Davis, discuss about his prior record?
8 Do you recall?

9 A. Well, we discussed that in 2002 in addition to me we
10 discuss the fact that he had a trafficking in cocaine
11 charge conviction where he received five years. He also
12 in addition I think non-drug offense. Had a couple of
13 weapons charges. I think it was a pointing and
14 presenting. I'm not sure. I think they were gun related
15 charges that he was given concurrent sentences to the
16 trafficking.

17 We discussed the simple possession of marijuana
18 second offense conviction. Exactly what your question,
19 but we did discuss those, and that I believed they could
20 be used to make these third offenses.

21 Q. That's what I'm trying to get at. I want to know if
22 y'all discussed the use of ---

23 A. Yes.

24 Q. --- the simple possession?

25 A. Yes.

1 Q. And do you recall you -- earlier you testified that
2 you had, I think it was Phil Smith, Mark McKinnon, review
3 the file?

4 A. Yes. First we reviewed the lead. We talked about
5 it. They, you know, looked at his record, looked at the
6 cases. And we discussed it prior to Mr. Davis coming into
7 the office at which point all three of us -- all four of
8 us sat in the office, and I basically was trying to get
9 Mr. Davis' second, third opinion so that he didn't think
10 that my advise was bad or that, you know, this you know, I
11 might be getting different advice from a different
12 attorney.

13 Q. So after he declined the offer and you all
14 prepared -- well, you were preparing for trial along the
15 way. On the date of this plea were you prepared to go
16 forward with a trial?

17 A. Yes, we prepared for trial.

18 Q. And when you discussed with him the offer, I believe
19 you testified earlier that you didn't -- were you -- how
20 did -- how did you present that he needed to plea on that
21 did and did he come back to you and say she wanted to
22 plea? What happened?

23 A. It's hard to recall. His mother was real involved.
24 She -- at some point prior Mr. Davis -- I would say it
25 this way. He put on a good poker face the entire time I

1 represented him. He did not appear to be afraid at all of
2 the consequences of going to trial.

3 Prior to the trial beginning to me it appeared that
4 he got nervous. At some point he talked to his mother
5 without me being in the presence. And after that I don't
6 recall exactly, he showed some interest in pleading. And,
7 you know, it's not a matter of trying to strong arm
8 somebody into pleading. I discussed the entire time that
9 I thought going to trial with the evidence as strong as it
10 was was a bad idea.

11 And that even though we were on the cusp of the trial
12 I still thought he could get a better sentence that if we
13 had gone through with it.

14 Q. So did you ask the Solicitor to consider giving the
15 offer, the original offer, of six years?

16 A. Yeah, and it's strange because the Solicitor changed
17 from Marina Hamilton to Ginny Desche. At some point she
18 handed it off to Ms. Desche to try it. I did ask Ginny to
19 put the offer back on the table, and she wouldn't do that.
20 So, yeah, I did ask, but it wasn't a possibility at that
21 point. Like I said there is a policy about after turning
22 over all the C.I. evidence they won't put it back on the
23 table.

24 Q. So after you talk to Ginny Desche about putting this
25 plea back on the table did would inform Mr. Davis of that;

1 that the offer was off the table?

2 A. Right. I'd informed him that the offer -- the plea,
3 it would be without recommendation.

4 Q. So what happened after that? Did y'all have more --
5 did y'all continue to have -- obviously, y'all ultimately
6 went before the Judge and he pled, but ---

7 A. Ultimately, what happened was -- I don't mean to cut
8 you off. I told Ginny that he was amenable to pleading,
9 and she indicated that he would have to plead in order for
10 them not to call the additional charges that were pending.
11 For them, basically, to bring him back from the Department
12 if he received a sentence, which he was almost certain to
13 do, you know, if they weren't satisfied with it they could
14 bring him back.

15 So the deal was he would plead to two sets of
16 distribution in proximity and a simple possession and the
17 rest of the remaining charges that were still pending
18 would be dismissed.

19 Q. Okay. So originally there were three sets of
20 distributions and two simple possessions?

21 A. That's my recollection.

22 Q. One charge was dis -- one simple possession was
23 dismissed at the preliminary hearing?

24 A. I think it was a P.W.I.D., but, yeah.

25 Q. Okay. So one charge was dismissed at the preliminary

1 hearing?

2 A. Correct.

3 Q. And then the other charge, other two charges, the
4 other set of distributions and prox charge was dismissed
5 based upon him pleading?

6 A. Right. He pled to five, and I think there were two
7 still remaining, simple possession.

8 Q. Right. So in all total three charges went away
9 during your representation?

10 A. That's correct.

11 Q. Okay. Now, as to the chain of custody I believe you
12 testified on that issue already and stated that you felt
13 like that would have been something you would have
14 challenged during the trial, correct?

15 A. I would have made sure that the State bore the burden
16 of establishing a sufficient chain of custody, certainly.
17 But I didn't have any knowledge or reason to believe that
18 there was anything deficient about the chain of custody,
19 and I don't believe it's until the State has the
20 opportunity to establish that during their case in chief
21 that I would have any chance to challenge it, per se.

22 Q. So as to the -- and the weight of the marijuana
23 changed? Did you discuss that with Mr. Davis?

24 A. I believe we did. I mean it negligible change, and I
25 think there are a variety of reasons. Judge indicated

1 that it could have been field tested. Marijuana also can
2 be moist at the time it's obtained and can dry out which
3 can cause a small change of weight. And some of it could
4 have been used when the chemist test. I don't know. I
5 remember there being a slight change in weight, but not a
6 noticeable, something glaring that we could point to the
7 jury that something was strange here.

8 Q. So you didn't have any reason to believe that it's --
9 the drugs had been altered -- by the State been altered
10 intentionally?

11 A. No.

12 Q. To tamper with evidence?

13 A. No.

14 Q. As to the appeal you filed a notice of appeal and you
15 filed explanation as to the appeal, correct?

16 A. Correct.

17 Q. Did you discuss the appeal possibility with Mr.
18 Davis?

19 A. I believe after the sentence I talked to him. He
20 said he did want to appeal. I told him I would file the
21 necessary paperwork.

22 Q. He said he did want to appeal?

23 A. Said he did want to appeal, yeah.

24 Q. Okay.

25 A. So we filed the necessary paperwork.

1 Q. So when you offered your explanation did you feel
2 there was any merit to the appeal?

3 A. No.

4 Q. But you did what he asked you to do?

5 A. I believe it's his right to have an appeal.

6 Q. So did you discuss with him whether or not you would
7 be representing him?

8 A. I don't recall whether we discussed whether I would
9 be representing him.

10 Q. But at the time you were a public defender. Is that
11 normal practice for you to represent ---

12 A. No. Appellate Defense would do that.

13 Q. Now, on Page 21 of the transcript -- do you have a
14 copy of the transcript?

15 A. Yes.

16 Q. Could you please turn to Page 21, and look at Line 19
17 through 25 -- Lines 19 through 25. And can you explain
18 what you were trying to address with 85 percent?

19 A. Yeah, I think that's a bit of a maybe a word coming
20 out of my mouth incorrectly. What I was trying to state
21 is that I believe that the Department would treat it. In
22 order to max it out, so if he didn't receive parole, I
23 believe he would end up serving 85 percent of his
24 sentence.

25 Q. And that's base on the Omnibus ---

1 A. Yeah, that's based on ---

2 Q. --- changes?

3 A. Yeah, and it's based on my understanding of some
4 communications between various attorneys and attorneys
5 that represent the Department of Corrections and that
6 that's the way they were treating third offense marijuana
7 distribution when the prior convictions contain other
8 distribution level offenses.

9 Q. Okay. So if I'm correct hearing what you're saying
10 the Department of Corrections was treating those level
11 offenses was that the person may be parole eligible but if
12 they don't make parole then they would serve 85 percent
13 thereafter?

14 A. That was my understanding, yeah.

15 Q. Okay. So that's what you were trying to say here on
16 Page 21?

17 A. Right. I was trying to stress to the Court that any
18 sentence you gave him was going -- he was going to serve a
19 substantial portion of it. More than -- most likely more
20 than, you know, shoplifting third offense or something of
21 that nature. And in a way to try to get the judge to come
22 down on the total sentence understanding that he was going
23 to serve the majority of it.

24 Q. So going back to the appeal, did you receive notice
25 that Mr. Davis' appeal was dismissed?

1 A. Yeah, I'm certain I did. Yeah, I have the order here
2 in the file.

3 Q. Did you inform Mr. Davis of that?

4 A. I don't recall sending a letter to Mr. Davis. I
5 don't recall doing that, no.

6 Q. Do you know if he was represented at that time by
7 appellate counsel?

8 A. Robert Dudack is copied on the order.

9 Q. All right. And when you say, 'Robert Dudack'
10 appellate counsel would have been -- he would have already
11 been appointed to them?

12 A. Right.

13 Q. Okay. Okay. Mr. Davis testified that you didn't
14 sign him up for indigent defense. Was that something you
15 normally do?

16 A. No. We would file a notice of appeal, and frankly, I
17 don't know how -- exactly how Indigent Defense or
18 Appellate Defense receives it. But that would not be --
19 normally I would not file a brief or, you know, do any of
20 the actual appellate work on it. I would preserve his
21 right to appeal and Appellate Defense would take over from
22 there.

23 Q. Are you aware -- well, actually, are you the person
24 that sends out the letter? Do you actually put it in the
25 mail?

1 A. No.

2 Q. You just do the ---

3 A. I just -- we have two people in our office, Jackie
4 Davis and Felicia Whiteside, who they would handle the
5 paperwork.

6 Q. So you wouldn't disagree with me that they would send
7 a copy of that to Sharon Graham at the South Carolina
8 Office of Indigent Defense?

9 A. I wouldn't disagree with that. I don't know exactly
10 who they send it to, but I wouldn't disagree.

11 Q. Okay.

12 MS. MOODY: Beg the Court's indulgence. No further
13 questions for this witness. Thank you.

14 MR. HUNTER: Nothing else for this witness, and no
15 other witnesses for the State.

16 THE COURT: All right. Proposed orders in 30 days.
17 Thank y'all.

18 END OF TRANSCRIPT OF RECORD

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for York
County, South Carolina, on the 20th day of January, 2016.

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

October 2, 2016



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-0777
Dennis Davis, Jr.,	)	
S.C.D.C. No. 288558,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

FILED-RECEIVED
2016 JUN 13 PM 12:32
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 12, 2015. Respondent made its Return on or about August 7, 2015. An evidentiary hearing into the matter was convened on January 20, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Creighton Hayes, Esquire, testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the August 2013 term of the York County Grand Jury for Possession of Marijuana (2013-GS-46-2964), two charges of Distribution of Marijuana In Proximity of a School (2013-GS-46-2966, -

2969), and two charges of Distribution of Marijuana-Third Offense (2013-GS-46-2970, -2971). Applicant was represented by Creighton Hayes, Esquire (hereinafter "Counsel"). On May 21, 2014, Applicant pled guilty as indicted before the Honorable G. Edward Welmaker. He was sentenced to a term of imprisonment for one year for Possession of Marijuana, a term of five years for each charge of Distribution of Marijuana In Proximity of a School, and a term of ten years and five months for each charge of Distribution of Marijuana-third offense. All sentences were to run concurrently.

Applicant timely filed a notice of appeal. By Order filed February 11, 2014, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to file sufficient explanation as required by SCACR 203(d)(1)(B)(iv). The Remittitur was sent September 5, 2014.

In this PCR action, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Guilty Plea Counsel
 - a. "Failure to challenge the use of an invalid conviction"
 - b. "Failure to challenge the sufficiency of the chain of custody"
 - c. "Failure to protect my rights to seek a direct appeal. Also failure to sign me up with the indigent defense to represent me on appeal."

II. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified that he bonded out and met with Counsel a couple times before his plea. He testified that he gave Counsel his side of the story and told him that he did not want to plead guilty. He testified that a six year offer came right before trial but he rejected this offer. He further testified that Counsel and the State were trying to scare him to plead guilty, and that he believed the State was punishing him for exercising his right to trial. Applicant also testified that

he thought he would be parole eligible but found out that he would have to serve eighty-five percent before being parole eligible.

Applicant said that he had an issue with the chain of custody, testifying that there were key documents missing and that the drugs had been altered. He testified that he got a copy of the discovery but that Counsel did not review it with him.

Applicant testified that Counsel failed to seek his appellate rights by failing to sign him up with the Office of Indigent Defense.

Counsel's Testimony

Counsel testified that he met with Applicant fifteen to twenty times prior to the plea. He testified that he received everything in discovery and shared this with Applicant, including video evidence and a statement. Counsel testified that he believed the State's evidence against Applicant to be strong. He testified that the State first presented a plea offer of seven years, then an offer of six years. Counsel testified that after Applicant rejected the six year offer, Counsel asked the State to put the offer back on the table. He testified that the plea offer eventually turned to a straight up plea offer because the information concerning the State's confidential informant was revealed. He testified that York County has a policy whereby the revelation of the confidential informant's identity negates a plea offer. Counsel testified that he believed pleading guilty was in Applicant's best interest and he believed Applicant understood everything involved with the plea. Counsel testified that he had two of his colleagues give Applicant a second and third opinion regarding whether to plead guilty or go to trial and that they both thought Applicant should plead guilty.

Counsel testified that he discussed with Applicant the fact that his prior convictions of trafficking crack cocaine and simple possession of marijuana (second or subsequent offense)

could be used to enhance his offenses to possession of marijuana second offense and distribution of marijuana third offense. He testified that the prior conviction of possession of marijuana second or subsequent offense may have had issues, but admitted that both prior convictions were properly used to enhance the current offenses.

Counsel testified that he had no issues with the chain of custody and no reason to think that it might be defective. He also testified that any issues regarding the weight were immaterial because any small and were probably the result of field testing.

Counsel testified that he informed the Court in mitigation to consider a low sentence because if he did not get a paroleable sentence then he would have to serve eighty-five percent of whatever sentence he received. He testified that he discussed this with Applicant.

Counsel testified that he filed Applicant's notice of appeal and a Rule 203(B) explanation stating that he did not have a good faith basis to appeal the sentence. He testified that public defenders do not have a duty to sign applicants up for Appellate Defense. He testified that he received the notice that Applicant's appeal was dismissed and that Robert Dudek of the Office of Appellate Defense was copied on it.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. 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).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked

through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Applicant failed to meet his burden of proving that his plea counsel was ineffective. This Court finds Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813.

First, this Court finds that Applicant has failed to prove that Counsel was ineffective for failing to challenge the use of Applicant's prior convictions. Counsel testified that Applicant's prior convictions for trafficking crack cocaine and simple possession of marijuana (second or

subsequent offense) were properly used to enhance his current offenses. Applicant has presented no evidence to show that his prior convictions were improperly used against him or that Counsel's performance was deficient. Furthermore, Applicant has failed to show that he was prejudiced, as he has failed to show that he would not have pled but would have gone to trial but for Counsel's alleged errors. Accordingly, this allegation must be dismissed.

Next, this Court finds that Applicant has failed to show that Counsel was ineffective for failing to challenge the sufficiency of the chain of custody. First, Applicant was properly informed during his guilty plea that by pleading guilty he would give up his right to challenge the State's evidence and Applicant informed the court that he understood that waiver of rights. Counsel testified that he had no justifiable reason to challenge the chain of custody and Applicant has presented no veritable evidence of defects in the chain of custody. This Court finds that Counsel provided effective assistance in this regard and Applicant has failed to meet his burden of proving otherwise. Additionally, this Court finds that Applicant was not prejudiced by any alleged deficiency as he has failed to show that he would have gone to trial but for Counsel's alleged errors. Accordingly, this allegation must be dismissed.

This Court also finds that Applicant has failed to show that Counsel was ineffective for not signing him up with Appellate Defense. This Court finds, and the record reflects, that Counsel followed the proper procedure for appealing a guilty plea by filing a notice of appeal and a Rule 203(B) explanation. Applicant has failed to show that Counsel was ineffective in this regard and, accordingly, this allegation must be dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to

present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

[Signature Block on Following Page]

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 6th day of June, 2016.


PAUL M. BURCH
Presiding Judge
Sixteenth Judicial Circuit

Chesterfield, South Carolina

2018CP46-3769

STATE OF SOUTH CAROLINA)

County of York)Dennis Rodger Davis Jr. 788568)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

FILED-RECEIVED
IN THE COURT OF COMMON PLEAS
2018 DEC 12 AM 11:19DAVID HAMILTON
C.C.P. & GS W
YORK COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

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 Mershaw Correctional Institution
2. Name and location of Court which imposed sentence York County General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 GS 460 2971, 2013 GS 460 2970, 2013 GS 460 2969,
 - (b) 2013 GS 460 2966, 2013 GS 460 2964

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2013 GS 460 2971, 2013 GS 460 2970, 5/21/2014, 125 months non-violent
- (b) 2013 GS 460 2919, 2013 GS 460 2966, 5/21/2014, 5 years non-violent
- (c) 2013 GS 460 2964, 5/21/2014 1 year non-violent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Post Conviction Relief
- iii. South Carolina Court of Appeals
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. Dismissed and Denied
- iii. Dismissed and Denied
- (c) the date of each such result:
- i. August 11, 2014
- ii. June 6, 2016
- iii. October 6, 2017
- (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) My current sentence is in violation of the Constitution and laws of the state.
- (b) The sentence exceeds the maximum sentence authorized by law.
- (c) The terms of my plea agreement has been violated illegally and unlawfully.

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

- (a) I was sentenced to a non-violent and Parole eligible sentence after the Omnibus Crime Reduction and Sentencing Reform Act
- (b) With the supervised Purlough I was maxing out March 2019 not March of 2023
- (c) SCDC has illegally resentence me based off an erroneous interpretation of the law and violated my Plea

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

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

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. Direct Appeal
 - ii. PCR
 - iii. South Carolina Court of Appeals
 - iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Appeals Court
 - ii. York County General Sessions
 - iii. South Carolina Appeals Court
 - iv. _____

(c) the disposition thereof:

- i. It was Dismissed
- ii. Dismissed or Denied
- iii. Dismissed or Denied
- iv. _____

(d) the date of each such disposition:

- i. August 11, 2014
- ii. June 6, 2016
- iii. October 6, 2017
- 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?

NO

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) I was just recently informed of this change February 8th, 2017 at 10:13 am
 (b) This is my first opportunity to properly address the matter
 (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
- i. Cocighton Hayes Sixteenth Circuit Public Defenders office Moss Justice Center,
1675-1E York Highway P.O. Box 691 York, SC 29745
 - ii. Leah B. Moody, LLC 235 E. Main St., Suite 115 Rock Hill, SC 29730
 - iii. LaNelle Cantey Dubant Appellate Defender P.O. Box 11589 Columbia, SC,
29211
- (b) the proceedings at which each such attorney represented you:
- i. Plea arraignment
 - ii. PCR
 - iii. Appeal from PCR

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

That my plea agreement be honored and my sentence be corrected to non-violent
and not be reflecting I serve 85% of my sentence. I never pled to a violent
or 85% sentence. My time was non-violent or parole eligible was what I pled guilty to in the court and
what the courts agreed upon.

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

No

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Dennis Rodger Davis Jr., 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.

Dennis Davis

SWORN to and subscribed before me this 7th
 day of December, 2018.

Cathryn A. Ammer (L.S.)
 Notary Public

My Commission Expires: December 22, 2021

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

I, Dennis Rodger Davis Jr., 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.

Dennis Davis

Applicant

SWORN or affirmed to and subscribed before me this
4th day of December, 2018.

Carlton A. Chmura

Notary Public

My Commission Expires: December 22, 2019

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Dennis Rodger Davis, Jr., #288558,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
IN THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-46-3769

RETURN AND MOTION TO DISMISS

2019 SEP 20 PM 12:45
DAVID HAMILTON
C.J.C.P. & C.S.
YORK COUNTY, SC

FILED-RECEIVED

The State (Respondent), making its return to the application for post-conviction relief (PCR) filed by Dennis Davis (Applicant) on December 12, 2018, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. During the August 2013 term, the York County Grand Jury indicted Applicant for possession of marijuana (2013-GS-46-2964), two charges of distribution of marijuana in proximity of a school (2013-GS-46-2966, -2969), and two charges of distribution of marijuana (2013-GS-46-2970, -2971). Applicant was represented by Creighton Hayes, Esquire. On May 21, 2014, Applicant pled guilty as indicted to all charges before the Honorable G. Edward Welmaker. He was sentenced to a term of imprisonment for one year for possession of marijuana, five years for each charge of distribution of marijuana in proximity of a school, and ten years for each charge of distribution of marijuana. All sentences were set to run concurrently.

Applicant filed a timely notice of appeal. By Order filed February 11, 2014, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to file sufficient explanation as required by SCACR 203(d)(1)(B)(iv). The remittitur was sent September 5, 2014.

II. First Post-Conviction Relief Application (2015-CP-46-777)

Applicant subsequently filed an application for post-conviction relief on March 12, 2015, in which he alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial (Guilty Plea) Counsel
 - a. "Failure to challenge the use of an invalid conviction"
 - b. "Failure to challenge the sufficiency of the chain of custody"
 - c. "Failure to protect my rights to seek a direct appeal. Also failure to sign me up with the indigent defense to represent me on appeal."

Respondent filed its return on August 10, 2015. An evidentiary hearing into the matter was convened on January 20, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and was represented by Leah Moody, Esquire. Assistant Attorney General Justin Hunter of the South Carolina Attorney General's Office, represented the State. Applicant and Counsel testified during the evidentiary hearing. On June 6, 2016, the Honorable Paul M. Burch, issued an order of dismissal denying Applicant's application for post-conviction relief.

On February 2, 2017, Appellate Defender LaNelle C. DuRant of the South Carolina Commission on Indigent Defense, filed a petition for writ of certiorari in the Supreme Court of South Carolina pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). On October 6, 2017, by written order the Supreme Court of South Carolina denied the petition. The remittitur was issued on October 24, 2017.

III. Second Post-Conviction Relief Application (2018-CP-46-3769)

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "My current sentence is in violation of the Constitution and laws of the state"

- a. "I was sentence to a non-violent and Parole eligible sentence after the Omnibus Crime Reduction and Sentencing Reform Act"
2. "The Sentence exceeds the maximum sentence authorized by law"
 - b. "With the supervised furlough I was maxing out March 2019 not March 2023"
3. "The terms if my plea agreement has [sic] been violated illegally and unlawfully"
 - c. "SCDC has illegally resentenced me based off an erroneous interpretation of the law and violated my plea"

As requested relief, Applicant has asked for "that my plea agreement be honored and my sentence corrected to non-violent and not be reflecting I serve 85% of my sentence. I never pled to a violent or 85% sentence! My time was non-violent or parole eligible was what I pled guilty to in the court and what the courts agreed upon."

Attached to this Return and incorporated by reference are the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, Applicant's prior post-conviction relief records, and the current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Statute of Limitations

Respondent submits that this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled guilty as indicted to all charges on May 21, 2014. The remittitur from the direct appeal was issued on September 5, 2015. The application was therefore due by May 22, 2015. This application was filed on December 12, 2018, well beyond the statutory filing period. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

V. Successive

The application should be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which

for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant's current application is practically identical to his prior application with the addition of a new allegation of being unlawfully sentenced. Applicant has failed to establish any sufficient reason why he could not have raised his current allegation in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court should summarily dismiss the application as successive to Applicant's previous PCR application.

VI. Denial of All Other Claims

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

VII. Conclusion

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired and is successive to Applicant's previous application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

for JANELL H. GREGORY
Assistant Attorney General

By: *Brian J. Hille*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 18, 2019

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-3769

Dennis Rodger Davis, Jr., #288558,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

2019 SEP 20 PM 12:45
DAVID HAMILTON
C.C.P. # 08
YORK COUNTY, SC

FILED-RECEIVED

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 Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Dennis Rodger Davis, Jr., #288558, MA-0018-T
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw, South Carolina 29067

DATED this the 18th day of September, 2019.



Caroline Collins, Administrative Coordinator
For Respondent

FILED-RECEIVED

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

2019 OCT 30 PM 12:56

FOR THE SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK

DAVID HAMILTON

C.C.C.P. 0 03

2018-CP-46-3769

Dennis Rodger Davis, Jr., #288558, YORK COUNTY, SC

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed by Dennis Davis (Applicant) on December 12, 2018. Respondent made its return, requesting the application be summarily dismissed.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. During the August 2013 term, the York County Grand Jury indicted Applicant for possession of marijuana (2013-GS-46-2964), two charges of distribution of marijuana in proximity of a school (2013-GS-46-2966, -2969), and two charges of distribution of marijuana (2013-GS-46-2970, -2971). Applicant was represented by Creighton Hayes, Esquire. On May 21, 2014, Applicant pled guilty as indicted to all charges before the Honorable G. Edward Welmaker. He was sentenced to a term of imprisonment for one year for possession of marijuana, five years for each charge of distribution of marijuana in proximity of a school, and ten years for each charge of distribution of marijuana. All sentences were set to run concurrently.

Applicant filed a timely notice of appeal. By Order filed February 11, 2014, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to file sufficient explanation as required by SCACR 203(d)(1)(B)(iv). The remittitur was sent September 5, 2014.

II. First Post-Conviction Relief Application (2015-CP-46-777)

Applicant subsequently filed an application for post-conviction relief on March 12, 2015, in which he alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial (Guilty Plea) Counsel
 - a. "Failure to challenge the use of an invalid conviction"
 - b. "Failure to challenge the sufficiency of the chain of custody"
 - c. "Failure to protect my rights to seek a direct appeal. Also failure to sign me up with the indigent defense to represent me on appeal."

Respondent filed its return on August 10, 2015. An evidentiary hearing into the matter was convened on January 20, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and was represented by Leah Moody, Esquire. Assistant Attorney General Justin Hunter of the South Carolina Attorney General's Office, represented the State. Applicant and Counsel testified during the evidentiary hearing. On June 6, 2016, the Honorable Paul M. Burch, issued an order of dismissal denying Applicant's application for post-conviction relief.

On February 2, 2017, Appellate Defender LaNelle C. DuRant of the South Carolina Commission on Indigent Defense, filed a petition for writ of certiorari in the Supreme Court of South Carolina pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). On October 6, 2017, by written order the Supreme Court of South Carolina denied the petition. The remittitur was issued on October 24, 2017.

III. Current Post-Conviction Relief Application (2018-CP-46-3769)

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "My current sentence is in violation of the Constitution and laws of the state"
 - a. "I was sentence to a non-violent and Parole eligible sentence after the Omnibus Crime Reduction and Sentencing Reform Act"
2. "The Sentence exceeds the maximum sentence authorized by law"
 - b. "With the supervised furlough I was maxing out March 2019 not March 2023"
3. "The terms if my plea agreement has [sic] been violated illegally and unlawfully"
 - c. "SCDC has illegally resentenced me based off an erroneous interpretation of the law and violated my plea"

As requested relief, Applicant has asked for "that my plea agreement be honored and my sentence corrected to non-violent and not be reflecting I serve 85% of my sentence. I never pled to a violent or 85% sentence! My time was non-violent or parole eligible was what I pled guilty to in the court and what the courts agreed upon."

Before this Court are the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, Applicant's prior post-conviction relief records, and the current application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IV. Statute of Limitations

The Court finds that this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled guilty as indicted to all charges on May 21, 2014. The remittitur from the direct appeal was issued on September 5, 2015. The application was therefore due by May 22, 2015. This application was filed on December 12, 2018, well beyond the statutory filing period. Therefore, the application shall be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

V. Successive

The Court further finds the application must be summarily dismissed because it is successive to Applicant's previous post-conviction relief application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant's current application is practically

identical to his prior application. Furthermore, Applicant has failed to establish any sufficient reason why he could not have raised his current allegation of newly discovered evidence in his previous applications for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court shall summarily dismiss the application as successive to Applicant's previous post-conviction relief application.

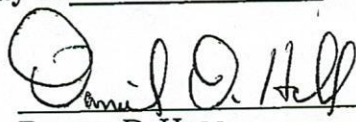
VI. Conclusion

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the York County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Janell H. Gregory, Esquire
PCR Division – 16th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the York County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 4th day of October, 2019.



DANIEL D. HALL
Chief Administrative Judge
Sixteenth Judicial Circuit

York

, South Carolina

To: Honorable David Hamilton
Clerk of Court York County
P.O. Box 649
York, S.C. 29945

11/12/19

FILED-RECEIVED

2019 NOV 15 PM 12:27

DAVID HAMILTON
C.O.C.P. # 93
YORK COUNTY, S.C.

RE: PCR # 2018-Cp-416-3769

Honorable Clerk:

Enclosed you will find the original motion in opposition to the Respondent's Conditional order of dismissal with a Certificate of Service for filing to be sent to The Honorable Judge Daniel D. Hall. Please Forward a clocked stamped copy back to me at the following address:

Dennis Davis #288558

K.C.I. MA-18

4848 Goldmine Hwy.

Kershaw, S.C. 29067

Thank you Sincerely,

S/ Dennis Davis

State of South Carolina
County of York

In the Court of Common Pleas
For the sixteenth Judicial Circuit

Dennis Badger Davis, Jr., #288558,

Applicant,

V.

State of South Carolina,

Respondent.

2018-Cp-46-3769

Motion in opposition to the Respondents

Conditional order of Dismissal

FILED-RECEIVED
NOV 15 PM 12:27
CLERK OF COURT
HAMILTON
COUNTY, SC

This matter comes before the Court by way of an application for Post-Conviction relief Filed by Applicant on December 12, 2018. Respondent made it's return, requesting the Application be summarily dismissed on September 18, 2019.

Procedural History

Applicant is presently confined in the South Carolina Dept. of Corrections pursuant to commitment orders of the York County Clerk of Court. On May 21, 2014, Applicant plead guilty to two Counts of Distribution of marijuana (2013-GS-46-2970, -2971) and was sentenced to 125 month's non-violent, two Counts of proximity of a School Zone (2013-GS-46-2966, -2969) and was sentenced to 5 years non-violent, and possession of marijuana (2013-GS-46-2964) and was sentenced to 1 year non-violent. All sentences were set to run Concurrently. Applicant did not file a timely notice of Appeal. By order Filed August 11, 2014, the South Carolina Court of Appeals dismissed the Appeal. The remittitur was

Sent September 15, 2014. Applicant filed an application for Post-Conviction relief on March 12, 2015. Respondent filed its return on Aug. 10, 2015. An evidentiary hearing was convened on January 20, 2016 at the Mass Justice Center in York, South Carolina. On June 6, 2016, the Honorable Paul M. Burch, issued an order of dismissal denying Applicant's application for Post-Conviction relief. On February 2, 2017, a petition for writ of Certiorari was filed. On Oct. 6, 2017 by written order of the Supreme Court of South Carolina the petition was denied. The remittitur was issued on Oct. 24, 2017. Applicant filed a Second Post-Conviction Relief Application on Dec. 12, 2018 due to the fact he is being held unlawfully and Falsely Imprisoned.

Findings of Facts and Conclusions of Law

The statute of limitations does not apply in this case because of newly discovered facts where as SCDJ Altered the Judges Commitment order due to their recent interpretation of Bello in conjunction with S.C. Code Ann. § 44-53-370 - 375 which violated my S.C. Constitutional rights Article I section 3 due process of law and S.C. Constitution Article I Section 8 Separation of Powers. No Branch of the Government may delegate to or Usurp Powers of the other two. State v. DeLaCruz, 302 S.C. 13, 393 S.E. 2d 184 (1990) (See also CF. Hamilton v. Freeman, 147 N.C. App. 195, 554 S.E. 2d 886, (N.C. 2001)

The PCR is not Successive because the Applicant was

not falsely imprisoned and held beyond his release date until March 1, 2019. §17-27-20

Persons who may institute proceedings; exclusiveness of remedy. Any person who has been convicted of, or sentenced for a crime and who claims that his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint, Detention beyond the termination of a sentence constitutes cruel and unusual punishment which violates Applicant's 8th amendment rights as well. A successive application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. S.C. Code Ann. §17-27-90 (1996 & Supp. 1997) Successive applications are disfavored and the applicant has the burden to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Alice V. State, 305 S.C. 448, 1109 S.E.2d 392 (1991) It would have been impossible for the Applicant to present evidence of False imprisonment at first P.R. application. (See Exhibit I SCDP Division of Classification and Inmate Records form.) Without an evidentiary hearing there is no other way to correct this error and miscarriage of Justice being done to the applicant. Also during the 1st P.R. proceeding the Hon. Paul M. Burch stated, "The other thing that I caught in looking over your file, your up for parole in three and a half months." (on page 6 lines 5-6 of the P.R. transcript.) He stated in open court, on the record I'm parole eligible or non-violent, not violent as SCDP has changed my sentence to reflect. (CF. Hamilton V. Freeman, 147 N.C. App. 195, 554 S.E.2d 856, (N.C. App. 2001) (where the Dept. of Corrections (DOC) independently amends Judgements to reflect the Doc's interpretation of state law, the Doc has usurped power of the Judiciary).

Conclusion

Wherefore, based on the foregoing facts I pray that the Court

denies Respondent's motion/order of dismissal and grant Applicant's relief which is an evidentiary hearing to correct his sentence and therefore would release him from the unlawful custody of the Respondent because Applicant has already exceeded his release date by 257 days and counting.

Respectfully Submitted,

S/ Dennis Davis # 288558

Dennis Davis # 288558

K.C.I. MA-18

4848 Goldmine Hwy.

Hershaw, SC. 29067

State of South Carolina

County of York

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2019 NOV 15 PM 5:27

DAVID HAMILTON
CLERK OF COURT
C.O.C.F. 8-8-88
CRIM. COURT

Dennis Rodger Davis, Jr. # 288558

Applicant

V.

State of South Carolina,

Respondent.

In the Court of Common Pleas
For the Sixteenth Judicial Circuit
2018-CP-416-3769

Certificate of Service

I hereby Certify that a copy of the foregoing motion was
on November 12, 2019 served upon the following individuals by placing
a copy of the same via mail to his/her last known address as
follows:

Office of the Attorney General
Attn: Janell H. Gregory, Esquire
PCR Division - 16th Circuit
P.O. Box 11549
Columbia, S.C. 29211

on this 12 day of
November 2019.

S/ Dennis Davis

Dennis Davis # 288558

K.C.I. MA-18

4848 Goldmine Hwy.

Kershaw, SC 29067

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION & INMATE RECORDS
CUSTODY AND PRIVILEGES**

Exhibit 1

126

Inmate Name Davis, Dennis Inmate Number 288558

Assigned/Recommended Custody NRIB

	MINIMUM OUT (MO)	MINIMUM OUT RESTRICTED (MOR)	MINIMUM IN (MI)	MEDIUM (ME)	SMU (SD, DD, PC, PHD)
ACCESS TO PROGRAMS & ACTIVITIES	Outside the perimeter <i>off</i> institutional property	Inside the perimeter <i>or</i> Outside the perimeter <i>on</i> institutional property	Inside the perimeter	Inside the perimeter	Selected cell activity only
ACCESS TO JOBS	Outside the perimeter <i>off</i> SCDC property	Inside the perimeter <i>or</i> Outside the perimeter <i>on</i> institutional property	All inside the perimeter Under armed supervision outside the perimeter	All inside the perimeter Under armed supervision outside the perimeter	None except job assignments within unit for Statewide PC which is closely supervised (none the 1 st 90 days)
WORK/EDUCATION CREDITS	2	2	3 until meets behavior & time requirements to MOR, then automatically to 2	5	None, except 7 for Statewide PC (none the 1 st 90 days)
ACCESS TO CANTEEN	\$100 week limit	\$100 week limit	\$100 week limit	\$30 week limit	Refer to OP-22.16 for Death Row, OP-22.12 for SMU, OP-22.32 for Statewide PC. Pre-Trial SK inmates are eligible for canteen privileges.
ACCESS TO VISITS	See SCDC Policy/Procedure OP-22.09, Inmate Visitation, OP-22.12, Special Management Unit, OP-22.11, Maximum Security Unit, or OP-22.32, Statewide Protective Custody for information on visitation privileges.				
*ACCESS TO TELEPHONE	Normal	Normal	Normal	4 calls per month	Up to 1 call per month (depending upon Security Detention level designation) Statewide PC – 1 per day

*This does not affect access to legal telephone calls.

Projected Release Date as of: October 17, 2016

Max-out 9/13/19 Parole Eligibility 5/31/16 SFII-A 3/17/19

Labor Crew Eligibility NONE

Sentence Start Date 5/21/14 Sentence Length 10yr

Detainers NONE

Annual Hardship Review Month May

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK 2020 JUL 14 PM 2:34)

DAVID HAMILTON)

2018-CP-46-3769

Dennis Rodger Davis, Jr., #288558, C.P. & GS)
YORK COUNTY, SC)

Applicant,)

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)
_____)

This matter comes before the Court by way of an application for post-conviction relief filed by Dennis Davis (Applicant) on December 12, 2018. Respondent was served with the application on December 18, 2018. Respondent made its return on or about September 18, 2019, requesting the application be summarily dismissed as untimely filed and successive to previous post-conviction relief applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed October 4, 2019, and filed October 30, 2019, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated November 15, 2019, serving the above-mentioned Conditional Order of Dismissal on Applicant.

On November 12, 2019, Applicant submitted a response to this Court's Conditional Order of Dismissal. This Court has reviewed Applicant's response to the Conditional Order of Dismissal, in conjunction with the original pleadings, and finds a no sufficient reason has been shown why

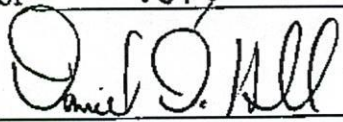
the Conditional Order of Dismissal should not become final.¹ Applicant has failed to provide any valid legal explanation that would allow him to bypass the statute of limitations and the successiveness of the application.

Therefore, as previously noted in the Conditional Order of Dismissal and the State's Return and Motion to Dismiss, this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, and for being successive to Applicant's prior PCR action.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

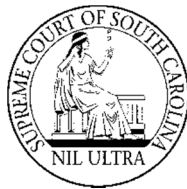
This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 15th day of July, 2020.


 DANIEL D. HALL
 Chief Administrative Judge
 Sixteenth Judicial Circuit

Yosk, South Carolina.

¹ On May 29, 2020, the South Carolina Attorney General's Office sent this Court a letter inquiring as to whether a motion hearing should be held regarding the motion to dismiss. However, this Court declines to hold a motion hearing.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

August 20, 2020

Dennis Rodger Davis, Jr., 00288558
Kershaw Correctional Institution
4848 Gold Mine Hwy
Kershaw SC 29069

Re: Dennis R. Davis, Jr. v. State
Appellate Case No. 2020-001116

Dear Petitioner:

This Court has received the notice of appeal in the above post-conviction relief action. Since the order of the circuit court determined that this action is barred as being successive and/or as being untimely under the statute of limitations, Rule 243(c) of the South Carolina Appellate Court Rules (SCACR) requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

Please provide the explanation required by Rule 243(c) within twenty (20) days of the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to be "J. B. Gregory". The signature is written in a cursive style with a large, sweeping initial "J" and a distinct "B".

DEPUTY CLERK

cc:

Janell H Gregory, Esquire

The State OF South Carolina
 To The Supreme Court

RECEIVED

Petition From York County
 Court OF Common Pleas

SEP 11 2020

Honorable Daniel D. Hall, Presiding

S.C. SUPREME COURT

Case No. 2018-CP-46-3769

Appellate No. 2020-001116

Dennis Rodger Davis Jr.
 Petitioner

"VS"

State OF South Carolina
 Respondent

Explanation Why This Court Should Entertain Petitioners
 2nd PCR Action, And Petition To Be Heard On The Merits

(Other Counsel of Record):

Janelle H. Gregory
 Office OF The S.C. Attorney General
 P.O. Box 11549
 Columbia S.C. 29211-1549

Mr. Dennis Rodger Davis, Jr. #288558
 Kershaw Co. I., Rm. MA-18.
 4848 Gold Mine Hwy
 Kershaw SC 29067

(Petitioner Pro. Se.)

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(Questions Presented)

- (I) Whether it was improper for the Lower Court to hold that Petitioner's Second PCR Application Was Successive?
- (II) Whether it was improper for the Lower Court to hold that Petitioner's Second PCR Application Was Time-Barred?
- (III) Whether This Court Can Entertain And Adjudicate This Cause On The Merits Do To Jurisdictional Disputes?

(Statement OF The Cause)

On August 22nd, 2013, Petitioner was indicted by The York County Grand Jury for possession of marijuana, 2nd subsequent offense (2013-GS-46-02964), Two Counts of distribution of marijuana within the proximity of a school (2013-GS-46-02966 & 02969), and two Counts of distribution of marijuana, 3rd offense (2013-GS-46-02970 & 02971).

On May 21st, 2014, Petitioner appeared before Honorable Judge Edward G. Welmaker, and pleaded guilty to all above Stated Charges. Petitioner was sentenced to 1 year for possession of marijuana, 5 years each proximity charge, and 10 years and 5 months for each distribution of marijuana 3rd offense Charges, all of which ran concurrent to "125 months", thus making Petitioner's projected max-out date September 13th, 2019, moreover parole eligible on May 31st, 2016 because he was sentence to all [N]on-Violent Charges.

Petitioner timely filed a notice of appeal with The S.C. Court of Appeals, However the appeal was dismissed for failure to file a sufficient explanation for The appeal.

On or about 3/12/2015, Petitioner filed a Post Conviction Relief (PCR) application with The York County Court of Common Pleas.

On June 6th, 2016, a Post Conviction Relief (PCR) hearing was held, and after Litigation, Petitioner was denied relief.

Petitioner timely filed a notice of appeal with [T]his Court, and

While this appeal was pending, and being litigated in this Court, On February 8th, 2017, Classification Case Manager, to wit, Mrs. M. Jackson, who is employed by The S.C. Dept. of Corrections (SCDC), Changed the Petitioners max-out date from September 13th, 2019 to March 24th, 2023, thus adding "4" years to Petitioners Sentence, moreover She revoked his Parole eligibility without a hearing.

Petitioners Contract with The State, and The Court was Transmuted predicated on The domestic precedent, to wit, Bolin "vs." S.C. Dept. of Corrections, 425 S.C. 276, 781 S.E.2d. 914 (2015) On October 6th, 2017, this Court denied certiorari, and the Remittitur was issued and Filed on October 30th, 2017.

On December 12th, 2018, Petitioner filed a second PCR application. The State made its return on or about September 18th, 2019 requesting that the PCR application be summarily dismissed as untimely, and Successive to The previous PCR application. The Court issued a Conditional order of dismissing The PCR action, and Petitioner timely responded to The Conditional order. Likewise the Court did not find a sufficient reason to entertain and adjudicate the PCR action on The merits, and denied and dismissed the application with prejudice on July 1st, 2020. Petitioner timely filed a notice of appeal with This Court, and on August 20th, 2020, this Court requested an explanation as to why The Lower Courts determination was improper, and this brief follows.

(Explanation As To Why The Lower Courts Determination Was Improper, And Off Point On The Law)

(A) Petitioner's Second Post Conviction Relief (PCR) Application Is Not A Successive Application As A Fact Of Law:

To begin with, Successive is defined as: "Following in uninterrupted order; Consecutive; Characterized by, or involving Succession (American Heritage College Dictionary). The Law is a profession of words, both spoken and written, and words in their proper order are the raw materials of Law. Importantly, Looking at the very essence of the word Successive, "Ex Rigore Juris", it simply doesn't have no relevance in this Litigation at all. Why not? The answer is elementary.

When Petitioner filed his first PCR action, SCDC had not transmitted his sentence by adding 4 years to his prison term, and at that time Petitioner was still parole eligible.

So that nobody misses the point, Mrs. M. Jackson, who is employed by SCDC, did not add 4 years to Petitioner's sentence until February 8th, 2017. On this day, Petitioner was on appeal from his first PCR application, and the factual predicates in the second PCR application were not litigated in the first PCR application.

There is no way possible Petitioner could have litigated that 4 years was added to his sentence, and his parole eligibility was revoked during the 1st PCR application, because the violation had not taken place yet. So the matter can't be successive because it was only litigated, or raised "one-time".

Jurisprudentially speaking, if the doctrine of precedents is regarded as the champion of stability, and Uniformity in the Law, Stare decisis enforces my point here. To be sure, this Honorable Court only need to review your own precedent, to wit;

Tilly vs State, 334 S.C. 24, 511 S.E.2d. 689 (S.C. 1999).

In Tilly Supra, this Court recognized that Tilly could not have revised the claim that his parole was taken away from him by (DPPPS), because Tilly did not know that (DPPPS) had taken his parole until after it was done. In point of fact, the exact same thing has happened in this matter case sub judice, based on fact that SCDC took Petitioner's parole after Petitioner filed his first PCR application.

Likewise, it is of vital importance for this Honorable Court to develop a clear awareness that "Where there is the same reason, there is the same Law, and the same judgment should be rendered on comparable fact,

(Ubi Eadem Ratio, Ibi Idem Jus; Et De Similibus Idem Est Judicium)

In view of this, it is obvious and unarguable that Petitioner's 2nd PCR application is not successive as an undisputed fact of Law.

(B). Petitioners Second PCR Application Is Not Time Barred:

This much is certain, We know Petitioner [C]annot have two PCR actions legally pending at the same time. Noticeable, this Court denied certiorari on Petitioner's "Second" PCR application on October 6th, 2017, and this Court issued the Remittitur on October 30th, 2017, and 365 days from October 30th, 2017 is on or about October 30th, 2018. In view of this, the Lower Court, and the State assumes that because Petitioner filed his second PCR action on December 12th, 2018, the application is time-barred by two months. Notwithstanding, to every broad rule, there is an exception, and an exception affirms an opposite rule, (*Exceptio Firmat Regulam In Contrarium*). Unshakable, In Rigore Juris, to wit, S.C. Code Ann. § 17-27-20(a)(4) Petitioner can raise claims that "There is evidence of material facts, not previously presented, and heard that requires vacation of the conviction or sentence in the 'interest of Justice', and 'That his sentence has [E]xpired, his probation, parole, or conditional release was unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint," S.C. Code Ann. § 17-27-20(a)(5). Insofar, the theme of these statutes override a time-bar, especially when the direction of "In the interest of Justice" is being so used. In point of fact, Petitioner's [S]entence has expired by his orders of Commitment of York County, and his [P]arole was arbitrarily taken away from him without a hearing, which demonstrates unequivocally that Petitioner's issues are a Paragon for the Statutes stated.

To crystalize my point, The S.C. Supreme Court has Started;

"Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant, and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice."

Aice" vs" State, 305 S.C. 448, 409 S.E. 2d. 392 (S.C. 1991)

Acknowledging this language, it is accurate to say that Petitioners' factual predicates can be entertained, and adjudicated on the merits under Aice vs State, Supra, criteria, and jurisprudence, and the time bar quibble is notwithstanding, predicated on fact that a gross miscarriage of justice is ongoing in this matter case sub judice, and will continue on "in futuro," if this Court does not act, because Petitioners' sentence ordered by the Court has expired, and he is still being held in custody, which violates the 8th and 14th Amendments to the U.S. Constitution, and Article I §§ 3 and 15 to the S.C. Constitution.

(C) Because There Are Jurisdictional Disputes Present In This Case, This Court Can Entertain And Adjudicate This Case On The Merits

Critically Serious, after the careful sifting of The unique facts and circumstances in this matter case. Sub judice, Three (3) jurisdictional disputes are glaring, and The Lower Court Could have raised These issues Sua Sponte.

(D) When Petitioner Informed The Lower Court That SCDC Could Not Change His Sentence, He Started A Jurisdictional Dispute.

Standing alone, When Petitioner duly informed The Lower Court That SCDC Could not Change his Sentence ordered by The Court, by adding 4 years to his Sentence, a jurisdictional question of Law was born.

Henceforth, [J]urisdiction is power to declare The Law, and No Warden, Director, Classification case manager, ect, has The "Jus Gladii" To Transmute Petitioners Sentence that was ordered by The Court of General Sessions of York County.

Inasmuch, When I Looked up The definition for The word [O]rder in The Blacks Law dictionary, and in The Barrons Law Dictionary, The dicton in both specifically, and unequivocally states that The order of The Court under The circumstances in This Case is [F]inal.

Petitioner's Sentence was edged in Stone by a judicial act, and under The Corpus Juris it cannot be abrogated by a [N]on-[J]udicial act.

Jurisdiction Can be raised at anytime, in any proceeding, Therefore, if The Court pleases, Please entertain This jurisdictional Claim.

(2). Petitioner Received No Notice That His Sentence Was Being Changed:

Well, I guess it's back to basics, [P] This Court has stated with emphasis, "Due process of Law requires That a person Shall have a reasonable opportunity to be heard before a legally appointed, and qualified impartial tribunal before any binding decree, order, or judgment can be made affecting his rights to Life, Liberty, or property"

State vs. Brown, 178 S.C. 294, 182 S.E. 838 (S.C. 1935) also see, Simmons vs. Western Union Tel. Co., 63 S.C. 425 S.E. 521 (S.C. 1902), and Ligon vs. Zimmerman, Brush Co., 455 U.S. 422, 102 S.Ct. 1148 (1982).

Everything Due Process requires, didn't happen in This case, Petitioner got absolutely nothing he was suppose to get, and to make matters even worse, The State and The Lower Court don't even want him to Litigate This matter.

Let me be pellucid, I reviewed The dictum for The definition of [J]urisdiction, in The Blacks Law Dictionary, and in The Barrons Law dictionary, and in relevant part The definition States "In addition to The power to adjudicate, a valid exercise of [J]urisdiction requires [F]air notice, and an opportunity for The affected parties to be heard"

In This case, Petitioner received no Notice at all That his Sentence was being Transmuted. He was called To The Classification office and asked to Sign a paper, and Thats it, That is not Due Process. In my view, because of This also, No Jurisdiction was present To Transmute Petitioners Sentence, because he received "No Notice at all."

(3). Petitioner Was Denied Counsel, When The U.S. Supreme Court Started He Was Entitled To Counsel:

Petitioner has no Legal training, he is not a jurist. This Transmutation of his Sentence was much to Complicated For him To handle. To be Sure, The Petitioners Counsel during his guilty Plea, and The Solicitor allowed This mess to happen 4 years after The omnibus Law was passed, and if They Could not handle This issue, Surely The Petitioner Could not handle This matter himself. Petitioner was Sentenced To Non-violent offenses, and he was parole eligible. However his Parole was revoked, which is defined as - "to void or annul by recalling, withdrawing or reversing." Likewise we know That any revocation of Parole, must Comport To The jurisprudence of Morrissey vs. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1971). In This case, Morrissey vs. Brewer, jurisprudence was Spolched. What is more, because This matter is extremely Complicated, Stare decisis. Informs us That Petitioner Should have been appointed, Counsel. "Gagnoni vs. Scarpelli, 411 U.S. 778, 92 S.Ct. 1756 (1973)"

Some may ask, how can being denied Counsel be a jurisdictional issue in This Case?

I researched, and I got The proposition from The president, to wit, Custis "VS." United States, 511 U.S. 485, 114 S.Ct. 1732 (1994)

In Custis, Supra, The Court Spoke Loudly When It Started;

"If The accused however is not represented by Counsel, and has not Competently and intelligently waived his Constitutional Right, The 6th Amendment Stands as a [J]urisdictional [B]ar to a valid Conviction, and Sentence depriving him of his Life or Liberty, The Judgment of a Conviction pronounced by a Court without jurisdiction is [V]oid."

The way I see it, During a Parole revocation crises that's extremely Complicated, and Counsel is required by Federal Law as determined by The U.S. Supreme Court, and No Counsel is appointed, The 14th Amendment Stands as a jurisdictional bar to a valid revocation of Paroleeligibility.

Inasmuch, because No Counsel was appointed during This hypersensitive, Complex Parole Crises, Jurisdiction was In absentia. There is absolutely No way Petitioners Parole was revoked and he was "inops Consilii", during This Complex matter.

(4). A Structural Error is glaring in This Case.

Getting Straight To The Point, The Petitioner's Sentence was Transmuted by a person Not a tribunal, and Petitioner had No Counsel appointed when The U.S. Supreme Court Commanded Counsel. This is a Structural error as defined by U.S. Supreme Court jurisprudence. What is more, No matter what is done, or The proceeding, at The end of The day, if a Structural error is shown, whatever happened is Constitutionally [V]oid, and require automatic reversal, Brecht "vs" Abrahamsen, 507 U.S. 619 (1993)

This case is jurisdictional in Character and nature, So if The Court please, entertain This matter on The merits To preserve The judicial economy, and emancipate Petitioner from his illegal Confinement.

Standing alone, The State of South Carolina on May 21st, 2014 Knew or Should have Known about The obvious Law of 2010.

SCDC employees do not have The judicial power to correct errors made by The Solicitor, and This much is Certain, SCDC employees Cannot act as Counsel for The State, or as a Judge, for The State. This incident is do To The ineptitude and Shortcomings of The Solicitor, and The Solicitors Shortcomings Should not be a penalty for The Petitioner. Shockingly, because The State did not raise This issue in 2014, Legally They "waived it", and That's by The Letter of The Law.

(Conclusion)

For The reasons Stated, Petitioner Should be released
From his illegal confinement, or in The alternative be
allowed to Litigate his factual predicates on The merits

Respectfully Submitted

Os/Dennis Davis

Dennis Davis #288558

Date: 9/6/2020

Kershaw C.I., Rm. MA-18

4848 Goldmine Hwy

Kershaw SC. 29067

RECEIVED

SEP 11 2020

S.C. SUPREME COURT

The State OF South Carolina
 In The Supreme Court
 Petition From York County
 Court OF Common Pleas
 Honorable Daniel D. Hall, Presiding
 Appellate No. 2020-001116

Dennis Rodger Davis Jr.

Petitioner

"VS"

State OF South Carolina

Respondent

Certificate OF Service

I, Dennis Rodger Davis Jr. do hereby certify That on the date hereunder,
 I did deposit in The Kershaw C.I. Mail system, an exact copy of The
 foregoing "Explanation Why This Court Should Entertain Petitioner's 2nd PCR action,
 And Petition To be Heard on The Merits" with sufficient first class postage
 attached and addressed as follows: Janelle H. Gregory
 Office OF The S.C. Attorney General, P.O. Box 11549 Colas S.C. 29211-1549

9/6/2020

Date

Dennis Davis #288558

Kershaw C.I., Rm. MA-18

4848 Goldmine Hwy

Kershaw S.C. 29067



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

October 20, 2020

Mr. Dennis Rodger Davis, Jr., 00288558
Kershaw Correctional Institution
4848 Gold Mine Hwy
Kershaw SC 29069

Re: Dennis R. Davis, Jr. v. State
Appellate Case No. 2020-001116

Dear Mr. Davis:

In light of the explanation you have provided under Rule 243(c) of the South Carolina Appellate Court Rules, this matter will be allowed to proceed.

While you proceeded *pro se* (that is, you represented yourself without counsel) below, I would strongly encourage you to obtain counsel to represent you in this appellate proceeding. If you intend to retain counsel, you should advise this Court of the name of this retained counsel within fifteen (15) days of the date of this letter.

If you cannot afford counsel and desire to be represented by counsel, you must complete the enclosed affidavit of indigency, and return it to this office within fifteen (15) days of the date of this letter. The Division of Appellate Defense of the South Carolina Office of Indigent Defense will use this document to determine if you qualify to have appointed counsel.

If you desire to proceed *pro se* in this case, you will need to advise this Court of this desire within fifteen (15) days of the date of this letter. The Court will not allow you to proceed without counsel unless it finds you are making a knowing

and intelligent waiver of the right to counsel. *See Faretta v. California*, 422 U.S. 806 (1975); *State v. Brewer*, 328 S.C. 117, 492 S.E.2d 97 (1997).

I warn you that there are many dangers and disadvantages to proceeding *pro se* in this case. If you are allowed to proceed *pro se*, this Court will require full compliance with all applicable rules and procedures, and failure to comply with such rules and procedures could result in the dismissal of the matter and forfeiture of the right to discretionary review. Further, since you are untrained in the law, having an attorney represent you in this case would be highly beneficial, and I would strongly encourage you either retain counsel or seek to have counsel appointed if you are indigent.

If you fail to make one of the responses outlined above within fifteen (15) days of the date of this letter, the Court could find that you have waived your right to be represented by counsel in this appellate case. Pending your response to this letter, the time limits for perfecting this appellate case will be held in abeyance.

Very truly yours,

A handwritten signature in black ink, appearing to be "D. E. [unclear]", written over a horizontal line.

CLERK

Enclosure

cc: Brianna Lynn Schill, Esquire

WITNESSES

RHPD/Vreeland

dc

ARREST WARRANT NUMBER

2013A4620302202

ACTION OF GRAND JURY

TRUE BILL

Sammy Eakins

Foreperson of Grand Jury

Date:

8/28/13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-46-02964

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

DENNIS ROGER DAVIS JR. AKA
DENNIS RODGER DAVIS JR.

Indictment for

POSSESSION OF MARIJUANA

SC Code: 44-53-370(d)(4)

CDR Code: 0182

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Dennis R. Davis, Jr.
hereby appear in my own proper person and plead guilty to the within indictment or to

Dennis Davis
Defendant

Witness

Charles Court
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

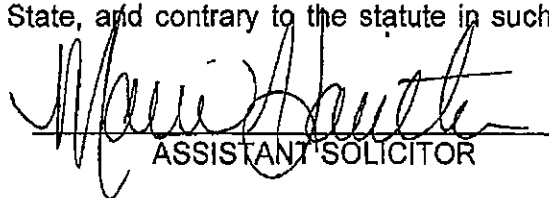
INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

POSSESSION OF MARIJUANA

On or about April 16, 2013, the Defendant, Dennis Roger Davis Jr. aka Dennis Rodger Davis Jr., did knowingly or intentionally possess marijuana, a controlled substance. This offense is Defendant's second or subsequent as defined in Section 44-53-470, Code of Laws of South Carolina. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

York

VS.

Dennis Rodger Davis Jr

INDICTMENT/CASE#: 2013GS4602964 ✓

A/W#: 2013A4620302202 ✓

Date of Offense: 4/16/2013

S.C. Code § : 44-53-0370(d)(4)

CDR Code #: 0182

AKA:

Race: BLACK

Sex: M

Age: 31

DOB:

SS#:

2015 MAR 16 PM 2:35

Address:

City, State, Zip:

DL#:

SID#:

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

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

☐ CONVICTED OF or ☒ PLEADS

TO: POSSESSION OF MARIJUANA, 2ND/SUBSEQUENT OFFENSE (0-1 YR)

in violation of § 44-53-0370(d)(4) of the S.C. Code of Laws, bearing CDR Code # 0182

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *J Desch* 78806 *Dennis Davis* *Angela H* 100284

Hamilton Marina Bender

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 1 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: 2013 GS 46-2970

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100-
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25-
§ 14-1-213 (Drug Court Surcharge)	\$150	\$150-
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5-
3% to County (if paid in installments)	\$	\$
TOTAL		\$280-

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2137

Sentence Date: 5-21-14

WITNESSES

YCMDEUVAvidon

dc

ARREST WARRANT NUMBER

2013A4610200213

ACTION OF GRAND JURY

TRUE BILL

Jimmy E. Davis
Foreperson of Grand Jury
Date: 8/22/13

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-46-02966

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.

Indictment for

DISTRIBUTION OF MARIJUANA IN PROXIMITY
OF A SCHOOL

SC Code: 44-53-445(A)
CDR Code: 0107

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Dennis R. Davis, Jr.
hereby appear in my own proper person and plead guilty to the within indictment or to

Dennis Davis
Defendant

Witness
Day Outdoors
C.C. C. PLS. AND G.S. Specialist

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

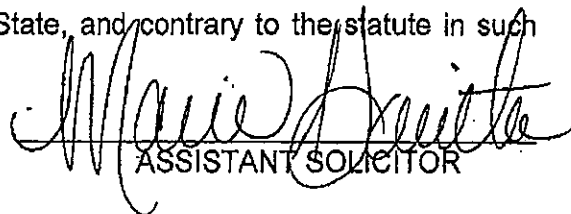
INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA
IN PROXIMITY OF A SCHOOL

On or about April 5, 2013, the Defendant, Dennis Rodger Davis Jr, aka Dennis Roger Davis Jr., did, with knowledge that he was within a one half mile radius of the grounds of Clinton Junior College, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute marijuana, a controlled substance, within a one-half mile radius of the grounds of Clinton Junior College, a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university located in York County, South Carolina. Said incident occurred in York County, South Carolina all in violation of Section 44-53-445 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

York

VS.

Dennis Rodger Davis Jr

CERTIFIED TRUE COPY

INDICTMENT/CASE#: 2013GS4602966

A/W#: 2013A4610200213

Date of Offense: 4/5/2013

S.C. Code § : 44-53-0445(B)(1)

CDR Code #: 0107

AKA:

Race: BLACK

Sex: M

Age: 2015 MAR 16 PM 2:30

DOB:

SS#:

Address:

City, State, Zip:

DL#:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCSENTENCE SHEET
ORIGINAL*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADS

TO: DISTRIBUTION OF MARIJUANA WITHIN PROXIMITY OF A SCHOOL (0- 10 YRS)

in violation of § 44-53-0445(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0107

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

ATTEST:

Hamilton Marina Bender

72806

Defendant

Attorney for Defendant

100284

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100-
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce, Funding)	\$25	\$ 25-
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150-
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5-
3% to County (if paid in installments)	\$	
TOTAL		\$ 280-

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2137

5-21-14

WITNESSES

YCMDEU\Avidon

dc

ARREST WARRANT NUMBER

2013A4610200175

ACTION OF GRAND JURY

TRUE BILL

Johnny Eakin
Foreperson of Grand Jury
Date: *8/28/13*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-46-02969

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.

Indictment for

DISTRIBUTION OF MARIJUANA
IN PROXIMITY OF A SCHOOL

SC Code: 44-53-445(A)
CDR Code: 0107

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

Dennis R. Davis, Jr.
hereby appear in my own proper person and plead
guilty to the within indictment or to

Dennis Davis
Defendant

Witness:
Wayne Chittus
C.C. & PLS. AND G.S. *Spencer*

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

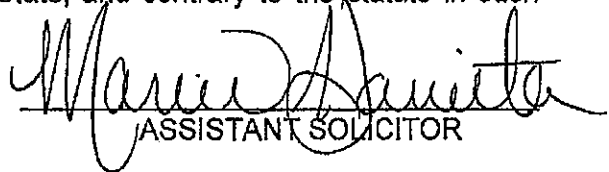
INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA IN PROXIMITY OF A SCHOOL

On or about March 8, 2013, the Defendant, Dennis Rodger Davis Jr. aka Dennis Roger Davis Jr., did, with knowledge that he was within a one half mile radius of the grounds of Winthrop University, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute marijuana, a controlled substance, within a one-half mile radius of the grounds of Winthrop University, a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university located in York County, South Carolina. Said incident occurred in York County, South Carolina all in violation of Section 44-53-445 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

York

VS.

Dennis Rodger Davis Jr

INDICTMENT/CASE#: 2013GS4602969

A/W#: 2013A4610200175

Date of Offense: 3/8/2013

S.C. Code §: 44-53-0445(B)(1)

CDR Code #: 0107

AKA:

Race: BLACK

Sex: M

Age: 31

DOB:

SS#:

2015 MAR 16

Address:

City, State, Zip:

DL#:

SID#:

DAVID HAMILTON
CLERK OF COURT

YORK COUNTY, SC

ORIGINAL

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

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

☐ CONVICTED OF or☒ PLEADS

TO: DISTRIBUTION OF MARIJUANA IN PROXIMITY OF A SCHOOL (0- 10 YRS)

in violation of § 44-53-0445(B)(1)

of the S.C. Code of Laws, bearing CDR Code #

0107

☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Hamilton, Marina Bender

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

5

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.

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal 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:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$280 -

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

213

5-21-14

WITNESSES

YCMDEU/Avidon

dc

ARREST WARRANT NUMBER

2013A4610200176

ACTION OF GRAND JURY

TRUE BILL

Johnny Earls
Foreperson of Grand Jury
Date: 8/22/13

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-46-02970

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.

Indictment for

DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370(b)(2)
CDR Code: 0188

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I, Dennis R. Davis, Jr.
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

James Earl
C.C.O. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

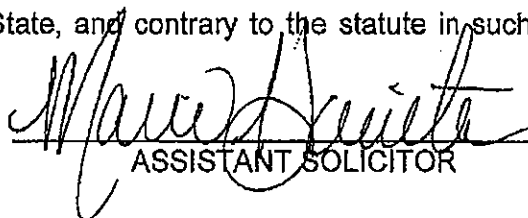
INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA

On or about March 8, 2013, the Defendant, Dennis Rodger Davis Jr. aka Dennis Roger Davis Jr., did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a Schedule I controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

York

VS.

Dennis Rodger Davis Jr

INDICTMENT/CASE#: 2013GS4602970

A/W#: 2013A4610200176

Date of Offense: 3/8/2013

S.C. Code §: 44-53-0370(b)(2)

CDR Code #: 0188

AKA:

Race: BLACK

Sex: M

Age: 31

DOB:

SS#:

2015 MAR 16

Address:

City, State, Zip:

DL#:

SID#:

DAVID HAMILTON

CLERK OF COURT

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE (5-20 YRS)☐ CONVICTED OF or ☒ PLEADSSENTENCE SHEET
ORIGINAL

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188

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

ATTEST:

Hamilton, Marina Bender

72806 SC Bar#

Defendant

Attorney for Defendant

100284 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 125 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$12

\$

\$25

\$

\$25

\$

\$150

\$

\$40/ea

\$

\$5

\$

\$

\$

\$

\$

\$

\$

\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2137

Sentence Date: 5-21-14

WITNESSES

YCMDEU/Avidon

dc

ARREST WARRANT NUMBER

2013A4610200214

ACTION OF GRAND JURY

TRUE BILL

Johnny Eakin
Foreperson of Grand Jury
Date: *8/22/13*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-46-02971

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.

Indictment for

DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370(b)(2)
CDR Code: 0188

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I Dennis R. Davis, Jr.
hereby appear in my own proper person and plead
guilty to the within indictment or to

Dennis R. Davis
Defendant

Witness: *Johnny Eakin*
C.C.C. PLS. AND G.S. *Spec. J.*

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

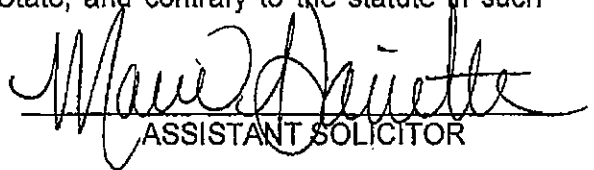
INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA

On or about April 5, 2013, the Defendant, Dennis Rodger Davis Jr. aka Dennis Roger Davis Jr., did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a Schedule I controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

York

VS.

Dennis Rodger Davis Jr

INDICTMENT/CASE#: 2013GS4602971

A/W#: 2013A4610200214

Date of Offense: 4/5/2013

S.C. Code § : 44-53-0370(b)(2)

CDR Code #: 0188

AKA:

Race: BLACK

Sex: M

Age: CERTIFIED TRUE COPY

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

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

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

TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE (5-20 YRS)

☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188

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

ATTEST:

Hamilton, Maria Bender J. Desch

SC Bar# 72806

Defendant

Attorney for Defendant

100284

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 125 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: 2013 GS46 2970☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

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

Payment Terms:

☐ Set by SCDPPPS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100-
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25-
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150-
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5-
3% to County (if paid in installments)	\$	
TOTAL		\$ 280-

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500. be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217. (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2137

5-21-14