

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable D. Craig Brown, Circuit Court Judge

WILLIAM TYREL FLEMMING,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2020-001517

APPENDIX

JESSICA M. SAXON
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg., Room 519
1000 Assembly Street
Columbia, SC 29201
(803) 734-3737

ATTORNEYS FOR RESPONDENT

RECEIVED

Jul 12 2021

S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED OCTOBER 4, 2018	1
APPLICATION FOR POST-CONVICTION RELIEF	25
RETURN AND MOTION TO DISMISS	32
CONDITIONAL ORDER OF DISMISSAL FILED DECEMBER 5, 2019	39
NOTICE OF MOTION AND SECOND MOTION TO AMEND APPLICATION FOR POST CONVICTION RELIEF (AMENDED APPLICATION FOR POST-CONVICTION RELIEF)	47
POST-CONVICTION RELIEF TRANSCRIPT FOR HEARING HELD DECEMBER 16, 2019	50
PLAINTIFF’S EXHIBIT NO. 1 (PLEA OFFER)	103
ORDER OF DISMISSAL	104
CLERK OF COURT RECORDS	126

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2018-GS-21-00051
	)	
The State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
William Tyrel Flemming,	)	
	)	
Defendant.	)	
	)	

October 4, 2018
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

John Jepertinger, Esquire
Attorney for the State/Plaintiff

Lawton Matthews, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

I N D E X

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
4	Defendant's Rights.....	4
5	Guilty Plea.....	8
6	Facts.....	13
7	Findings.....	15
8	Sentence.....	22
9	Court Reporter Certification.....	24

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
------------	--------------------	------------	------------

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption
 or change in thought

ellipses . . . trailing off

[ph] phonetically written

[sic] written as said

1. OCTOBER 4, 2018

2 (WHEREUPON, the proceedings began at 10:36 a.m.)

3 THE COURT: Ladies and gentlemen, those of you who are
4 here, both those folks that are standing up here as well as
5 anyone in the audience, if there's anyone that's here in the
6 courtroom today that believes that you may want to resolve
7 your case by way of a guilty plea, I need to have your
8 attention. Okay?

9 I am going to go over with you your constitutional
10 rights. If you decide to go forward with a guilty plea, then
11 I need to go over with you your rights regarding that because
12 if you -- if you do decide to go forward with a guilty plea,
13 then for purposes of your plea you waive or you give up these
14 rights that I'm going to go over with you. So anytime you
15 give up a constitutional right, you need to understand what
16 it is you're giving up.

17 The reason I'm going to go over these with you as a
18 group is because these are the rights that are common to all
19 of us. It doesn't matter who you are or what you're charged
20 with or whether you're charged with anything or not. All of
21 us have these same rights and they're the same for everybody.
22 So rather than go over it 25 times, I'm going to go over with
23 you once because it applies to all of us.

24 Now, if you have any questions about anything that I go
25 over, I will be more than happy to give you whatever time you

1. need to talk to your attorney and have those questions
2 answered. It's important that you understand these rights if
3 you decide to go forward with a guilty plea.

4 Now, the fact that I'm going over these rights with you
5 as a group does not bind you or commit you to do anything.
6 In other words, if after I go over these rights if the State
7 calls your case and you've changed your mind and you do not
8 want to go forward, that's fine. That's your decision. No
9 one is going to force you to do something against your will.
10 But if you do decide to go forward, it's important that you
11 understand these rights that you have.

12 All of us have the right to remain silent. We all have
13 the right to a jury trial. But if you go forward with a
14 guilty plea, then for purposes of your plea you waive or you
15 give up those two important constitutional rights.

16 And when you give up that right to a jury trial, you
17 give up the rights that are connected to that or associated
18 with that. For example, if you were to have a jury trial,
19 you would be presumed innocent of the charge or charges that
20 you're facing. That presumption of innocence places the
21 burden of proof on the State to prove guilt. In a jury
22 trial, the burden is on the State to prove your guilt.
23 You're not required to prove anything.

24 The way they would try to do that is, during the course
25 of that jury trial, they would bring witnesses into the

1. court. Those witnesses would be placed under oath and they
2 would take the witness stand. You would have the right to
3 cross-examine or to question those witnesses.

4 The Constitution of the United States says that everyone
5 that's charged with a criminal offense has the right to face
6 their accusers or to confront their accusers, and so that's
7 your right of confrontation under the Constitution, the
8 opportunity or the ability to question those State's
9 witnesses before the jury.

10 Now, if you go forward with a guilty plea though, by
11 entering that plea of guilt, you give up or you waive that
12 presumption of innocence that I spoke about. You relieve the
13 State of their burden of proof and, since they don't have to
14 prove your guilt, they're not required to bring their
15 witnesses into court. And so you give up the right to
16 question or to confront those witnesses.

17 Now, the State is not the only one that can call
18 witnesses in a jury trial. You could call witnesses in your
19 defense or you yourself could testify. You could do either
20 one of those things or you could do both of those things, but
21 the important thing to understand is this. You don't have to
22 do anything. In this country, a person charged with a
23 criminal offense is never required to prove themselves
24 innocent. The burden of proof is on the State to prove
25 guilt, as I said earlier.

1. So if you had a jury trial, you could remain silent and,
2 if you chose to exercise that right to remain silent, I would
3 instruct the jury that that is your constitutional right and
4 that they could not in any way consider the fact that you've
5 exercised that right to remain silent in their deliberations.
6 As a matter of fact, I would tell them that the fact that you
7 chose to remain silent could not even be discussed in the
8 jury room. They are to give it no consideration at all.

9 Now, as I said, the State has the burden of proof and
10 they have to prove guilt beyond a reasonable doubt and to a
11 unanimous decision. In other words, they have to convince
12 all twelve members of the jury that you are guilty or they
13 could not convict you. But if you did have a jury trial and
14 if you were convicted, you could appeal that conviction to a
15 higher court if you felt that was appropriate.

16 These are the rights that we all have, but if you decide
17 to go forward with a guilty plea, then for purposes of your
18 plea you waive or you give up these rights. You will not
19 have a jury trial and your case will be resolved pursuant to
20 your plea.

21 Now, as I said earlier, if you have any questions about
22 anything that I just went over, I will give you whatever time
23 you need to talk to your lawyer and have those questions
24 answered. It's just important that you understand these
25 rights if you decide to go forward with a plea. All right?

1. So we'll take the pleas individually.

2 MR. JEPERTINGER: Mr. William Flemming.

3 If it please the Court, Your Honor, standing in front of
4 you is William Flemming on 2018-GS-21-51. In that
5 indictment, he was charged with distribution of cocaine base,
6 third, and distribution of cocaine base within proximity. He
7 is pleading to distribution of cocaine base, third. The
8 proximity charge is being dismissed.

9 Also, in terms of plea bargaining, on 2018-63, he was
10 also charged with distribution of cocaine base, third, and
11 distribution of cocaine base within proximity. That
12 indictment in total is being dismissed.

13 There is a negotiated sentence of 12 years that the
14 State has entered into with Rosemary Parham. Mr. Lawton
15 Matthews works with Ms. Parham, and he is here to take the
16 plea.

17 Also, Your Honor, Mr. Flemming was on probation for a
18 charge that happened a month or two before this crime
19 happened, for a drug charge. He pled to distribution, I
20 believe, of cocaine base, first, two counts, and he was given
21 a probationary sentence with, I believe, 12 years hanging
22 over his head there. I would ask that any sentences that he
23 would receive on the probation violation and on this new
24 charge would run concurrently as well.

25 THE COURT: All right. Thank you, Mr. Jepertinger.

1 THE CLERK: Please raise your right hand. Do you swear
2 to tell the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Sir, you are William Flemming?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Mr. Flemming, Indictment
8 2018-GS-21-51 is a two-count indictment. Count I is a
9 distribution of cocaine base, that being a third or
10 subsequent offense, and then Count II is a distribution of
11 cocaine base within proximity of a school, and it is my
12 understanding that that charge is being dismissed pursuant to
13 your plea, as well as Indictment 2018-GS-21-63. That
14 indictment is a count of distribution and proximity, but that
15 Indictment 63 is being dismissed also.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Then the charge that you are before
19 the Court on, the distribution of cocaine base, third or
20 subsequent offense, carries a penalty of not less than 10
21 years nor more than 30 years and/or a fine of up to \$50,000.
22 Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Flemming, understanding the nature of
25 the charge against you and the possible punishment, how do

1. you plead to that charge, sir? Guilty or not guilty?

2 THE DEFENDANT: Guilty, sir.

3 THE COURT: Thank you, sir.

4 Mr. Matthews, you and Ms. Parham, your office has
5 represented Mr. Flemming on this matter?

6 MR. MATTHEWS: That's correct, Your Honor.

7 THE COURT: Have you discussed with him his
8 constitutional rights to a trial and the charges or the
9 charge that he's before the Court on, sir?

10 MR. MATTHEWS: Yes, Your Honor, we have.

11 THE COURT: Okay. Mr. Flemming, sir, am I correct that
12 you're 35 years of age?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Could you tell -- how long have you been in
15 jail on this charge, sir?

16 THE DEFENDANT: A year and a half.

17 THE COURT: Okay. This -- I'm just looking. The date
18 of offense is May the 16th of 2017.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Were you picked up on that date?

21 MR. JEPERTINGER: He was arrested on July the 4th, 2017,
22 on both indictments.

23 THE COURT: Okay. July 4th. And, Mr. Flemming, when you
24 were arrested then, have you been in -- have you been locked
25 up since that date?

1 MR. JEPERTINGER: Yes.

2 THE DEFENDANT: I been -- I been already incarcerated
3 before I got served those warrants for driving under
4 suspension.

5 THE COURT: Okay. But you were served those warrants on
6 the -- on July 4th?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. All right. Then that would be 458
9 days.

10 When I went over the constitutional rights just a moment
11 ago, you were here for that; correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did you understand those rights, Mr.
14 Flemming?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any question about those rights
17 or do you need any more time to discuss those rights with Mr.
18 Matthews?

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you understand that by entering your plea
21 on this charge that that would -- hang on. That that would
22 resolve your case here today and that you would not have a
23 jury trial? Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Now, the State has -- as part of this

1 negotiation, as I said earlier, they have dismissed Count II
2 on this indictment. They have also dismissed both of these
3 counts on this other indictment.

4 They are asking the Court to sentence you to 12 years on
5 this distribution charge and to run that charge concurrent or
6 together with your probation case. Is that your
7 understanding of the State's recommendation or negotiations?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Other than the negotiations that I just
10 mentioned, has anybody promised you anything, held out any
11 hope of reward or threatened you in any way to get you to
12 enter this plea?

13 THE DEFENDANT: No, sir.

14 THE COURT: Now, you understand that this charge that
15 you are pleading to that it is classified under South
16 Carolina law. Although it's classified as a nonviolent
17 offense, it is also classified as a serious offense, and the
18 reason that is important is because under South Carolina law,
19 if a person gets convicted of three serious offenses, on that
20 third serious offense the State could seek life without
21 parole.

22 So this -- so, in other words, by you pleading guilty on
23 this charge, that would be one of those serious offenses. Do
24 you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Also, this is classified -- as I
2 said, even though it's classified as nonviolent, it is
3 considered a non-parolable offense. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right, sir. Now, are you satisfied with
6 the representation and the advice that Ms. Parham and the
7 members of her office, Mr. Matthews, have provided?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you today under the influence of any
10 substance that would affect your ability to understand what
11 you're doing?

12 THE DEFENDANT: No, sir.

13 THE COURT: Okay. Mr. Flemming, are you entering your
14 plea of guilt on this charge of your own free will, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And are you guilty of this charge?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I am going to ask Mr. Jepertinger to go over
19 the facts briefly for me. If you would listen carefully,
20 I'll get back with you in just a moment.

21 Mr. Jepertinger?

22 MR. JEPERTINGER: Yes, sir.

23 On May the 16th, 2017, in Lake City, which is in Florence
24 County, Mr. Flemming distributed what turned out to be, per
25 SLED analysis, .29 grams of cocaine base to a confidential

1 informant of the Lake City Police Department. The
2 transaction was videotaped. I pulled a still from the
3 videotape. I'll show that to the Court.

4 THE COURT: Okay. All right.

5 MR. JEPERTINGER: Your Honor, the -- the issue then
6 becomes a matter of enhancement. And I've also pulled
7 sentencing sheets from our Clerk of Court's office to -- and
8 the reason I'm doing this -- Mr. Flemming in a letter to the
9 Clerk of Court, which was sent to me by the Clerk of Court,
10 had some concern whether this was a second or third offense.

11 THE COURT: Okay.

12 MR. JEPERTINGER: Your Honor, the one he was on
13 probation for was he pled guilty on March the 20th, 2017, and,
14 of course, this offense happened less than two months later
15 on May the 16th of 2017, but he pled to two counts of
16 distribution of cocaine base, first. I pulled the indictment
17 and the sentencing sheets on that case.

18 I don't think they were continuing courses of events,
19 but even if they were, Judge, I also pulled his record from
20 August the 2nd, 2012. At that time, he entered a plea to
21 possession with the intent to distribute marijuana, but we're
22 not using that as the enhancement offense, even if we were to
23 take a liberal view of his March of 2017 conviction, because
24 he also pled guilty to a possession of a hydrocodone, which
25 would be a non-marijuana offense that we could also use for

1 enhancement.

2 THE COURT: And that was in March of 2012 or -- excuse
3 me. August of 2012?

4 MR. JEPERTINGER: That's correct.

5 THE COURT: Okay.

6 MR. JEPERTINGER: So it holds his name, his signature,
7 and, unfortunately, he finds himself in this position. And
8 to be honest with you, Your Honor, the thing that most bugs
9 me is I showed him mercy when it was a second back in --

10 THE COURT: March.

11 MR. JEPERTINGER: -- March of 2017. And not more than
12 two months later, he's back in business of distributing
13 drugs, and he needs to go. I think it's a fair -- and he may
14 not consider it, but I think it is a fair resolution of the
15 charges, Judge, and he's made this decision and now he has to
16 pay for it.

17 THE COURT: Thank you, Mr. Jepertinger.

18 Mr. Flemming, the facts surrounding the distribution on
19 the 16th of May of the cocaine base, are those facts correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. I find that the State has
22 provided a substantial factual basis to support the charges
23 or -- excuse me -- the charge that Mr. Flemming has pled
24 guilty to. I believe that his decision to enter this plea
25 has been done freely, voluntarily, and intelligently. He's

1 had the advice and counsel of not one but two outstanding
2 lawyers, both Ms. Parham and Mr. Matthews. Mr. Flemming has
3 indicated that he is satisfied with the representation and
4 the advice that Ms. Parham and Mr. Matthews have provided.
5 I'm going to accept his plea.

6 Mr. Matthews, I'd be happy to hear from you, sir.

7 MR. MATTHEWS: Thank you, Your Honor.

8 As you stated, Mr. Flemming is 35 years old. He is the
9 proud father of four small children, two boys and two little
10 girls. He attended Lake City High School and he also attends
11 No. 1 Holiness Church in White Oak.

12 THE COURT: Okay.

13 MR. MATTHEWS: Your Honor, he deeply regrets this
14 situation. It's one of those things that, you know, due to
15 financial circumstances, I believe he was just trying to make
16 ends meet. You know, obviously, it's one of those things
17 where hindsight is 20/20, but he has expressed to me, you
18 know, just how much he loves his family.

19 His fiancée, Ms. Lyons, is here standing by his side.
20 He just wants to get back to his family as quickly as
21 possible so that he can be a part of their lives. He also
22 has a newborn child who he has not -- newborn child he has
23 not met yet. Ms. Lyons was pregnant for that child when he
24 got incarcerated, and so he desperately wants to get back to
25 being a meaningful part of their lives going forward from

1 that.

2 We would ask that you just go along with the
3 negotiations.

4 THE COURT: All right.

5 MR. MATTHEWS: We would ask that you run the probation
6 case consecutive.

7 THE COURT: If anyone else would like to address --

8 MR. MATTHEWS: I apologize. Concurrent.

9 THE COURT: If anyone else would like to address the
10 Court, I'm happy to hear from them first, but before I do
11 that, let me hear from Probation because -- and I think I
12 know the violation, I guess, is this plea, but there may be
13 some other things. I don't know.

14 THE PROBATION AGENT: There is. Your Honor, he is
15 actually on probation for three different things. The two
16 drug charges that were already mentioned, that carries a 12-
17 year suspended sentence.

18 And he's also on for a banking federally chartered or
19 insured financial institution crime that carries a suspended
20 sentence of five years with us. The -- the victim in that
21 case who was owed restitution in the amount -- the balance
22 what I'm left seeing here is \$2,430 -- is South State Bank.

23 They are the only ones that we have listed as a victim
24 that wanted notification, and I called not only several of
25 the branches in Florence, but I also called their -- what I

1 believe is their headquarters in Orangeburg and keep getting
2 referred back to branches in Florence, and I've left a
3 message with several of the branch managers, including Ms.
4 Rodriguez, most recently just a few minutes ago. I've had to
5 leave voicemails. So we've made an effort to contact them
6 and, you know, normally we give them a letter or send a
7 letter to allow them ten days.

8 THE COURT: Yeah.

9 THE PROBATION AGENT: So, you know, if you want to move
10 forward with it, that's fine. If you choose to wait, we can
11 wait on it. It doesn't matter to us. It's up to you, of
12 course.

13 THE COURT: Yeah.

14 THE PROBATION AGENT: But that -- that restitution
15 matter, we would -- we would appreciate if it was addressed
16 with a judgment, if you choose to revoke this. I would
17 mention that the current case he's on for right now with us
18 is his sixth probation case and every prior one has had a
19 revocation.

20 THE COURT: Okay. All right. Thank you very much, sir.

21 All right. Mr. Matthews, if anyone else would like to
22 address the Court, I'd be happy to hear from them. They are
23 not required to, obviously, but I'm happy to entertain any
24 comments.

25 Ma'am, I will just need your name for the record, if I

1 could, please.

2 MS. LYONS: Nicole Lyons.

3 THE COURT: All right, Ms. Lyons. Yes, ma'am?

4 MS. LYONS: I just wanted to say that, like, you know, I
5 do feel that he will change this time. Like, he's -- it was
6 a situation and circumstances were really bad at home when he
7 got his probation and got these last charges, but he had
8 already shown where he was changing a little bit. And now I
9 do have the seven-month-old daughter that he has not even
10 been able to meet except for through the little phone, which
11 really doesn't even work half the time.

12 THE COURT: Yes, ma'am.

13 MS. LYONS: And as soon as possible to get him back home
14 to be with us.

15 THE DEFENDANT: Your Honor?

16 THE COURT: All right. Mr. Flemming, go ahead, sir.

17 THE DEFENDANT: I would like to just ask you and the
18 Court -- I did what I did and I'm wrong for what I did, and I
19 just ask you and the Court to have mercy on me. I should
20 have known not to go back out there and do the same thing,
21 but we just -- we were struggling real bad and due to our
22 circumstances and with our children, I felt that I ain't -- I
23 was trying to get a job. A lot of places turned me down
24 because of my record and I just kept trying, but then with
25 transportation and everything, like, it just been hard, Your

1 Honor.

2 THE COURT: Sure.

3 THE DEFENDANT: It pushed my back against the wall and
4 that was the only way to provide -- to provide ends meet for
5 my kids and be able to pay the bills, which I felt that --
6 well, I know that was wrong, but I was praying and asking God
7 to send me -- send me a blessing where I can get a job, and
8 it just haven't worked out for me. I just ask you and the
9 Court to please have mercy on me so I can get back home to my
10 kids as soon as possible.

11 THE COURT: All right. Mr. Flemming, there's always --
12 there's always another way and sometimes I think folks allow
13 -- and I'm not saying you would do this or you would think
14 this way, but I've had some people tell me that -- because
15 I'll make the comment, you know, there's hundreds of churches
16 in this area that -- that help folks in need, you know.

17 I go to a small church here in town, it's small, and we
18 help folks all the time and they don't even go to our church.
19 They are just in need and we provide food, clothing.
20 Sometimes we pay their bills to help them get through tough
21 times. And we're just one small church. There's hundreds
22 all over this town that will do that kind of thing for folks
23 who need help.

24 So there are other ways, but here's the other thing.
25 And I know you don't think this way, but whether you think

1 this way or not, the damage is still done. When you sell
2 crack, you're destroying somebody else's life because that
3 drug destroys people. And so what you're saying is to take
4 care of my family, I'm willing to destroy yours. And that's
5 -- I know you don't think that way, but that's the reality.

6 That's what's happening. When you sell crack to
7 somebody, you're destroying their life. So you're basically
8 saying to take care of my family, I'm okay destroying yours.

9 Go ahead.

10 THE DEFENDANT: No, Your Honor. Actually, that's why I
11 asked you and the Court to have mercy on me because I see the
12 way it affected my loved ones around me and my aunt, my mom,
13 like, I see different ones it affected and I -- like, I
14 stopped, but -- and then, like I say, I was doing good, but
15 it was too late. I already had the charges, you know.

16 THE COURT: Okay.

17 THE DEFENDANT: And I have -- we have went by churches
18 and had help from churches, but like I say, Your Honor, it
19 was just constantly, it was, like, everything. Bills coming
20 up. I could pay a bill every night.

21 MS. LYONS: My stepdad was dying with cancer and all
22 during that time, and then my mom had her own thing she was
23 going through too. So we were extra stressed too.

24 THE COURT: And now you're having to deal without Mr.
25 Flemming. So was it worth it?

1 MS. LYONS: No, sir.

2 THE COURT: Was it worth it? No. And it never is.

3 I don't know how to -- listen, I'm not trying to be
4 critical about people who make mistakes. We all make them,
5 but when you make them over and over and over again -- and
6 Mr. Jepertinger said it best. It's just time to go. It's
7 time. There's nothing else we can do.

8 I'm going to accept the recommendation. And I'm going
9 to -- I'm going to run it concurrent -- or the negotiation I
10 should say. And Mr. Jepertinger is going to dismiss these
11 other charges.

12 So this will take care of everything, Mr. Flemming, so
13 as quick as you can complete this sentence, you will then
14 have an opportunity. You're a young man. You'll have an
15 opportunity to put your family back together.

16 SENTENCE

17 THE COURT: On Indictment 2018-GS-21-51, the sentence of
18 the Court is that you be committed to the State Department of
19 Corrections for a period of 12 years. You are to be given
20 credit for the 458 days that you have served. I am going to
21 run this sentence concurrent.

22 With regards to the probation matters, I find that there
23 have been -- that there has been a willful violation of the
24 terms and conditions of those probation cases. I am going to
25 revoke all of them in full, run them concurrent with each

1 other and with this charge.

2 I am going to convert those monies owed in restitution
3 over to a civil judgment. And I'm not -- I mean I realize
4 that the bank didn't respond to your efforts, but they're not
5 going to get their money back and so the best I can do is
6 convert that over to a civil judgment.

7 THE PROBATION AGENT: Yes, sir.

8 THE COURT: All right.

9 MR. JEPERTINGER: Thank you, Your Honor.

10 THE COURT: Good luck to you, sir.

11 MR. MATTHEWS: Thank you, Your Honor.

12 (WHEREUPON, the proceedings ended at 11:06 a.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

15

16

17

18

19

20

21

22

23

24

25

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

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 23, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Florence County, South Carolina, on the
13 4th day of October, 2018.

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

16

17

Krystal J. Smith

18

Court Reporter

19

20 Florence, South Carolina

21 June 23, 2019

22

23

24

State of South Carolina v. William Tyrel Flemming

25

Case Number 2018-GS-21-00051

FORM 5

20 19 CP 21 546

STATE OF SOUTH CAROLINA

COUNTY OF

FLORENCE

IN THE COURT OF COMMON PLEAS

WILLIAM TYREL FLEMMING

Full name and prison number (if any) of Applicant.

SCDC # 291952

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

BORIS BOULDER SOHARA
CCCP # 283
FLORENCE COUNTY, SC

2019 FEB 25 PM 12:46

FILED

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 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 MACDOUGALL CORRECTIONAL
2. Name and location of Court which imposed sentence FLORENCE GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017A2120400358-2018-GS-21-00051
 - (b) DRUGS/MANUFACTURE, DISTRIBUTION OF COCAINE
 - (c) BASE, 3RD OR SUB. OFFENSE.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) OCT, 4, 2018
 - (b) 12 YRS

Revised 3/2003

SCANNED

(c) N/A

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

No.

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) My ATTORNEY FAILED TO FILE ONE.
- (b) N/A
- (c) _____

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

GUILTY PLEA WAS NOT KNOWINGLY
INTELLIGENTLY MADE.

- (a) N/A
- (b) N/A
- (c) N/A

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

- (a) IT WAS FORCED TO TAKE THIS PLEA DUE
- (b) TO THE FACT IT COULD HAVE GOT A
- (c) (30) YR. SENTENCE.

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

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

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

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

No.

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

- (a) which grounds have been presented:

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

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

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

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

- (a) _____
- (b) N/A
- (c) N/A

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

YES

- (a) your arraignment and plea? YES
- (b) your trial, if any? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NONE

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. ROSE MARY PARKMAN, 152 SOUTH MCQUEEN
- ii. ST. 29501 - P.O. Box 1514, FLORENCE, S.C. 29503
- iii. OFFICE # 843-407-7757 / CELL 843-319-8395
- (b) the proceedings at which each such attorney represented you:
- i. PLEA HEARING
- ii. N/A
- iii. N/A

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

TIME SERVED, PLEA TO A LESSER CHARGE.

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

No

STATE OF SOUTH CAROLINA

County of

FLORENCE

WILLIAM FLEMMING

VERIFICATION

I, William Flemming, 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.

William Flemming

SWORN to and subscribed before me this

day of February, 2019

Jay C Way (L.S.)
Notary Public

My Commission Expires:

3/4/2024

FILED

2019 FEB 25 PM 12:46

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

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

William Flemming
I, William Flemming, 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.

William Flemming
Applicant

SWORN or affirmed to and subscribed before me this
21st day of February, 2019.

Don C. Wray
Notary Public

My Commission Expires: 3/4/2024

2019 FEB 25 PM 12:46
FILED
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
William Tyrel Flemming, #291952,	)	
	)	Case No.: 2019-CP-21-546
Applicant,	)	
	)	
v.	)	
	)	RETURN AND MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on February 25, 2018, and received by Respondent on February 28, 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 Clerk of Court for Florence County. Applicant was indicted at the January 2018 term of the Florence County Grand Jury one count of distribution of cocaine base and one count of distribution of cocaine base within proximity to a school (2018-GS-21-00051). Applicant was also indicted on additional counts of distribution of cocaine base and one count of distribution of cocaine base within proximity to a school (2018-GS-21-00063). The indictments arose out of two separate incidents wherein a confidential informant purchased drugs from Applicant.

Applicant was represented on these charges by Rose Mary Parham, Esquire. On October 4, 2018, Applicant pleaded guilty as-indicted to distribution of cocaine base – third offense before the Honorable Thomas A. Russo. The charge of distribution of cocaine base within

proximity to a school from indictment -00051 was dismissed, and indictment -00063 was dismissed in its entirety in exchange for the plea. Pursuant to the negotiated agreement between Applicant and the State, Judge Russo sentenced Applicant to twelve years' imprisonment. Applicant did not appeal his conviction or sentence.

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

II. ALLEGATIONS

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

1. "Guilty plea was not knowingly, intelligently made."
 - a. "I was forced to take this plea due to the fact I could have got a (30) year sentence."

III. RESPONSE TO ALLEGATION OF INVOLUNTARY GUILTY PLEA AND MOTION TO DIMISS

The record reflects Applicant's guilty plea was freely and voluntarily entered, and therefore, Respondent respectfully requests this application be denied and dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (Act). Under the Act, an applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. §17-27-10 to -160.

In this case, the plea transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Applicant has not alleged any deficient or incorrect advice given to him by counsel induced his guilty plea. Instead, Applicant alleges only that he felt he had to accept the plea offer because he faced a potential thirty-year sentence if convicted at trial. However, during the plea hearing, Applicant told the plea judge no one had threatened him or promised him anything other than the twelve-year negotiation to get him to plead guilty. Tr. p. 12. Applicant affirmed he understood his right to have a jury trial, the potential sentencing range for each offense, and classification of this offense as nonviolent and serious. Tr. pp. 9, 10, 12-13. Applicant admitted his guilt and told the plea court he was pleading guilty of his own free will, after consulting with counsel with whom he was satisfied. Tr. p. 13.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983)). An applicant who pleads guilty with the advice of counsel may collaterally

attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Hill v. Lockhart, 474 U.S. 52 (1985)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he

should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) *overruled on other grounds by* U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985). Applicant has presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. Furthermore, “[t]he general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea.” Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981). “The plea admits all elements of the offense charged, ‘leaves open for review only the sufficiency of the indictment and waives all other defenses.’” State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (quoting State v. Munsch, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985)). Accordingly, Applicant has failed to make a *prima facie* showing he is entitled to relief, and Applicant is not entitled to an evidentiary hearing on this issue. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965) (“It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief.”).

For the aforementioned reasons, Respondent moves for this allegation to be summarily dismissed. Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing, and the allegation the guilty plea was not freely and voluntarily entered should be dismissed as a matter of law.

IV. RESPONSE TO ANY OTHER ALLEGATIONS

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

V. PRAYER FOR RELIEF

WHEREFORE, having made its Return, Respondent requests this action be dismissed as a matter of law without an evidentiary hearing because the record unequivocally refutes Applicant's sole claim that his guilty plea was not freely and voluntarily entered.

Respectfully submitted,

ALAN WILSON
Attorney General

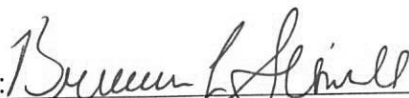
W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD A. ZELENKA
Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

 LINDSEY A. McCALLISTER
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

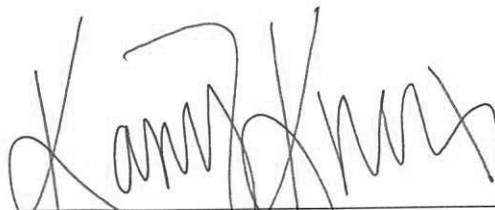
Nov. 12, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	
	)	
	)	2017-CP-33-0519
	)	
WILLIAM TYREL FLEMMING, #291952	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

William Tyrel Flemming, #291952
1516 Old Gilliard Road,
Ridgeville, South Carolina 29472

DATED this 12th day of November, 2019.



 Kasey Knox, Legal Assistant
 For Respondent

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE) IN THE COURT OF COMMON PLEAS
2019 DEC-5) OF THE TWELFTH JUDICIAL CIRCUIT

William Tyrel Flemming, #291952,

Case No. 2019 CP-21-546

Applicant,

v.

CONDITIONAL ORDER
OF DISMISSAL

State of South Carolina,

Respondent.

2019 DEC-2 PM 3:14
Clock in Cancelled
Not Recorded
FILED

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by William Tyrel Flemming (Applicant) on February 25, 2018, and received by Respondent on February 28, 2018.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. Applicant was indicted at the January 2018 term of the Florence County Grand Jury one count of distribution of cocaine base and one count of distribution of cocaine base within proximity to a school (2018-GS-21-00051). Applicant was also indicted on additional counts of distribution of cocaine base and one count of distribution of cocaine base within proximity to a school (2018-GS-21-00063). The indictments arose out of two separate incidents wherein a confidential informant purchased drugs from Applicant.

Applicant was represented on these charges by Rose Mary Parham, Esquire. On October 4, 2018, Applicant pleaded guilty as-indicted to distribution of cocaine base – third offense before the Honorable Thomas A. Russo. The charge of distribution of cocaine base within

proximity to a school from indictment -00051 was dismissed, and indictment -00063 was dismissed in its entirety in exchange for the plea. Pursuant to the negotiated agreement between Applicant and the State, Judge Russo sentenced Applicant to twelve years' imprisonment. Applicant did not appeal his conviction or sentence.

Before this Court are the records of the Florence County Clerk of Court, the plea hearing transcript, Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return and Motion to Dismiss.

II. ALLEGATIONS

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

1. "Guilty plea was not knowingly, intelligently made."
 - a. "I was forced to take this plea due to the fact I could have got a (30) year sentence."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

The Court finds the current application for post-conviction relief should be summarily dismissed because it fails to state a claim cognizable in a post-conviction relief action. Under the Post-Conviction Procedure Act, an applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983)). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Hill v. Lockhart, 474 U.S. 52 (1985)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against

him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant entered a guilty plea during which he admitted his guilt and agreed to the facts as presented by the State. Tr. pp. 12, 15. Applicant affirmed he understood his right to have a jury trial, the potential sentencing range for each offense, and classification of this offense as nonviolent and serious. Tr. pp. 9, 10, 12-13. . Importantly, Applicant also told the plea judge no one had threatened him or promised him anything other than the twelve-year negotiation to get him to plead guilty. Tr. p. 12. Applicant told the plea court he was pleading guilty of his own free will, after consulting with counsel with whom he was satisfied. Tr. p. 13.

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) *overruled on other grounds by* U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985). Applicant has presented no reasons to show that he should be allowed to depart from the truth of

the statements he made during his guilty plea hearing. Furthermore, “[t]he general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea.” Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981). “The plea admits all elements of the offense charged, ‘leaves open for review only the sufficiency of the indictment and waives all other defenses.’” State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (quoting State v. Munsch, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985)).

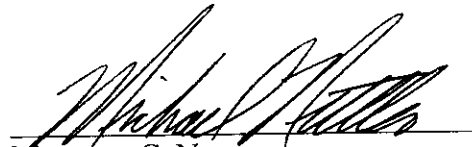
The Court finds Applicant has failed to make a *prima facie* showing he is entitled to relief, and Applicant is not entitled to an evidentiary hearing on this issue. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965) (“It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief.”). Further, 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.” This Court finds Applicant’s claim fails to raise any genuine issue of material fact as to the voluntariness of his guilty plea, and therefore, Respondent is entitled to judgment as a matter of law. For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court shall deny Applicant’s allegation and dismiss his application for relief.

CONCLUSION

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

Office of the Attorney General
Lindsey A. McCallister, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 19 day of Nov, 2019.


MICHAEL G. NETTLES
Chief Administrative Judge
Twelfth Judicial Circuit

Florence, South Carolina

2019 DEC -5 PM 2:51
FLORENCE COUNTY, SC

FILED

**STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP2100546**

William Tyrel Flemming

2019 DEC -5 PM 2: 58

South Carolina State Of

DORIS POULOS O'HARA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

12/5/2019

Date

For Clerk of Court Office Use Only

This judgment was entered on **December 5, 2019**, and a copy mailed first class or placed in the appropriate attorney's box on **December 6, 2019**, to attorneys of record or to parties (when appearing pro se) as follows:

Overture E. Walker 1527 Blanding Street Columbia, SC
29201

Samuel Leonard Key Rembert C. Dennis Building 1000
Assembly Street Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	C/A No.: 2019-CP-21-0546
	)	
William Tyrel Flemming,	)	
	)	
Applicant,	)	NOTICE OF MOTION AND SECOND
	)	MOTION TO AMEND APPLICATION
vs.	)	FOR POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

**TO: LINDSEY MCCALLISTER, ESQUIRE, ATTORNEY FOR RESPONDENT
AND RESPONDENT ABOVE-NAMED:**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Applicant, William Tyrel Flemming (hereinafter “Applicant”) will move before the Presiding Circuit Court Judge of the Court of Common Pleas for the Twelfth Judicial Circuit on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order, pursuant to Rule 15(b) of the South Carolina Rules of Civil Procedure, amending the application for post-conviction relief for a second time, filed by Applicant on February 25, 2019, to conform to the evidence in the following particulars:

1. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to adequately investigate the criminal charge(s) for which Applicant was convicted and prepare a defense for trial.

2. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel advised him to enter into a guilty plea that was not knowingly and intelligently made. Applicant entered a guilty plea to Distribution of Cocaine Base – 3rd offense with a negotiated

sentence of twelve (12) years imprisonment without ever reviewing evidence and/or discovery in his case.

3. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to call or communicate with material witnesses whose testimony would have been favorable to Applicant.

4. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to file a motion for a bond reduction.

5. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to advise him he was pleading guilty to a violent offense and would be required to serve eighty-five (85%) percent of his sentence.

6. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to timely request a preliminary hearing.

7. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to file a motion requesting the removal of the assistant solicitor from his case.

8. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to object to enhancement of the underlying criminal charges pursuant to S.C. Code Ann. § 44-53-375.

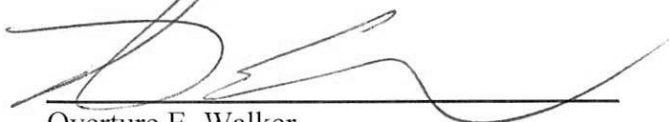
9. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to inform him of his right to appeal his guilty plea and sentence, and/or failed to initiate an appeal of the same on his behalf.

Based on the aforementioned grounds, the application for post-conviction relief, filed by Applicant on February 25, 2019, should be amended to conform to the evidence as set forth above.

This motion is based upon the testimony to be provided by witnesses at the hearing scheduled before this Court on December 16, 2019, and upon applicable case law and rules of court.

Pursuant to Rule 11(a) of the South Carolina Rules of Civil Procedure, Applicant, by and through his counsel, certifies that consultation with opposing counsel would serve no useful purpose due to the nature of this motion.

Respectfully submitted,
Stoney & Walker, LLC



Overture E. Walker
1527 Blanding Street
Columbia, SC 29201
Tel: 803.223.6934
Fax: 843.771.9906
Email: owalker@stoneywalkerlaw.com

December 11, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE) 2019-CP-21-00546

WILLIAM TYREL FLEMMING,)

Applicant,)

Transcript of Record

vs.)

December 16, 2019

THE STATE OF SOUTH CAROLINA)

Respondent.)

B E F O R E:

Honorable D. Craig Brown
Florence County Courthouse
Florence, South Carolina

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

Overture Walker, Esquire
Attorney for Applicant

Lindsey McCallister, Esquire
Attorney for Respondent

Sallie Beth Todd
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
----------------	---------------	--------------	-----------------	----------------

WILLIAM FLEMMING

By Mr. Walker 5

By Ms. McCallister 22

ROSEMARY PARHAM

By Ms. McCallister 26

By Mr. Walker 35

LAWTON MATTHEWS

By Ms. McCallister 44

By Mr. Walker 46

Certificate of Court Reporter..... 53

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>
------------	--------------------	-----------	-----------	-------------

PL1	Plea Offer		X	10
-----	------------	--	---	----

1 **THE COURT:** All right. Call your next case, please.

2 **MS. MCCALLISTER:** Thank you, Your Honor. The next case
3 is William Tyrel Flemming versus the State of South Carolina,
4 2019-CP-21-546. Your Honor, Mr. Flemming was indicted in
5 January of 2018 by the Florence County Grand Jury for one
6 count of distribution of cocaine base and one count of
7 distribution of cocaine base within proximity of a school. He
8 was indicted on an additional count -- on an additional count
9 of distribution and distribution in proximity as well and
10 those indictments arose out of two separate incidents in which
11 a confidential informant purchased the drugs from -- sorry --
12 I didn't realize he wasn't here.

13 **REPORTER'S NOTE:** (Applicant enters courtroom.)

14 **MS. MCCALLISTER:** Your Honor, Mr. Flemming was
15 represented on these charges by Rosemary Parham and Lawton
16 Matthews. On October 4th, 2018 he plead guilty as indicted to
17 one count of PWID cocaine base before Judge Russo. The
18 remaining charges from the other indictments were dismissed in
19 their entirety. And pursuant to the negotiated agreement
20 between Mr. Flemming and the state, Judge Russo sentenced him
21 to 12 years imprisonment. He did not appeal that conviction
22 or sentence; however, he did file this PCR on February 25th of
23 2018 -- I'm sorry, 2019. And he is present today; he is
24 represented in this matter by Mr. Overture Walker. Your
25 Honor, Mr. Walker has recently filed some amendments in this

1 action and it's my understanding that those amendments are
2 what we're going forward on today. Your Honor, the state had
3 originally done a return and a motion to dismiss and a
4 conditional order of dismissal was filed. That was based on
5 the applicant's failure to state a claim. So with the
6 amendments the state takes the position that the amendments
7 would have cured that issue and we would ask to go forward
8 with the hearing and I guess not have a final -- not go
9 forward with the final order -- withdraw the conditional order
10 I guess, however you want to say it.

11 **THE COURT:** Okay.

12 **MS. MCCALLISTER:** And at this time, I will turn it over
13 to Mr. Walker.

14 **THE COURT:** All right. Mr. Walker.

15 **MR. WALKER:** Your Honor, may it please the Court?

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

17 **MR. WALKER:** Your Honor, we're ready to call our first
18 witness.

19 **THE COURT:** Go ahead, please, sir.

20 **MR. WALKER:** At this time the applicant's counsel would
21 call Mr. Flemming to the stand.

22 **THE COURT:** Sir, if you would come up here to be sworn,
23 please.

24 **THE CLERK:** Mr. Flemming, raise your right hand as much
25 as you can.

1 **WILLIAM TYREL FLEMMING, HAVING BEEN**
2 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

3 **THE CLERK:** Thank you. You can have a seat in the
4 witness chair.

5 **DIRECT EXAMINATION OF MR. FLEMMING BY MR. WALKER:**

6 Q: Mr. Flemming, good morning.

7 A: Good morning.

8 Q: All right. Mr. Flemming, do you recall what you were
9 arrested for or what you plead guilty -- well do you recall
10 what you were convicted for rather?

11 A: Yes, sir.

12 Q: All right. And what was that?

13 A: Distribution.

14 Q: All right. Distribution. Distribution of what?

15 A: Distribution of cocaine base third offense.

16 Q: Third offense. And how were you convicted? Was that a
17 guilty plea or was that a trial?

18 A: A guilty plea.

19 Q: And who was your attorney?

20 A: Ms. Rosemary Parham.

21 Q: Ms. Rosemary Parham. Was there anyone in her office that
22 assisted on the case as well, or was it just her?

23 A: It was just her, but when I went to court, I went to
24 court with another one of her employees. I guess her --
25 another attorney from her office.

1 Q: Okay.

2 A: It wasn't her when I went to court.

3 Q: How did Ms. Parham become involved in your case?

4 A: She had a previous case of mine, and I was already paying
5 her, and when I seen her I talked to her in the county and she
6 took my case.

7 Q: Okay. And how long was she the attorney on this
8 particular case?

9 A: About 14 - 15 months.

10 Q: Fourteen - 15 months. And how many times did you meet
11 with her over the course of that 14 - 15 month period?

12 A: Probably once, twice at the most.

13 Q: So two times at the most. And when you met with her did
14 you discuss your charges?

15 A: Yes, sir. And I was trying to tell -- I was trying to
16 see if she had been -- see what she could find out on my case
17 and my situation. And the first time I actually seen her she
18 told me that she didn't have enough time and she stated to Mr.
19 Jepertinger that she didn't have enough time to work on my
20 case and deal with my case because she was helping her
21 daughter move from California or something. It was something
22 like that.

23 Q: Okay. And did you ever -- did she ever discuss with you
24 I guess the elements of the charge, the charges against you?

25 A: She -- she stated what the charges I had, but like she

1 didn't broke it down letting me know like the charges are this
2 and why it was enhances and this and that. I didn't find
3 these things out later on until I -- after I was already
4 incarcerated.

5 Q: Okay. And did she ever discuss with you, I guess the
6 potential punishment you were facing?

7 A: No. She -- the only thing she really stated was that she
8 tried in my situation and either I take the 12 -- either I
9 take the 12 non-violent or I go to trial and she was telling
10 me that she knows that I was going to loose at trial and I'd
11 get 30 -- 30 years. She even told my mother and my fiancé the
12 same thing so they didn't want me to go forward with the
13 trial.

14 Q: So when she told you that if you went trial you would be
15 convicted, did she say anything about the strength of the
16 state's case or anything about the evidence in the state's
17 case?

18 A: No. The only thing she stated that they had -- that they
19 had a picture and they had me on it. She claimed that she had
20 saw it but I asked her could I see it and she was supposed to
21 take a picture in her phone and bring it and let me see it but
22 she didn't. And I didn't get none of that in my motion. I
23 didn't even get the full motion. And she stated that the
24 solicitor Mr. Jepertinger was very angry with me and upset.
25 And that he basically had a vendetta which I got on a exhibit

1 showing -- stating that the vendetta that he was holding
2 against me or whatever stating that I wasn't going to get a
3 fair trial from the start.

4 Q: What exhibit are you talking about?

5 A: The exhibit right here on the plea offer sheet where it
6 got -- that was written from Jepertinger and was gave ---

7 Q: All right. Let me stop you.

8 **MR. WALKER:** Your Honor, permission to approach the
9 witness.

10 **THE COURT:** Yes.

11 **MR. WALKER:** Your Honor, I would like to get this marked
12 as an exhibit. I mean this is you know completely
13 unanticipated, but I'd like to have it marked. I think this
14 is the only copy Mr. Flemming has in his possession so -- it's
15 the plea offer sheet, Judge.

16 **THE COURT:** Dawn, can you see if you can make a copy of
17 this?

18 **MR. WALKER:** Do you want us to just continue on, Judge,
19 or just wait?

20 **THE COURT:** However you want to do it.

21 **MR. WALKER:** All right.

22 **BY MR. WALKER:**

23 Q: So, Mr. Flemming, what we're going to mark as applicant's
24 exhibit 1, what's on that plea offer sheet that you want the
25 Court to know about?

1 A: It starts by distribution third offense v is for
2 vendetta.

3 Q: Okay. And who -- do you know -- well first of all the
4 plea offer sheet came from who?

5 A: My attorney. It was in -- it was in the paperwork with
6 my motion ---

7 Q: Okay.

8 A: --- that I filed for, but she did come to see me.

9 Q: Again, when you talked to your attorney, did she talk to
10 you at all about the v for vendetta that was written or
11 transcribed on that?

12 A: She show it to me, and she say see he really wants -- he
13 really wants you bad and he not gone work -- work with us in
14 no type of way. I'm trying to get him to come down off the
15 plea, but I state to him that I don't have enough time to go
16 over this case and -- and basically saying that she had so
17 many clients that she didn't have enough time to deal with my
18 situation at hand. And I was incarcerated for almost 15
19 months in the county, so I didn't quite understand but I know
20 that my family, my fiancé and my mom, would try to call her at
21 least once a week sometimes twice a week and they would always
22 get a response from her secretary that she wasn't in or she
23 was busy you know. And out of the whole time I been
24 incarcerated she only talked to my girl once and my mom once.

25 Q: So your conversations with Ms. Parham, what you

1 discovered after you received this plea offer was that the
2 prosecutor supposedly had a vendetta against you?

3 A: Yes, sir.

4 Q: Okay.

5 **MR. WALKER:** And, Your Honor, also permission to enter
6 this applicant's exhibit 1 into evidence.

7 **THE COURT:** Any objection?

8 **MS. MCCALLISTER:** No objection.

9 **THE COURT:** Without objection, so admitted.

10 **(APPLICANT'S EXHIBIT NUMBER 1 IS**
11 **ADMITTED INTO EVIDENCE.)**

12 **MR. WALKER:** Thank you.

13 **BY MR. WALKER:**

14 Q: And so in light of the revelation that this prosecutor
15 has a vendetta against you, what do you believe Ms. Parham
16 should have done? Or what is it that she did not do?

17 A: I feel that now me knowing -- well I felt that she should
18 have right then and there took that sheet and showed the Judge
19 and got him removed off my -- off my case, got another
20 solicitor on my case because that wouldn't give me a fair -- a
21 fair trial or give me a fair how would you say it? I'm
22 looking for the right word here, Your Honor. But a fair
23 situation at trial in my case and I felt that she didn't do
24 what she was supposed to as in investigating my case. And I
25 would like to departure from my plea because I only took the

1 plea because I didn't want to go to trial because my family,
2 the pain and suffering of being away for 30 years. Your
3 Honor, I got four children and all of my children are young.
4 And she stated to me then that you know you can go and do this
5 time right here and still make it back in time to still be in
6 your kid's life.

7 Q: Let me ask you this Mr. Flemming, explain to the Court
8 what do you mean when you say that you don't, or that Ms.
9 Parham did not investigate your case or devote adequate time
10 to investigating your case?

11 A: Because had she investigated my case from the start she
12 would see that the narcotics agent from Lake City that got me
13 on the distribution, he -- he was out to get me stating that I
14 -- I got witness -- the witness I was telling you about. I've
15 got witness on this that his -- my fiancé this is her brother
16 -- her stepbrother. And her mom was going with his dad and
17 his dad died of cancer, but the whole time his dad was on
18 drugs and he kind of blamed me and the mom for the dad being
19 on drugs and dying on drugs and cancer or whatever. But she
20 caught 15 years too in this same situation. And I felt that I
21 really like -- really I felt that these distribution charges
22 probably was hold from when they should have been given to me
23 the first time when I had distribution charges. I don't
24 really know. I know he was out to get me and he -- and the
25 female that he stated this to, she told me and my fiancé ---

1 **MS. MCCALLISTER:** Your Honor, I would object to any
2 hearsay.

3 **THE COURT:** Sustained.

4 **BY MR. WALKER:**

5 Q: Mr. Flemming, let's -- let's kind of get back on the
6 horse here. So when I asked you to explain to the Court what
7 did you mean when you said that your trial attorney did not
8 adequately investigate the case? Are you trying to
9 communicate to the Court that there were witnesses that she
10 didn't talk to that you wish she had talked to?

11 A: Yes, sir.

12 Q: Okay.

13 A: And she didn't -- she didn't -- there was witnesses she
14 didn't talk to in the case and it was things she didn't do.
15 They didn't even test the weight of the drugs because they say
16 it was weighing one weight and in my motion and on the warrant
17 it was saying another weight.

18 Q: Okay. So you're saying that she didn't obtain a copy of
19 the drug analysis report?

20 A: Yeah. I'm saying like she didn't do anything to
21 investigating my case.

22 Q: Okay. And the witnesses that you -- that you have
23 mentioned to the Court that you believe Ms. Parham should have
24 spoken with or talked with, what would they have added to your
25 case? How would they have helped you?

1 A: They would have let Ms. Parham know that -- that the
2 narcotics agent ---

3 **MS. MCCALLISTER:** Your Honor, I'm going to object.
4 Again, I think this is hearsay.

5 **MR. WALKER:** Well, Your Honor, it's not exactly hearsay.
6 He's not going to testify to what they said. He's merely
7 telling the Court how their testimony would have been
8 favorable to his case.

9 **THE COURT:** Is that not backdoor hearsay?

10 **MR. WALKER:** Only if he's saying what -- what exactly
11 they said. He's not repeating the statement. He's just only
12 saying -- he's only telling the Court what ---

13 **THE COURT:** But is that not speculation though?

14 **MR. WALKER:** --- what they could provide.

15 **THE COURT:** Is that not speculation?

16 **MR. WALKER:** Not if it's coming from him, Judge.

17 **THE COURT:** I mean it is -- why is it not speculation? I
18 mean doesn't he have to have those witnesses here?

19 **MR. WALKER:** Well, what -- well it would be better to
20 walk them in and have them get on the witness stand and say
21 what they would have said, but he's merely saying -- I don't
22 know exactly what he's going to say Judge, but if it's okay
23 well these are witnesses who were present and they could come
24 in Court and testify that I didn't do this or what have you.
25 I don't think that's exactly hearsay, but if he's going to get

1 into exactly what they're saying then certainly that would be
2 hearsay testimony.

3 **THE COURT:** I mean I think it's purely speculation on
4 what benefit they would have been to them. I mean for that
5 matter he could come in here and sit down and say well
6 everyone of those witnesses I think they'd have told the
7 police that I didn't have anything to do with this drug
8 transaction.

9 **MR. WALKER:** Well, Your Honor, I can rephrase the
10 question and I can ask him why does he believe that there are
11 -- well why does he believe these witnesses would have been
12 beneficial to him? It's -- I mean I can rephrase the
13 question.

14 **THE COURT:** I'll let you rephrase it and well see kind of
15 what -- I think you're kind of skirting along the edge of the
16 rules here.

17 **MR. WALKER:** I like skirting, Your Honor. I'll rephrase
18 the question.

19 **THE COURT:** Okay. Again, even if it's not, I think it's
20 hearsay but it's also asking him to speculate on what he
21 believes they would say. I think the rules -- the rules of
22 evidence clearly apply, and he's tasked with having to get
23 those witnesses in here. But I'll let you rephrase it. Go
24 ahead.

25 **MR. WALKER:** Okay. Thank you, Your Honor. I appreciate

1 it.

2 **BY MR. WALKER:**

3 Q: So, Mr. Flemming, why do you believe these witnesses
4 would have been beneficial to you or to your case? And you
5 can't say exactly what these witnesses have said, that would
6 be hearsay. But what about them would have been beneficial to
7 your case?

8 A: Well they could have state to my attorney ---

9 **MS. MCCALLISTER:** I mean I would object, Your Honor.

10 **THE COURT:** Here's the example that I think that this
11 line of questioning could clearly go to. For instance, how do
12 you think these witnesses would have helped you? Or these
13 witnesses were there at the alleged time that this transaction
14 took place. Does that make sense, Mr. Walker?

15 **MR. WALKER:** Yes, sir. It does, Your Honor, absolutely.

16 **THE COURT:** But I mean I don't think -- I mean he can't
17 just get up there and say what all of these witnesses would
18 say.

19 **MR. FLEMMING:** No, Your Honor ---

20 **MR. WALKER:** No. No. Address your comments to me.

21 **THE COURT:** So go ahead, Mr. Walker.

22 **MR. WALKER:** Thank you, Your Honor.

23 **BY MR. WALKER:**

24 Q: So you can't get into what the witnesses would have said,
25 but what involvement would these witnesses have had in this

1 case?

2 A: Well they could have state to my attorney ---

3 Q: Again, you cannot say what they would have stated to your
4 attorney.

5 A: Oh.

6 Q: Okay. So you know what -- how are these witnesses
7 relevant to your case?

8 A: Well they could have showed that it's -- it's like I been
9 singled out.

10 Q: Okay. So these witnesses could have shown that you were
11 singled out by ---

12 A: The narcotics agent.

13 Q: They could have provided your attorney some information
14 that you were singled out by a narcotics agent?

15 A: Yes, sir.

16 **MS. MCCALLISTER:** Again, I think this is still
17 speculation.

18 **THE COURT:** I'm going to let him answer the question.
19 The objection is noted but I do think -- go ahead Mr. Walker.

20 **MR. WALKER:** Well, Your Honor, it goes to the weight of
21 the evidence. I mean, so I mean I don't think it's
22 admissibility, it just goes to the weight. So he's testifying
23 that this witness and/or witnesses could have shared with his
24 attorney. All right. But we'll move on.

25 **BY MR. WALKER:**

1 Q: Did you have an opportunity, Mr. Flemming, to review any
2 of the evidence in your case?

3 A: Yes, sir. I have.

4 Q: Was that prior to the plea or -- when you reviewed the
5 evidence?

6 A: Evidence in my case, some of it was after the plea.

7 Q: What evidence did you review prior to the plea?

8 A: Prior to the plea?

9 Q: Yes. Did you review an incident report prior to your
10 plea?

11 A: Yes, sir. I ---

12 Q: Who reviewed that with you? Did Ms. Parham review that
13 with you or did someone else review that with you?

14 A: The incident report?

15 Q: Yes.

16 A: Well to be honest, my roommate reviewed it with me.

17 Q: Okay. So did Ms. Parham's office provide you with a copy
18 in discovery before you went in for a guilty plea?

19 A: Yes, sir.

20 Q: All right. She gave you that and did you have a chance
21 to discuss or review that discovery with her?

22 A: No. She basically was -- she basically just went over
23 like every piece of paper that she was showing me, she
24 basically just went over it telling me what it was. And she
25 stated that he wasn't moving off the plea and like he just had

1 it out for me. But like ---

2 Q: But she explained the discovery to you.

3 A: Yeah.

4 Q: So she did explain the evidence to you?

5 A: No, sir.

6 Q: Oh, she did not explain the evidence to you?

7 A: No, sir.

8 Q: Okay. And did you know how much time you were facing
9 prior to the plea?

10 A: I actually didn't know that until she came to court, I
11 meant until she came to the county that day before I had to go
12 to court. Because previous before that Monday, I mean before
13 that Friday when she came and I had to go that Monday. They
14 had me come to court that Thursday to pick a jury, telling me
15 I was going to trial that I knew nothing about.

16 Q: Okay. And did the two of you discuss any defenses to the
17 charge or charges? Any potential defenses, did you have
18 conversations about that?

19 A: About my charges?

20 Q: No. Defenses -- any defenses you may have had to the
21 charge?

22 A: No, sir.

23 Q: Okay. And did she talk to you about any preparations
24 that she would -- that she was making for trial?

25 A: No, sir. She -- she told me that she didn't wanted to go

1 to trial with my case because we would have lost.

2 Q: And did you have any conversations with Ms. Parham about
3 -- about your charge being enhanced?

4 A: No, sir. I -- I asked her about -- I asked her about the
5 charges and why was it third offense and she told me that they
6 enhanced it.

7 Q: Did she explain that to you, what that meant?

8 A: Not really. She just told me they enhanced it and I
9 asked her why and she said because she looked on my record and
10 she showed me that previous charges that I had was why they
11 enhanced it.

12 Q: And did she tell you or did you discuss the percentage of
13 time that you would be required to serve if you accepted a
14 guilty plea on a third drug offense?

15 A: She told me that it was non-violent and that the law was
16 changing.

17 Q: Okay. So you didn't realize at the time that what you
18 were pleading to would require 85 percent time?

19 A: No, sir. I did not know that. My family didn't either.
20 They was thinking it would half of that like kind of like six
21 years and half or something like that. They didn't know that
22 it would be 85.

23 **THE COURT:** Ma'am -- I'm sorry. Hold on a minute. Ma'am
24 ---

25 **MS. MCCALLISTER:** I'm sorry. I was objecting to him

1 saying what his family thought.

2 **THE COURT:** Go ahead, Mr. Walker.

3 **MR. WALKER:** Thank you, Your Honor.

4 **BY MR. WALKER:**

5 Q: Now there's some other grounds that you allege to
6 ineffective assistance of counsel in your amended application
7 for PCR relief, Mr. Flemming. And it's your position that Ms.
8 Parham was ineffective for not requesting or filing for a bond
9 reduction in your case?

10 A: Yes, sir. I've got the paperwork right here.

11 Q: And why do you believe she was ineffective for not doing
12 that?

13 A: Because she -- she basically told me that he would be --
14 he would deny the bond reduction and I wouldn't get none, but
15 she never tried to get me one, she just told me that because I
16 wrote the clerk of court right here. I've got exhibit ---

17 Q: That's all right. That's fine. We don't need to use
18 that as an exhibit.

19 A: I can't get my hands kind of ---

20 Q: And you also filed in your application for -- well your
21 amended application for PCR relief you reference not having a
22 preliminary hearing. You believe she was ineffective for not
23 requesting a preliminary hearing.

24 A: Yes, sir. I actually even -- I actually even wrote the
25 clerk of court. I was trying to get me another attorney

1 because I was letting them know that my attorney wasn't doing
2 anything to help me in my situation. And they wrote me back
3 saying that she would get the administrative judge or
4 something. I've got the paperwork right here but I ---

5 Q: Okay. And ultimately you entered into a negotiated plea.
6 Is that correct?

7 A: Yes, sir. That's what it said.

8 Q: And that was for how many years?

9 A: Twelve.

10 Q: All right. And who -- and how did you arrive at that
11 decision?

12 A: I'm not sure. When I got here that -- that was what was
13 brought to my attention when I got to court.

14 Q: Did you and Ms. Parham talk before court, well before the
15 court date about the negotiated plea of 12 years?

16 A: She told me that they didn't want to get off the 12, they
17 was standing on giving me 12 years and he didn't want to come
18 down off the plea.

19 Q: Okay. So did you expect her to be in court with you the
20 morning of the plea?

21 A: Yes, sir.

22 Q: Did she talk to you ahead of time about there being
23 another attorney who would fill in?

24 A: Not as I recall.

25 Q: Not that you recall. And so you arrived at court the

1 morning of your guilty plea ---

2 A: Yes.

3 Q: --- the attorney that appeared in court was not Ms.
4 Parham.

5 A: No. It was not Ms. Parham.

6 Q: Were you surprised to see someone else?

7 A: Yes, sir.

8 Q: All right. And but for the grounds that you've stated in
9 your amended application for PCR relief, would you have plead
10 guilty to this charge?

11 A: No ---

12 Q: Would you have accepted the negotiated plea of 12 years?

13 A: No, sir.

14 Q: All right.

15 **MR. WALKER:** No further questions, Your Honor.

16 **THE COURT:** All right.

17 **CROSS EXAMINATION OF MR. FLEMMING BY MS. MCCALLISTER:**

18 Q: Mr. Flemming, do you recall the day that you plead guilty
19 and you went in -- in the courtroom and spoke with the Judge?
20 Do you recall that?

21 A: Yes, ma'am.

22 Q: Okay. And at that time the Judge asked you a series of
23 questions. Do you recall that?

24 A: Yes, ma'am.

25 Q: Okay. And one of the things that he asked you about was

1 whether you were satisfied with the representation that Ms.
2 Parham and Mr. Matthews had give you, and you told him that
3 you were satisfied. Do you remember saying that?

4 A: Yes, ma'am.

5 Q: Okay.

6 A: I also was told to say that.

7 Q: Who told you to say that?

8 A: The attorney.

9 Q: Okay. So your testimony is you only said that because
10 they told you to?

11 A: Yes. Being honest and that was the right thing to do or
12 say at the time, I guess.

13 Q: Okay. The Judge also explained to you this issue about -
14 - about how much time you would have to serve. Do you recall
15 him telling you that even though it was non-violent it was
16 considered non-parolable time? Do you remember that?

17 A: No, ma'am. I don't -- I don't recall.

18 Q: Would you dispute me if I told you that the transcript
19 says that he told you that and you responded yes, sir that you
20 understood?

21 A: Yes. Yes, ma'am.

22 **MS. MCCALLISTER:** Your Honor, that's on page 13 of the
23 transcript.

24 **THE COURT:** What page?

25 **MS. MCCALLISTER:** Thirteen.

1 **THE COURT:** Okay.

2 **MS. MCCALLISTER:** As well as the questioning about
3 whether he was satisfied. That's also on page 13 as well.

4 **BY MS. MCCALLISTER:**

5 Q: Okay. And is it your testimony that you -- you only met
6 with Ms. Parham once or twice? I believe you said that to Mr.
7 Walker, correct?

8 A: Yes, ma'am.

9 Q: Did you ever meet with Mr. Matthews before the plea?

10 A: No. No, ma'am.

11 Q: Okay. So your testimony is when you showed up at the
12 plea that morning you were expecting Ms. Parham and you didn't
13 know who Mr. Matthews was?

14 A: Yes, ma'am. I was expecting Ms. Rosemary.

15 Q: Okay. But when the Court asked you about that you didn't
16 bring that up and you didn't say that.

17 A: No, because Mr. Matthews was basically telling me don't
18 saying nothing.

19 Q: Okay. And do you recall the solicitor kind of briefly
20 putting on the record the basis for the plea and what their
21 evidence was, and he explained to the Court essentially that
22 this was a drug transaction and it was on videotape with an
23 informant?

24 A: Yes, ma'am. I recall hearing that but ---

25 Q: Okay. And you didn't dispute that?

1 A: No. He never -- I never saw it. He -- he stated that, I
2 never saw nothing.

3 Q: Okay.

4 A: I'm not sure what he showed the Judge at the time, but I
5 remember him showing the Judge a piece of paper at that time.

6 Q: I guess my question is that you didn't dispute the facts
7 that the solicitor -- that you heard the solicitor tell the
8 Court?

9 A: Dispute the facts that I heard the solicitor tell the
10 Court, what?

11 Q: The solicitor -- you heard the solicitor tell the Court
12 the facts of your -- what he says were the facts of your case,
13 correct?

14 A: Yes, ma'am.

15 Q: Okay. And you didn't dispute those facts to the Court?

16 A: No, ma'am.

17 Q: Okay.

18 A: I'm not -- excuse me, Your Honor, I'm not disputing the
19 fact that I was guilty. I was guilty of the crime I
20 committed. The only thing I'm -- what I'm here for today is
21 stating that I didn't have great representation in my case. I
22 didn't have a lawyer that was trying to help me in my
23 situation. Like I basically just -- it was basically go take
24 this plea and -- or either go to trial and we're not gone win
25 at trial. Like and the whole time I been locked -- I been

1 incarcerated over a year and she only really came to see me
2 one time because the first time that I did actually talk to
3 her, she was coming to see other clients, but I asked the CO.
4 I keep aggravating the CO that I could talk -- could I please
5 talk to my attorney and they was like they'll ask her after
6 the fact.

7 Q: So Mr. Fleming, you didn't tell any of this to the Judge
8 on the day of your plea when you were asked?

9 A: No, ma'am.

10 Q: Okay.

11 **MS. MCCALLISTER:** That's all of the questions I have for
12 Mr. Flemming, Your Honor.

13 **MR. WALKER:** I have no redirect, Your Honor.

14 **THE COURT:** Sir, you may step down. Thank you.

15 All right. Any other witnesses, Mr. Walker?

16 **MR. WALKER:** Your Honor, I beg the Court's indulgence.

17 **THE COURT:** All right.

18 **MR. WALKER:** Your Honor, the applicant rests.

19 **THE COURT:** All right.

20 **MS. MCCALLISTER:** Your Honor, the state calls Rosemary
21 Parham.

22 **ROSEMARY PARHAM, HAVING BEEN**

23 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

24 **DIRECT EXAMINATION OF MS. PARHAM BY MS. MCCALLISTER:**

25 Q: Ms. Parham, could you explain to the Court how you came

1 to be involved in this case?

2 A: Yes. I represented William on a drug charge and some
3 bank fraud charges in 2017, and John Jepertinger was the
4 prosecutor, and he plead in March of '17. And we got a really
5 good plea deal in my opinion from Mr. Jepertinger and we got
6 probation and he dismissed the drug charges. And then after
7 Mr. Flemming was placed on probation, within two months Lake
8 City made some controlled buys off of him.

9 Q: Okay. So then you took him on on this second set of
10 charges -- did he contact -- were you paid or were you
11 retained or appointed or how did that work?

12 A: Well so the original -- Mr. Flemming owed us money from
13 the first case. He was making one or two hundred dollar a
14 month payments back then. And he asked us, or his girlfriend
15 Nicole asked us to take on the second case. So we put in
16 paperwork and, you know, I don't -- I don't believe he or she
17 made payments after that, but I was still willing to represent
18 him because I knew him and I knew his circumstance and I felt
19 sorry for his circumstance. And so you know we -- we
20 continued to represent him on the second case.

21 Q: Okay. So he got probation on the first set of drug
22 charges and then these new set of charges arose within a
23 couple months of him entering that plea deal?

24 A: Correct. I think he plead to bank fraud and not drug
25 charges and the drug charges were dismissed in 2017. But he

1 was placed on probation in March and I think these charges --
2 the incident date was in May of '17.

3 Q: Okay. Okay. And so he approaches you to represent him
4 again on these charges and then what did you do once you
5 agreed to take them on?

6 A: Well when I -- when I would go to the jail I would stop
7 in and see him when I was in his pod. And I told him that
8 John Jepertinger had told me that he was not going to be
9 lenient on this case because of the -- you know that he had
10 just sold drugs within two months of getting probation. And
11 so I told him that it was going to be difficult to resolve
12 this case.

13 Q: Okay. And I just want to back up. You said that you
14 thought he plead to bank fraud. Does it sound correct that he
15 -- he plead to distribution of cocaine first offense as well.

16 A: Okay. Yeah. I'm looking at the old file now. I hadn't
17 -- I just remember that he got probation. And I think there
18 were a number of charges that were dismissed. I think he
19 plead to a couple of counts and a lot of counts were
20 dismissed.

21 Q: Okay. Okay. And so you get retained and you start
22 working on this new set of charges and you received discovery
23 from the state.

24 A: I did.

25 Q: Okay. And you were here for the testimony earlier about

1 the plea sheet and what was written on the plea sheet,
2 correct?

3 A: Right.

4 Q: Are you familiar with that?

5 A: Right.

6 Q: Okay. Can you sort of explain that and explain how you
7 handled that?

8 A: Well I took a copy of all of the discovery to Mr.
9 Flemming and that was on the top of the discovery, the plea
10 sheet where Mr. Jepertinger wrote v for vendetta. And it was
11 similar to what he had told me when I met with him and that is
12 that since MR. Flemming, you know, sold drugs within two
13 months of getting probation he was not going to be lenient on
14 him because he -- we had gotten a really good deal the first
15 time in 2017, in March. And so Mr. Jepertinger said you know
16 I gave him a ham and I'm not going to give him a good deal
17 this time.

18 Q: Okay. So the v is for vendetta was essentially Mr.
19 Jepertinger's way of saying I'm not going to offer you another
20 probation deal or another -- another sweet deal like I gave
21 you the first time because you burnt me.

22 A: Yes. And I mean he had told me that, I mean I think it
23 was Mr. Jepertinger's attempt at humor too. You know, he had
24 told me the same thing and he wrote it on the plea sheet. I
25 mean he and I had talked about that.

1 Q: Okay. And so you conveyed to Mr. Flemming that -- that
2 the state was not happy about him getting rearrested so soon
3 and was not -- not going to give him another similar probation
4 type deal, that he was going to have to do jail time.

5 A: Right.

6 Q: Okay. Did you see that v for vendetta as something that
7 you needed to get Mr. Jepertinger removed from the case? Did
8 you think that it was -- did you think it rose to that level?

9 A: No, I didn't. I mean I met with Mr. Jepertinger multiple
10 times on this case because Mr. Flemming expressed concern that
11 -- he told me the whole situation about Patrick Miles. That
12 he thought that Patrick Miles was out to get him because
13 something about being married to someone or a girlfriend in
14 common. I told Mr. Jepertinger all of that. And Mr. Flemming
15 also expressed concern that this wasn't his third and I
16 remember meeting with Mr. Jepertinger and us going through the
17 NCIC to make sure it was a third. I even have notes in my
18 file where I wrote number one, number two, you know. And then
19 I also remember Mr. Flemming wanting to see the video of the
20 buy and I talked with Mr. Jepertinger about that and he said
21 well if I burn the CI then I'm not going to -- in other words,
22 you're going to have to wait and go to trial to see the video
23 because we don't want to burn the CI, but I'll let you see the
24 CI and see the video. So I did see the video and I recognized
25 Mr. Flemming on the video and so Mr. Jepertinger was willing

1 to let me see the video, but did not want my client to see the
2 video without us you know going to trial.

3 Q: Okay. And did you explain all of that to Mr. Flemming?

4 A: I did.

5 Q: Okay. So some of these concerns he's raising here today
6 about potentially interviewing other witnesses or having a
7 defense, those are things that he raised to you and you looked
8 into and also conveyed to the state?

9 A: That's right.

10 Q: Okay. And ultimately did you ever talk to Mr. Flemming
11 about the fact that the state doesn't have to offer him a plea
12 offer at all?

13 A: Yes. And I told him that, you know, that he could get up
14 to 30 years, that this was -- I think it was a mandatory
15 minimum of ten. And I always told him it was violent. I mean
16 he kept saying well I'll take 12 years non-violent, and I said
17 well that's not going to happen. I mean he wanted 12 years
18 non-violent, and I said no the offer is 12 years violent and I
19 cannot get Mr. Jepertinger to come off of that.

20 Q: Okay. And by -- do you mean 12 -- by that do you mean 12
21 years non-parolable time at 85 percent?

22 A: Yes. I told him it was going to be 85 percent.

23 Q: Okay. And so ultimately though, the state did negotiate
24 and did make an offer. It was just an offer that included
25 jail time.

1 A: That's right.

2 Q: Okay. And it was an offer for a third and you testified
3 a minute ago that he expressed some concern about that to you
4 and you looked into that to make sure that the third was the
5 correct charge.

6 A: I did.

7 Q: Okay. Did Mr. Flemming ever talk to you about wanting to
8 go to trial in this case?

9 A: He always said he didn't want to go to trial, but he
10 didn't want 12 years violent. I mean you know and I went --
11 and I tried every way I could to get John to come off a little
12 bit and he just -- he was not going to come off of it.

13 Q: Okay. So he didn't like his two choices between trial
14 and the 12 years, but he was aware that those were the two
15 choices that he had.

16 A: That's right. And his family was aware. And let me say,
17 I gave Mr. Flemming's family my cell phone number as I do in
18 all of my cases and I have text messages, they called me. We
19 -- I talked to his -- because he had a baby that had health
20 problems and I think his father was dying of cancer and I
21 think his mother had health problems. And so I mean his
22 baby's mother would call me crying saying she was at the
23 doctor with the baby and she needed him out. And you know,
24 yeah, so I talked to them a lot.

25 Q: Okay. Okay. And he's raised an allegation about not

1 filing a motion for a bond reduction. Did y'all talk about
2 that?

3 A: We did. I mean, he would go back and forth about that.
4 So I'd meet with him at the jail and I would -- he'd say --
5 and I mean his girlfriend would say she didn't have money to
6 make any payments to me and she had no money for a bond. And
7 he had a bond, he wanted it reduced, and so I told him look
8 you're going to do jail time, it's just a question of how
9 much. And so I thought that he agreed, I do believe he agreed
10 and accepted that he was just going to stay there and begin
11 serving his time.

12 Q: Okay. So you explained to him that that would count as
13 time served towards his sentence ---

14 A: Right.

15 Q: --- and he agreed it was best just to stay in?

16 A: Right.

17 Q: Okay. He's also got an allegation that you failed to
18 request a preliminary hearing. Do you recall talking about
19 that issue with him?

20 A: You know, I can't remember when the indictment came down
21 in this case, but I don't remember -- usually we file a motion
22 for a preliminary hearing in our standard discovery and I
23 don't remember -- I just don't remember what happened in this
24 case. I mean, I don't remember him asking for a preliminary
25 hearing and us not doing it.

1 Q: Okay. Do you recall whether you saw any benefit of doing
2 a preliminary hearing in this case?

3 A: No, I didn't. Because like I said, I went and watched
4 the video of the controlled buy and it was a really good
5 quality video and I saw Mr. Flemming's face. And you know,
6 there was just no question about the evidence. And he always
7 told me he was guilty. I mean, there was never any question
8 about his guilty either. He just wanted a better deal and I
9 just couldn't -- I couldn't get it for him, and I don't
10 believe anyone could have gotten it for him.

11 Q: Okay.

12 A: And I really -- I was -- I mean, I felt sorry for Mr.
13 Flemming. I wanted him to have a better deal too, but I just
14 -- I couldn't get it.

15 Q: Okay. And so you -- it sounds like you had the
16 involvement with Mr. Fleming leading up to his plea. Was Mr.
17 Matthews involved at all during that time?

18 A: So I went back to look at my text messages and searched
19 for Flemming. And so what happened is October 3rd was the day
20 he was supposed to plead. So I came up here on October 3rd
21 here in a neighboring courtroom and met with him and prepared
22 him for his plea. And he understood he wasn't getting any
23 better than that and we went over everything. And for some
24 reason, and there's text messages with Mr. Jepertinger and
25 myself about you know I'm going to be up there in a minute.

1 Can I speak with him in a neighboring courtroom? And
2 Jepertinger texts me yes. Well for some reason his plea did
3 not go forward on the 3rd of October, and so and Mr.
4 Jepertinger knew that I could not be there on the 4th. But it
5 wasn't through any fault of ours, it was just something,
6 scheduling or something. So I was up here on the 3rd prepared
7 to plead him and something fell through and it was rescheduled
8 for the 4th. So I told him and Mr. Jepertinger that Lawton
9 Matthews was going to stand in for me and do it. And Mr.
10 Flemming understood. I mean, there was no question since the
11 beginning, the first of September that this deal was not going
12 to get any better.

13 Q: Okay. And you had explained the plea deal to him and all
14 of the terms of it the day before?

15 A: I did. In this courthouse.

16 Q: And you told -- you let him know at that time that Mr.
17 Matthews would be there the next day to put the plea on the
18 record?

19 A: That's right.

20 Q: And did he have any objection to that?

21 A: No.

22 Q: Okay.

23 A: I think that's all the questions I have. Thank you.

24 **MR. WALKER:** Thank you, Your Honor.

25 **CROSS EXAMINATION OF MS. PARHAM BY MR. WALKER:**

1 Q: Good morning to you, Ms. Parham.

2 A: Good morning.

3 Q: Just a handful of questions, Ms. Parham. I think you
4 testified that you provided Mr. Flemming with a copy of his
5 discovery.

6 A: Right.

7 Q: Okay. And at any point did you go to the jail to review
8 that with him?

9 A: I did. It was, I think September 3rd. I had seen Mr.
10 Flemming, like when I would go to the jail to visit other
11 people I'd stop in and see Mr. Flemming, but I don't believe I
12 actually sat down and reviewed the discovery with him until
13 September 3rd. I think he had a copy, but I didn't actually
14 sit down and go page by page through it with him until
15 September 3rd.

16 Q: And did you actually discuss what was in the state's
17 case?

18 A: We did.

19 Q: Did you talk about the strength of the state's case as
20 well with him?

21 A: Uh-huh. (Affirmative response)

22 Q: And did he communicate to you at all if he, you know, as
23 far as his desire to go to trial or ---

24 A: He always maintained he did not want to go to trial, but
25 he wanted a better deal. And he also thought he was being

1 treated unfairly by the Lake City Police Department and I
2 think the officer was Patrick Miles. And he thought he was
3 being targeted and he thought it was because of something,
4 some kind of bad blood between some family members or loved
5 ones of his and Mr. Miles.

6 Q: Did you all talk about the enhancement factor at all, Ms.
7 Parham?

8 A: We did. And he -- I have a letter from him where he says
9 that it's a second and not a third. So I went back to Mr.
10 Jepertinger, went through the NCIC with him and checked off
11 what we considered to be the first and second.

12 Q: Did it seem like he understood?

13 A: Yeah. He understood, but you know he wanted a second
14 because he wanted non-violent time, I mean non 85 percent time
15 and that just wasn't going to happen.

16 Q: Did he ever talk to you about any witnesses that he
17 thought would have been helpful to his case?

18 A: No. He did tell me about the whole -- and I looked into
19 it. I mean I talked to Nicole about it, but I didn't believe
20 that I could prove -- well it was a huge risk too. I just
21 didn't know that that was going to be admissible in a trial
22 and he didn't want -- in other words to be able to cross
23 examine Patrick Miles on all of that stuff we were going to
24 have to go to trial. And in my opinion, he was going to lose,
25 and he was going to get a lot more time than the plea offer.

1 So yeah, we talked about all of that, but he didn't want to go
2 to trial. But he just wanted me to talk to Mr. Jepertinger
3 about Mr. Miles, which I did, and about the allegations of him
4 being targeted. But yeah, the bottom line is my client didn't
5 say he didn't do it. He admitted that he sold drugs and ---
6 Q: But I was going to ask you, Ms. Parham, you said that --
7 I'm sorry. Did I interrupt you?
8 A: No. Uh-uh. (Negative response)
9 Q: Now when you said that you told him that if y'all had
10 gone to trial that you all were going to lose, you were basing
11 that off of ---
12 A: My video, I mean the video that I saw with his face on
13 it.
14 Q: Okay. And you communicated that to him as well.
15 A: Yes. Yes.
16 Q: And what was his response to you when you told him about
17 the video?
18 A: I mean, he never denied his guilt, he just thought the
19 deal was unfair.
20 Q: Okay. And speaking about the deal being unfair, you were
21 asked earlier about what's been marked as applicant's exhibit
22 1. I believe that's the plea offer. When the solicitor wrote
23 vindictive on the plea offer, you took that as being, I guess
24 some sort of humor.
25 A: Well he said v for vendetta.

1 Q: I'm sorry.

2 A: Yeah. You know, I think John Jepertinger probably
3 mentioned to me about Mr. Flemming getting rearrested and
4 said, you know you got such a good deal the first time but
5 it's not going to be that way the second time, you know. And
6 he made that clear when I spoke to him and that was what he
7 wrote on the plea offer.

8 Q: So you didn't think that there was anything -- you didn't
9 find anything concerning about the -- him marking vendetta on
10 the plea sheet?

11 A: No, because I know Mr. Jepertinger very well and we have
12 cases together and no, I mean I didn't think -- Mr.
13 Jepertinger was just -- I mean I don't know if it was humor,
14 but he -- he just told me multiple times that we weren't going
15 to get a good deal this time.

16 Q: Okay. And you don't think that him marking vendetta on
17 this -- this plea sheet, the offer, the offer form rather,
18 that he meant anything beyond just being ---

19 A: Well, no I think he was serious too. The bottom line is
20 Mr. Jepertinger gave him probation and probation was not the
21 offer on the first case. I mean, it was a time offer on the
22 first case and we went around, and around, and around, and
23 around and finally I got Mr. Jepertinger to give him probation
24 because Mr. Flemming had some very sad family circumstances.
25 And so I think that Mr. Jepertinger thought that he had really

1 bent over backwards and given him a break and given him a
2 chance to prove himself and then two months later after the
3 plea he's out selling drugs. And so, you know I think that
4 Mr. Jepertinger was frustrated, rightfully so, because he had
5 bent over backwards to try to help Mr. Flemming and then Mr.
6 Flemming's out selling drugs within two months.

7 Q: And you believe that what was offered to Mr. Flemming in
8 regards to this, the 12 years negotiated, that was a fair
9 offer under the circumstances?

10 A: Well, I mean you know I was hoping for better, but I
11 always feel that way. I mean you know certainly he was
12 looking at ten to thirty years and so, you know usually -- I
13 mean I was hoping for better, but I think it's -- that's you
14 know the state has the -- they don't even have to give a plea
15 offer.

16 Q: Mr. Parham, did you have a conversation with Mr. Flemming
17 about what was transcribed or written on that plea offer form?

18 A: Yes. I mean I told him -- I told him in no uncertain
19 terms that Mr. Jepertinger is not happy with you. He -- he
20 really regrets giving you that break last year.

21 Q: And did Mr. Flemming express any concerns about the
22 prosecutors, I guess feelings about him and also wanting to be
23 removed from the case?

24 A: No. He didn't say anything about that. He just wanted
25 me to go talk to Mr. Jepertinger again, which I did, and ask

1 for a better deal, which I did, and it just didn't ---

2 Q: Okay.

3 **MR. WALKER:** Your Honor, I beg the Court's indulgence.

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

5 **BY MR. WALKER:**

6 Q: Ms. Parham, did you ever communicate to Mr. Flemming that
7 you didn't have the time to adequately investigate this case
8 or even handle the case? Did you ever express that to him at
9 any point?

10 A: No. No. But I did tell him -- he never wanted a trial,
11 but I told him I said I'm basically doing this case because I
12 like you and you know -- and if you want to get another lawyer
13 you're welcome to type thing. But, no. At one point he did
14 send me a letter in September of 2018 asking me to withdraw
15 from this case. And then he sent a letter a couple of weeks
16 later kind of retracting that saying, you know I'm sorry, I've
17 been talking to these jailhouse lawyers I really don't want
18 you to withdraw. And in the letter he says I'll take 12 years
19 non-violent. So in his letter to me he always wanted the 12
20 years non-violent but I just couldn't get it for him.

21 Q: Got you. And did you approach this case any different
22 than you do any other case that you've handled ---

23 A: No.

24 Q: --- over the course of your career?

25 A: No.

1 Q: All right. Ms. Parham, just a couple more questions.
2 The fact that Mr. Flemming's financial -- his finances were
3 limited because he was incarcerated, did that have any impact
4 on the way you handled the case?

5 A: No. Not at all. And you know, I think he did say
6 something like -- you know they hadn't paid me on this case
7 and that was fine. I think he says well what it -- what if I
8 can get my family to bring you some money. I said no it
9 doesn't work like that. It doesn't matter if you bring me all
10 of the money in the world, I am not going to be able to get
11 you a better deal than 12 years. You know, Mr. Jepertinger is
12 not changing his mind. And I tell him like I've told
13 everyone, how much I get paid does not affect you know how
14 hard I advocate on your behalf with Mr. Jepertinger or the
15 solicitor's office. But he said that, I think he said
16 something like that, you know what if my family can bring you
17 some money can you get me a better deal and I'm like no I
18 can't. You know there's no amount of money that's going to
19 change Mr. Jepertinger's mind.

20 Q: And would you have visited him more often at the
21 detention center if his finances were ---

22 A: No. I remember going in and seeing him every time I was
23 in his pod, but I did not actually sit down and physically go
24 over the discovery, he had it, but I didn't sit down and go
25 page by page through it until the first week of September.

1 Q: Okay. All right.

2 MR. WALKER: No further questions, Your Honor.

3 THE COURT: Any redirect?

4 MS. MCCALLISTER: No, Your Honor.

5 THE COURT: Ma'am, you may step down. Thank you.

6 MS. PARHAM: May I be excused? I have to be in Columbia.

7 THE COURT: Any objection to her being excused?

8 MS. MCCALLISTER: No objection.

9 MR. WALKER: No objection.

10 THE COURT: You're free to go.

11 MS. PARHAM: Thank you.

12 THE COURT: Are you going to call Mr. Matthews?

13 MS. MCCALLISTER: I think I am, Your Honor. I have just
14 a few questions.

15 THE COURT: All right. I need to step down for just a
16 minute, stand down for just a minute.

17 (COURT IN RECESS)

18 THE BAILIFF: Court come to order.

19 THE COURT: Thank you. Be seated, please.

20 All right. I'm sorry. Yes, ma'am.

21 MS. MCCALLISTER: Thank you, Your Honor. Lawton
22 Matthews.

23 LAWTON MATTHEWS, HAVING BEEN
24 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE COURT: Have a seat, please. State your full name

1 for the record.

2 **MR. MATTHEWS:** Lawton Steven Matthews.

3 **THE COURT:** Go ahead.

4 **DIRECT EXAMINATION OF MR. MATTHEWS BY MS. MCCALLISTER:**

5 Q: Mr. Matthews, where do you work?

6 A: I work at the Parham law firm.

7 Q: Okay. And how long have you been there?

8 A: Six and a half years, hard to believe.

9 Q: And do you recall your involvement in the representation
10 of Mr. Flemming?

11 A: I do.

12 Q: Okay. Did you have any involvement in preparing his case
13 before the plea?

14 A: I think that I may have done his -- I think -- I can't
15 recall whether I did his initial paperwork that was filed with
16 the Court or if office staff did. Other than that, my
17 dealings with it primarily I spoke with his fiancé several
18 times on the phone just about various things regarding his
19 incarceration in Effingham during the pendency of his case,
20 but other than that no.

21 Q: Okay. So your main involvement in the case was when you
22 stood in for Ms. Parham to enter the guilty plea.

23 A: That's correct.

24 Q: Okay. Did you have a chance to speak with Mr. Flemming
25 that morning before you put the plea on the record?

1 A: I did. We spoke at length.

2 Q: Okay. Did you review sort of what was going to happen
3 and what the plea was with him at that time?

4 A: I did. My understanding coming in that morning was that
5 Ms. Parham had previously spoken with him on several occasions
6 and I believe that she said she had spoken with him the day
7 before and that he was going to -- that it was a negotiated
8 plea.

9 Q: Okay. And did he ever express any hesitation about
10 proceeding without Ms. Parham there?

11 A: No. Not specifically with regard to Ms. Parham. He did
12 have some reticence with regard to the deal, and in speaking
13 with him I think that he wanted a little bit better deal. And
14 to my recollection, our conversation was you know at this
15 point this was the deal that was on the table and that despite
16 our best efforts the state was not going to offer a better
17 deal. And so at that point, you know, he needed to make an
18 informed decision as to whether or not he wanted to accept the
19 deal as offered or if he wanted to go to trial.

20 Q: Okay. And do you believe that the decision that he made
21 was an informed decision?

22 A: I do. We spoke at length with regard to it. I recall
23 him -- he did bring up an issue with regard to Mr. Jepertinger
24 putting a comment on his plea offer sheet and I explained to
25 him, I recall saying that you know Mr. Jepertinger I believe

1 had put that on there because he had given him a good deal
2 previously and that he felt that he had kind of been burned
3 when Mr. -- when the client had you know subsequently gotten
4 in trouble immediately thereafter.

5 Q: Okay. And whose decision was it ultimately to enter the
6 guilty plea?

7 A: It was Mr. Flemming's decision to enter into that and in
8 our conversations I spoke with him and asked him on multiple
9 occasions if there were any other questions that he had that I
10 could answer with regard to his case prior to the plea and he
11 indicated that there was not. He did ask for me to speak with
12 his fiancé to get her opinion on it. I was meeting with him
13 in an adjoining courtroom in this courthouse. I left him,
14 went and spoke with his finance about the situation. She
15 informed me that she thought he should take the deal. I then
16 went back to him and reported that to him. I think that that
17 was something that was important to him in making his final
18 decision.

19 Q: Okay. I think that's all of the questions that I have.

20 **MR. WALKER:** I beg the Court's indulgence, Your Honor.

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

22 **CROSS EXAMINATION OF MR. MATTHEWS BY MR. WALKER:**

23 Q: Sir, I didn't catch your last name.

24 A: Matthews.

25 Q: Matthews. Good morning, Mr. Matthews.

1 A: Good morning.

2 Q: You and I we actually met in the hall.

3 A: Yes, sir.

4 Q: So pardon me for not remembering your last name. So you
5 talked with Mr. Flemming for the first time when?

6 A: Well I believe that I had briefly spoken on the phone, I
7 want to say that he had possibly called the office a time or
8 two from Effingham. But actually face to face speaking with
9 him was that day of the plea.

10 Q: All right. And he expressed reservations with you about
11 going forward with the plea, right?

12 A: Yes, sir. Basically he didn't like the options, you know
13 the options of either accepting the negotiated 12 years or
14 either going to trial and running the risk of potentially
15 getting more time.

16 Q: Did he tell you, express to you that he did not want to
17 accept the plea?

18 A: He expressed that he was -- he was on the fence about it.
19 He at the time I think, if I recall, was hopeful that we could
20 garner some 12th hour better deal and I explained to him that
21 you know that wasn't an option.

22 Q: Did you advise him in any way on the morning of the
23 guilty plea?

24 A: I recall telling him that, you know ultimately the
25 decision of whether or not to go to trial was his and solely

1 his, but that you know this was the plea offer that was on the
2 table and that given the circumstances and given the evidence
3 in the case that you know it was a fair deal. I think that
4 was around about the time that he brought up the issue about
5 the v is for vendetta notation that was put on the plea offer
6 sheet and to that end, you know I explained that certainly at
7 that time Mr. Jepertinger had put that on there and -- but
8 that since that time he had made an offer that was fair in
9 light of the fact that (a) he didn't have to make a plea offer
10 at all, and (b) certainly he could have made it a stiffer one.

11 Q: Did he complain to you, Mr. Matthews, about the number of
12 times Mr. Parham came to see him or did not come to see him?

13 A: I don't recall that specifically.

14 Q: Do you recall having a conversation with him about
15 whether or not your office had devoted enough time to his
16 case?

17 A: I recall that -- I think that he had made a comment with
18 regard to the amount of time put into the case and I think
19 that my comment to him was that I had firsthand experience, or
20 firsthand knowledge that we had indeed met with the
21 solicitor's office numerous times with regard to his case.

22 Q: And were you part of those meetings as well, Mr.
23 Matthews?

24 A: I was not.

25 Q: But you -- but so how do you know that your office had

1 met several times with the solicitor's office in this case?

2 A: I -- I -- typically when Ms. Parham would go over to met
3 with solicitors on a case, she would make a list of the
4 clients that she was going to speak with them specifically
5 about. And on several occasions Mr. Flemming's was one of
6 those cases.

7 **MR. WALKER:** No further questions, Your Honor.

8 **THE COURT:** Any redirect?

9 **MS. MCCALLISTER:** No, Your Honor. Thank you.

10 **THE COURT:** Mr. Matthews, you may step down.

11 **MR. MATTHEWS:** Thank you.

12 **MS. MCCALLISTER:** Your Honor, one other thing that I
13 have, and I have spoken with Mr. Walker about this, I do have
14 a copy of the public index that shows the 2021 conviction.
15 It's referenced in the plea transcript that that's part of the
16 charges that make up the three -- the third charges. I'm
17 sorry, the enhancement to a third offense. And so I would
18 just ask the Court I guess to either take judicial notice of
19 it or I can submit the document that I printed out last night
20 that just shows that that charge was -- that he plead guilty
21 to that charge in 2012. And then I believe that that document
22 combined with the SCDC record shows the three charges for the
23 Court.

24 **THE COURT:** All right. Mr. Walker.

25 **MR. WALKER:** Your Honor, I have no objection to the Court

1 taking judicial notice. I've also reviewed the public index
2 as well. I've even had a conversation with Mr. Flemming about
3 you know whether or not this was the charge that he was
4 convicted of and it had been properly enhanced. So based on
5 my reading of the statute the enhancement is proper.

6 **THE COURT:** Well okay. I'll take notice of that. I
7 don't think that's an issue in this case.

8 **MR. WALKER:** I don't think it was. I think what we were
9 -- I think what we were saying was that he was not properly
10 advised on it and that he didn't quite understand it. He
11 didn't feel like his attorney didn't discuss with him as far
12 as the ramifications of a -- of it being enhanced. But we've
13 never contested whether or not the enhancement was legitimate
14 or valid.

15 **THE COURT:** Okay. Well also as part of my package that
16 I've reviewed which is attached to the SCDC Offender
17 Management System, the release date screen. His prior guilty
18 plea or pleas back in -- on March 2nd of 2017 wherein he plead
19 to a banking fraud or a federally chartered or insured
20 financial institution crime which carried zero to five. He
21 plead to a manufacture, distribution cocaine base first as
22 well as another manufacture, distribution of cocaine base
23 first. Those manufacture, distribution cocaine base first
24 charges carried zero to 15. He plead to two counts of that.
25 He was sentenced on the banking charge to -- and I'll note for

1 the record in my review of these sentence sheets, these were
2 negotiated pleas as well. It was a five-year sentence
3 suspended upon three years' probation on the banking charge.
4 On each of the two manufacturing, distribution charges again
5 which were negotiated sentences as well, 12 years suspended
6 upon the service of three years' probation as to each of those
7 charges. And finally the matter for which we are here today,
8 it appears that he plead guilty on October 4th of 2018 and
9 this was also a distribution cocaine base third offense and it
10 was a negotiated sentence of 12 years, 12 years. And the
11 prior cases for which he plead in March of 2017, those
12 probation cases were revoked it appears and they were run
13 concurrent with the 12-year sentence that he received on
14 October the 4th of 2018. All right. Anything by way of
15 argument, Mr. Walker?

16 **MR. WALKER:** Your Honor, nothing to argue unless the
17 Court wishes to hear argument, but you know I'm okay with Your
18 Honor taking it under advisement.

19 **THE COURT:** Ms. McCallister.

20 **MS. MCCALLISTER:** Your Honor, the only thing that I would
21 note for the record, I believe there was an allegation about
22 failing to file an appeal and that was not brought up in any
23 of the testimony so we would just ask that that be stricken or
24 be dismissed.

25 **THE COURT:** All right.

1 **MR. WALKER:** Well, Your Honor, we've already rested so.

2 **THE COURT:** Okay. Well it wasn't addressed while the
3 defendant was on the stand so that allegation will be
4 dismissed. Okay. All right. Anything further from the state
5 or applicant's counsel?

6 **MR. WALKER:** Nothing from applicant's counsel, Your
7 Honor.

8 **MS. MCCALLISTER:** No, Your Honor.

9 **THE COURT:** All right. I'll take a look at it and I'll
10 let you all know. Okay. Thank you.

11 **(COURT IS ADJOURNED)**

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of William Tyrel Flemming versus The State of South Carolina held in the Court of Common Pleas for Florence County, Florence County Courthouse, Florence, South Carolina, on December 16, 2019.

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



Sallie Beth Todd, CVR

Official Reporter

February 7, 2021.

OFFICE OF THE SOLICITOR
TWELFTH JUDICIAL CIRCUIT

PLEA OFFER

IN RE: STATE V. WILLIAM T. FLEMMING

Dear PD: DM

Your client has been charged with the following crimes that have yet to be indicted:

Warrant No: 2017A2120400357

Charge: DISTRIBUTION OF COCAINE BASE PROX/SCHOOL

Warrant No: 2017A2120400358

Charge: DISTRIBUTION OF COCAINE BASE 3rd

Warrant No: 2017A2120400359

Charge: DISTRIBUTION OF COCAINE BASE PROX/SCHOOL

Warrant No: 2017A2120400360

Charge: DISTRIBUTION OF COCAINE BASE 3rd

After a review of this file, we are willing to allow your client to plead as follows:

As to Charge 1:

As to Charge 2:

As to Charge 3:

As to Charge 4:

Review Dist of C/B 3rd's. V is for Verdict.
He got prison in March of 2017 - now he gets the
State's unyielding justice. Will recommend
consecutive sentences

Please discuss this offer with your client and advise me at your earliest convenience as to what they are willing to plead to before I prepare an indictment on this case. I look forward to hearing from you soon.

Sincerely,

John C. Jepertinger

JOHN C. JEPERTINGER
DEPUTY SOLICITOR
TWELFTH JUDICIAL CIRCUIT

INITIAL APPEARANCE 10/25/17

DOCKET APPEARANCE: 12/14/17

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

William Tyrel Flemming, #291952,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

C.A. No. 2019-CP-21-546

ORDER OF DISMISSAL

DOUGLAS O'HARA
CCLP & GS
FLORENCE COUNTY, SC

2020 OCT 30 PM 1:08

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by William Tyrel Flemming (Applicant) on February 25, 2018, and amended through counsel on December 11, 2019. Respondent made its Return and Motion to Dismiss on December 5, 2019. An evidentiary hearing into the matter convened on December 16, 2019, at the Florence County Courthouse before the undersigned. Overture E. Walker, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. Respondent called Applicant's plea counsel, Rose Mary Parham and Lawton Matthews. This Court also had before it a copy of the Florence County Clerk of Court's records regarding the subject conviction, records from the South Carolina Department of Corrections, the application and amendments, Respondent's Return, and the plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the

January 2018 term of the Florence County Grand Jury one count of distribution of cocaine base and one count of distribution of cocaine base within proximity of a school (2018-GS-21-00051). Applicant was also indicted on additional counts of distribution of cocaine base and one count of distribution of cocaine base within proximity of a school (2018-GS-21-00063). The indictments arose out of two separate incidents wherein a confidential informant purchased drugs from Applicant.

Applicant was represented by Rose Mary Parham and Lawton Matthews, Esquires, on all charges. On October 4, 2018, Applicant pleaded guilty as indicted to distribution of cocaine base – third offense, before the Honorable Thomas A. Russo. Applicant's proximity charge from indictment -00051 was dismissed, and indictment -00063 was dismissed in its entirety in exchange for the plea. Pursuant to a negotiated agreement between Applicant and the State, Judge Russo sentenced Applicant to twelve years' imprisonment. Applicant did not appeal his conviction or sentence.

ALLEGATIONS

In his original PCR application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Involuntary guilty plea:
 - a. "I was forced to take this plea due to the fact I could have got a (30) year sentence."

In his amended application, Applicant further alleged:

1. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to adequately investigate the criminal charge(s) for which Applicant was convicted and prepare a defense for trial;
2. Applicant asserts ineffective assistance of counsel on the grounds

that trial/plea counsel advised him to enter a guilty plea that was not knowingly and intelligently made. Applicant entered a guilty plea to Distribution of Cocaine Base – 3rd offense with a negotiated sentence of twelve (12) years imprisonment without ever reviewing evidence and/or discovery in his case;

3. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to call or communicate with material witnesses whose testimony would have been favorable to Applicant;
4. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to file a motion for a bond reduction;
5. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to advise him he was pleading guilty to a violent offense and would be required to serve eighty-five (85%) percent of his sentence;
6. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to timely request a preliminary hearing;
7. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to file a motion requesting the removal of the assistant solicitor from his case;
8. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to object to the enhancement of the underlying criminal charges pursuant to S.C. Code Ann. § 44-53-375; and
9. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to inform him of his right to appeal his guilty plea and sentence, and/or failed to initiate an appeal of the same on his behalf.

At the evidentiary hearing, Applicant proceeded on the allegations in his amended application, which encompasses and expands upon the allegation in his original application. In support of these allegations, Applicant introduced one exhibit, the written plea offer sheet. At the conclusion of the hearing, this Court dismissed Applicant's allegation plea counsel failed to inform him of his right to appeal because Applicant presented no evidence on this issue. The remaining issues are analyzed below.

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified Parham represented him in this case because she had previously represented him in another matter. Applicant testified he and Parham met once or twice, at most, over the course of the fourteen-to-fifteen months she represented him.

Applicant testified they discussed the charges, and he wanted Parham to see what she could find out on his case. Applicant testified the first time he met with Parham, she did not have enough time to go over the case because she was helping her daughter move. Applicant testified she explained the charges to him, but she did not fully explain why the charges were being enhanced. According to Applicant, Parham told him he could either accept the State's twelve-year nonviolent offer or he could go to trial; however, Parham allegedly told Applicant he would likely receive thirty years at trial. Applicant testified she told his mother and fiancée the same thing, and they did not want Applicant to proceed with a trial.

Applicant further testified the only evidence the State had was a picture, which Parham claimed to have seen, but Applicant never saw. Applicant testified Parham was supposed to take a picture and let him see it, but he did not receive that in his discovery. According to Applicant, Parham told him the solicitor was very angry and upset with Applicant and had a vendetta against him, and she told Applicant he was not going to get a fair trial. Applicant testified he received some paperwork from Parham, including a plea offer sheet,¹ on which the solicitor had written "V is for Vendetta." Applicant testified Parham showed the sheet to him and told him the solicitor

¹ Applicant's Exhibit 1.

“really wants you bad,” although Parham was still trying to work with the State for a lower plea offer.

Applicant testified Parham said she had so many clients, she did not have time to deal with his situation. According to Applicant, when his fiancée and mother would call Parham’s office, they were always told Parham was busy or was not in the office. According to Applicant, Parham only spoke to his family one time.

Applicant testified he felt Parham should have taken the written plea offer sheet to the court and asked to have the solicitor removed from the case because the solicitor was not giving him a fair trial or dealing fairly with his case. Applicant also testified Parham did not investigate his case, and, according to Applicant, if Parham had investigated she would have found evidence the narcotics officer from Lake City was out to get him. Applicant explained the officer was his fiancée’s stepbrother, and the officer blamed Applicant for his dad’s death and drug use. Applicant stated there were witnesses Parham did not talk to who could have shown Applicant was singled out by the narcotics officer, and she did not test the weight of the drugs, even though the warrant and documents in discovery listed different weights.

Applicant testified he reviewed some discovery in his case, but he did not see all of it until after the plea. Prior to the plea, he reviewed the incident report, and stated Parham told him what each document meant but did not explain the evidence against him. According to Applicant, Parham informed him the solicitor was not willing to negotiate further on the plea offer and he “had it out” for Applicant. Applicant also testified he was not aware of how much time he was facing until Parham came to the detention center the day before he was brought over to court for his plea hearing.

Applicant testified Parham never discussed any potential defenses or trial preparations because she told him they would lose if the case went to trial. Applicant testified he wanted Parham to file a motion for a bond reduction, but Parham told him the judge would deny the bond, and she never filed the motion. Applicant further testified he wrote the Clerk of Court asking for a new attorney and he wanted to let the Clerk know Parham was not doing anything to help him.

Applicant stated he asked Parham about the charges and why it was a third offense, but she did not explain what it meant that the charge was enhanced. However, Applicant agreed Parham reviewed his criminal history and showed him the previous charges on which the enhancement was based. Applicant testified Parham told him he would serve nonviolent time, but the law was changing. According to Applicant, neither he nor his family understood he would have to serve eighty-five percent of his sentence. Applicant further testified he spoke with Parham prior to entering the guilty plea, and she told him the State would not offer anything lower than the twelve-year sentence. Applicant testified he expected Parham to be in court the morning of the plea, and she did not tell him ahead of time that another attorney would fill in for her. Applicant stated he was surprised to see someone else show up that morning.

Applicant testified he only agreed to plead guilty because he did not want to go to trial and cause his family the pain of him being away for thirty years. Applicant stated he has four young children, and Parham said he could do the time and make it back to be in their life, if he agreed to plead guilty. Applicant also stated both his mother and his fiancée did not want him to go to trial. Applicant testified if he had been aware of all these issues prior to the plea, however, he would not have pleaded guilty.

On cross-examination, Applicant conceded he recalled the plea hearing and recalled the plea court asking him a series of questions about what he was doing. Applicant testified he told the plea court he was satisfied with his attorneys because that is what he was told to say, and it was the right thing to do at the time. Applicant also agreed he did not inform the plea court he was unsatisfied with the amount of times he had met with Parham, or that he did not wish to be represented by Matthews at the plea that day. Applicant did not recall the plea court reviewing the sentence and the amount of time Applicant would be required to serve.

Parham testified she had previously represented Applicant on other charges, and Applicant's girlfriend asked her to represent him on these charges, which she agreed to do.

Parham testified she went to see Applicant in the detention center on September 3, 2018, and they reviewed discovery.² Parham testified she told Applicant the assistant solicitor was not going to be lenient because Applicant sold the drugs at issue in this case right after the State had offered him a probationary sentence and dropped several additional charges in the first case. Parham testified she took a copy of all discovery to Applicant in the detention center, including the plea offer sheet on which the solicitor had written "V for vendetta." Parham explained this sentiment was similar to what he had already expressed to her – the State had offered Applicant a very lenient deal in the previous case, but the solicitor was not willing to do so again because he felt he had been "burned" by Applicant. Parham testified she and Applicant discussed the note and what it meant in the context of the situation; in her opinion, it was the solicitor's failed attempt

² Applicant pleaded guilty October 4, 2018.

at humor. Parham stated the note did not concern her because she has worked with the solicitor on many cases, and she understood he was frustrated with Applicant for being involved in another drug case so soon after the State offered him a break on his previous charges. Additionally, Parham testified Applicant never asked her to file a motion asking for the solicitor to be removed from the case.

Parham testified Applicant told her he felt the narcotics officer was out to get him, and she looked into it and discussed the issue with the solicitor. Parham explained she ultimately did not believe she could prove anything and it was a risky strategy because, in order to cross-examine the officer, Applicant would have to go to trial, which she strongly believed he would lose. She also testified Applicant was concerned this was not his third offense, but she reviewed his criminal history and confirmed it was a third offense. Parham further stated Applicant wanted to see the video of the drug buy, but the solicitor told them he would have to wait until trial if the State was going to have to reveal the identity of the confidential informant. However, she testified she was able to view the video, and she explained all of this to Applicant. Parham further testified the person on the video was clearly Applicant, and after seeing it, she told him he would lose if he went to trial. Parham stated Applicant never denied his guilt, but rather he always wanted a better plea offer.

Parham testified she explained to Applicant the State did not have to make a plea offer at all, and the charge carried a mandatory-minimum sentence of ten years. Parham stated Applicant wanted nonviolent time, but she told him he would be required to serve eighty-five percent of his

sentence. Parham testified she also explained to Applicant this was in fact a third offense.³ Parham stated Applicant was aware he had a choice to accept the plea offer or go to trial, but he did not like either option. However, she testified Applicant never wanted to go to trial, he just wanted a better plea offer.

Parham testified Applicant changed his mind several times about wanting a bond reduction. According to Parham, Applicant's girlfriend told her Applicant did not have the money to pay a bond even if it were to be reduced. Parham testified she thought Applicant ultimately understood and agreed to remain in jail to earn time-served credit. Parham further testified she usually files a motion for a preliminary hearing, but she could not recall when the indictment was handed down in this case. She stated she did not remember him asking for one and then not doing it, and in any event, she did not see any benefit to it. Parham testified the drug buy was captured on video, clearly showing Applicant, and he always admitted his guilt and just wanted a better deal. Finally, Parham testified Applicant sent her a letter in September 2018 asking her to withdraw as counsel, but then he sent another letter saying he did not want her off the case.

Parham explained Applicant was supposed to enter a plea on October 3, 2018. She testified she met with him and prepped him for the plea, and went over everything. However, for some reason, the plea did not go forward that day, and it was rescheduled for October 4 instead. Parham testified she knew she could not be present for the plea on October 4. Parham explained, at that

³ In response to a question from this Court, Applicant's PCR counsel conceded the enhancement was proper.

point, she was certain the State was not going to offer a better deal. Parham testified she told Applicant Matthews would be there to stand in for her, and Applicant did not object.

Matthews testified his main involvement in the case was standing in for Parham when Applicant entered his guilty plea. Matthews testified he may have spoken to Applicant on the phone a few times, and he spoke to Applicant's fiancée. Matthews testified he met with Applicant prior to entering the plea to review with him what was going to happen. Matthews testified Parham had met with Applicant several times, including the day before, and it was a negotiated plea. Matthews further testified Applicant did not express any reservations about Parham not being present, but he was still holding out hope for a better deal, which Matthews told him was not going to happen, despite their best efforts.

Matthews testified he and Applicant spoke at length. Matthews stated Applicant brought up the issue with the solicitor writing a comment on his plea offer sheet. Matthews testified he explained to Applicant the solicitor had written that because the solicitor had given Applicant a good deal in the previous case and felt Applicant had taken advantage of him. Matthews opined the solicitor was mad when he wrote the comment, but since then had offered a fair plea bargain. Matthews testified he asked Applicant multiple times if he had any other questions, and Applicant said he did not. Matthews explained Applicant did not like either of his options – accept the plea or go to trial – but Matthews told him it was Applicant's decision to make. Matthews stated he told Applicant that given the circumstances and evidence in the case, it was a fair plea offer. Matthews testified it was ultimately Applicant's decision to enter the plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the evidence presented at the evidentiary hearing, observed the witnesses, evaluated their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject conviction, as well as the plea transcript. This Court finds the combined record of the plea transcript and the testimony and evidence presented the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code.

Applicant alleges he received ineffective assistance of counsel rendering his guilty plea involuntary. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. In the context of a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness, and but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 697.

This Court finds Applicant has failed to prove his plea counsel's performance was deficient in any way, nor was Applicant prejudiced by plea counsel's performance. Together, Parham and Matthews met with Applicant numerous times and reviewed with him the evidence and discovery in the case, Applicant's options for resolving the case, and the State's plea offer. This Court finds Applicant ultimately chose to enter a guilty plea because he wanted to avoid facing a maximum

sentence of thirty years, and this decision was made freely and voluntarily. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

1. Failure to Investigate⁴

Applicant alleges Parham failed to investigate the circumstances of his case and failed to contact or call material witnesses who could have established a defense Applicant was targeted by the narcotics officer.

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). However, failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). To establish Parham was constitutionally ineffective in investigating Applicant’s case and formulating a defense, Applicant must present evidence of what she would have discovered or what other defenses could have been pursued had she been more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not

⁴ Allegations 1 and 3 in Applicant’s amended application.

presented at the PCR hearing); Moorchcad, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds Applicant has failed to meet this burden. Parham credibly testified she investigated the issue of whether Applicant had been targeted and discussed it with the solicitor in an attempt to negotiate a better plea. However, she explained that in order to present that theory as a defense and get a chance to cross-examine the officer, Applicant would have to take his case to trial, which Applicant did not want to do. Applicant did not present any of the witnesses he claims would have helped establish this defense, or any other evidence supporting this theory, and therefore, he cannot prove he was prejudiced. See Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (stating to support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence). Accordingly, this Court finds Counsel was not deficient, nor was Applicant prejudiced by counsel's representation, relief is denied, and these allegations are dismissed with prejudice.

2. Involuntary guilty plea⁵

Applicant alleges his guilty plea was not voluntarily entered because Applicant entered the plea without ever reviewing evidence or discovery in his case and because his plea counsel failed to advise him he was pleading guilty to a violent offense and would be required to serve eighty-five percent of his sentence. This Court disagrees and denies relief as to this issue.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

The Court has reviewed the plea transcript and finds Applicant's testimony is refuted by the record and therefore is not credible. This Court finds the plea colloquy combined with Parham's and Matthews' credible testimony is dispositive as to this issue, as the record clearly

⁵ Allegations 2 and 5 in Applicant's amended application.

establishes Applicant pleaded guilty freely and voluntarily. The plea court explained the negotiated twelve-year sentence Applicant would receive, and Applicant indicated his understanding and informed the court he wished to plead guilty. Tr. pp. 11-12. Applicant affirmed he understood his right to have a jury trial, the potential sentencing range for the offense, and classification of this offense as nonviolent and serious, which made it non-paroleable. Tr. pp. 9, 10, 12-13. Applicant admitted his guilt and told the plea court he was pleading guilty of his own free will, after consulting with counsel with whom he was satisfied. Tr. p. 13. Applicant affirmed he was pleading guilty freely and voluntarily and no one had threatened him or made him any promises to get him to do so. Tr. p. 12.

Parham and Matthews credibly testified they both spoke with Applicant at length about his case and the State's plea offer. Both testified Applicant did not like the options available to him, but Applicant understood it was his choice either to accept the guilty plea or take his case to trial. Matthews further testified it was ultimately Applicant's decision to enter the plea. Matthews testified he repeatedly asked Applicant if he had any further questions about the guilty plea before he entered it, and Applicant said no. Both Matthews and Parham also testified Applicant never raised any objection to Matthews standing in for Parham during the plea hearing.

Accordingly, based on the combined record of the plea transcript and Parham's and Matthews' credible testimony at the evidentiary hearing, this Court finds neither Parham's nor Matthews' representation of Applicant was deficient, nor was Applicant prejudiced by their representation. Parham met with Applicant on multiple occasions to review discovery and explained Applicant's options for resolving the case. This Court finds Parham repeatedly sought to negotiate a better plea bargain for Applicant, but was unsuccessful in doing so. The Court further

finds Applicant chose freely and voluntarily, after consultation with his attorneys and his family, not to risk a conviction at trial after the State extended a plea offer with a negotiated sentence of twelve years and the dismissal of several other charges. Therefore, this Court denies relief and dismisses this allegation with prejudice.

3. Failure to file motions⁶

Applicant alleges Parham failed to file several motions in his case after being asked to do so: (1) a motion for a bond reduction; (2) a request for a preliminary hearing; and (3) a motion to remove the solicitor from the case. This Court finds Applicant has failed to meet his burden of proof as to these allegations, and denies relief as to each.

First, as to the bond reduction motion, the Court finds credible Parham's testimony she discussed it with Applicant, but he ultimately decided to remain in the detention center to earn time-served credit and because he could not afford to pay a bond at all, even if the motion had been successful. Therefore, this Court finds Parham was not deficient. Additionally, Applicant failed to prove prejudice because he did not offer any testimony or explanation as to how the lack of a bond reduction hearing influenced his decision to plead guilty. See Lockhart, 474 U.S. at 58-59 (requiring Applicant to show, absent counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial).

This Court also finds Parham was not deficient for not requesting a preliminary hearing, nor was Applicant prejudiced. "The purpose of a preliminary hearing is to establish probable cause

⁶ Allegations 4, 6, and 7 in Applicant's amended application.

exists to continue the criminal process.” State v. Cunningham, 275 S.C. 189, 193, 268 S.E.2d 289, 291 (1980). This Court finds Parham credibly testified her usual practice is to request a preliminary hearing, and she did not recall Applicant requesting one and not having it done. She also credibly testified she did not see the benefit of a preliminary hearing after seeing the video of the controlled drug buy in which Applicant was clearly visible and when Applicant never denied his guilt or expressed a desire to take his case to trial. See McCall v. State, 257 S.C. 93, 184 S.E.2d 341 (1970) (affirming trial judge’s finding defendant was not prejudiced by failure to have a preliminary hearing where defendant’s counsel testified he had no recollection of defendant asking for a hearing and where he saw no benefit to one after conducting an independent investigation).

Finally, this Court finds Parham was not deficient for failing to file a motion requesting the solicitor be removed from Applicant’s case, nor was Applicant prejudiced. Applicant contends the solicitor’s note on the plea offer sheet, “V is for vendetta,” should have prompted Parham to file a motion to have the solicitor removed in order to ensure Applicant received a fair trial.

This Court finds both Parham’s and Matthews’ testimony on this issue to be credible. Parham explained the solicitor had recently offered Applicant probation in his previous drug case, along with dropping several additional charges, and Applicant was arrested on this charge shortly thereafter. According to Parham, the solicitor was frustrated with Applicant and felt Applicant had “burned” him by continuing to engage in the same criminal activity, and he was upfront that he would not offer Applicant a similar plea bargain in this case. Parham credibly testified the note on the plea offer was likely the solicitor’s attempt at humor, and it did not raise any alarm with her because it was the same sentiment he had already expressed. Parham’s recollection comports with the solicitor’s statements during the plea hearing. Tr. p. 15. Likewise, Matthews opined even

though the solicitor was upset with Applicant, he offered Applicant a fair plea deal at the lower end of the sentencing range for this offense. Additionally, Parham credibly testified Applicant only ever asked her to try to negotiate a better deal and never told her he wanted her to ask for the solicitor removed.

Based on all of the foregoing, this Court denies relief as to these issues and dismisses them with prejudice.

4. Enhancement of charges⁷

Applicant contends Parham was constitutionally ineffective for failing to object to the improper enhancement of his charge to a third offense. This Court disagrees and finds Parham credibly testified she reviewed Applicant's criminal history with the solicitor to confirm this was in fact a third offense. Applicant himself admitted Parham discussed the issue with him and explained why it was a third offense. Moreover, in response to this Court's question on the matter, Applicant's counsel conceded the enhancement was proper. Therefore, this Court finds Parham was not deficient, denies relief, and dismissed this allegation.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant relief. Applicant's counsel were not deficient in any manner, nor was Applicant prejudiced by their

⁷ Allegation 8 in Applicant's amended application.

representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). 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. Further, 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 Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


 D. CRAIG BROWN
 Presiding Circuit Court Judge
 Twelfth Judicial Circuit

10-23, 2020

2020 OCT 30 PM 1:08
 DOUGLAS O'HARA
 CCLP & GS
 FLORENCE COUNTY, SC

FILED

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP2100546

William Tyrel Flemming

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 4(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or ☐ Other: _____
modify arbitration award;
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED
2020 OCT 30 PM 1:24
CLERK OF COURT
COURT OF COMMON PLEAS
FLORENCE COUNTY, SC

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

10/30/2020

Date

For Clerk of Court Office Use Only

This judgment was entered on **October 30, 2020**, and a copy mailed first class or placed in the appropriate attorney's box on **October 30, 2020**, to attorneys of record or to parties (when appearing pro se) as follows:

Overture E. Walker 1527 Blanding Street Columbia, SC
29201

Samuel Leonard Key Rembert C. Dennis Building 1000
Assembly Street Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

Patrick L Miles **Lake City Police Department**

John C Jeperfinger

ARREST WARRANT NUMBER

2017A2120400358 **2017A2120400357**

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: **1-8-18**

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-21-00051

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY TERM 2018

THE STATE

vs.

WILLIAM TYREL FLEMMING

Indictment for

**DISTRIBUTION OF COCAINE BASE
AND
DISTRIBUTION OF COCAINE BASE
WITHIN PROXIMITY OF A SCHOOL**

2018 JAN -8 PM 2:06

DOCRIS ACQUISITION
CCCP & GS
FLORENCE COUNTY SC

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 DISTRIBUTION OF COCAINE BASE
 AND
 DISTRIBUTION OF COCAINE BASE
 WITHIN PROXIMITY OF A SCHOOL

At a Court of General Sessions, convened on JANUARY 4, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- DISTRIBUTION OF COCAINE BASE

That William Tyrel Flemming did in Florence County, on or about May 16, 2017, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver to a Confidential Informant of the Lake City Police Department, a quantity of Cocaine Base, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

COUNT TWO- DISTRIBUTION OF COCAINE BASE WITHIN PROXIMITY OF A SCHOOL

That William Tyrel Flemming did in Florence County on or about May 16, 2017, unlawfully distribute to a Confidential Informant of the Lake City Police Department, a quantity of Cocaine Base, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, while in, on, or within a one-half mile radius of the grounds of a public or private school, college or university, a public playground or park, or a public vocational or trade school or technical education center, to wit: J. Paul Truluck Middle School, in violation of Section 44-53-445(B)(2), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

WITNESSES

Patrick L Miles Lake City Police Department

John C Jeperfinger

ARREST WARRANT NUMBER

2017A2120400360 2017A2120400359

ACTION OF GRAND JURY

TRUE BILL

Jim Cont...
Foreperson of Grand Jury
Date: 1-9-18

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-21-00063

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY TERM 2018

THE STATE

vs.

WILLIAM TYREL FLEMMING

Indictment for

DISTRIBUTION OF COCAINE BASE
AND
DISTRIBUTION OF COCAINE BASE
WITHIN PROXIMITY OF A SCHOOL

2018 JAN -8 PM 2:06
CHRIS POULOS CLERK
CCCP & GS
FLORENCE COUNTY SC
No probs
upon plea
to 18-51
Jol C
10/4/18

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 DISTRIBUTION OF COCAINE BASE
 AND
 DISTRIBUTION OF COCAINE BASE
 WITHIN PROXIMITY OF A SCHOOL

At a Court of General Sessions, convened on JANUARY 4, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- DISTRIBUTION OF COCAINE BASE

That William Tyrel Flemming did in Florence County, on or about May 19, 2017, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver to a Confidential Informant of the Lake City Police Department, a quantity of Cocaine Base, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

COUNT TWO- DISTRIBUTION OF COCAINE BASE WITHIN PROXIMITY OF A SCHOOL

That William Tyrel Flemming did in Florence County on or about May 19, 2017, unlawfully distribute to a Confidential Informant of the Lake City Police Department, a quantity of Cocaine Base, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, while in, on, or within a one-half mile radius of the grounds of a public or private school, college or university, a public playground or park, or a public vocational or trade school or technical education center, to wit: J. Paul Truluck Middle School, in violation of Section 44-53-445(B)(2), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

William Tyrel Flemming

AKA:

Race: Black Sex: M Age: 35

DOB: SS#:

Address: 491 S Blanding St

City, State, Zip: Lake City, SC 29560-3519

DL#: SID#:

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

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

TO: Drugs / manufacture, distribution, etc. of cocaine base, 3rd or sub. Offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-21-00051

A/W#: 2017A2120400358

Date of Offense: 5/16/2017

S.C. Code § : 44-53-0375(B)(3)

CDR Code #: 3039

SENTENCE SHEET

in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)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:

John C. [Signature]
Solicitor9826
SC Bar#*William Tyrel Flemming*
Defendant*Robert [Signature]*
Attorney for Defendant17032
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 12 ~~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: on Probation Revocation
☒ 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 SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 8.25
TOTAL	\$283.25

Clerk of Court/ Deputy Clerk

Court Reporter: *Smith*

SCCA/217 (04/2018)

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,
§ Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: *2141*Sentence Date: *10-4-2018*

ARREST WARRANT

2017A2120400357

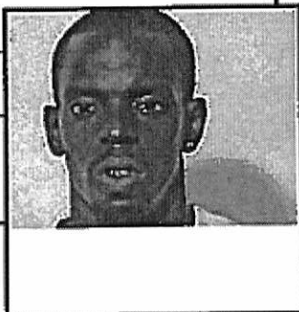
STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAKE CITY

THE STATE

against



WILLIAM TYREL FLEMMING

Address: 491 S BLANDING ST

LAKE CITY SC 29560

Phone: [REDACTED] 3069 SSN: [REDACTED]

M Race: B Height: 5-6 Weight: 145

DL State: DL#:

DOB: [REDACTED] Agency ORI#: SC0210200

Prosecuting Agency: LAKE CITY POLICE DEPARTMENT

Prosecuting Officer: PATRICK MILES

Offense: DISTRIBUTING CRACK COCAINE NEAR

SCHOOL Offense Code: 0107

Code/Ordinance Sec. 44-53-0445 (A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

Date

Time

RETURN

A copy of this arrest warrant was delivered to defendant WILLIAM TYREL FLEMMING

on 07/04/2017

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

LAKE CITY MUNICIPAL COURT

202 KELLEY STREET

LAKE CITY, SC 29560

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAKE CITY

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 61B

Personally appeared before me the affiant PATRICK MILES who being duly sworn deposes and says that defendant WILLIAM TYREL FLEMMING did within this county and state on 05/16/2017 to 05/16/2017 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LAKE CITY) in the following particulars:

DESCRIPTION OF OFFENSE: 44-53-0445 (A) / DISTRIBUTING CRACK COCAINE NEAR SCHOOL

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE AFFIANT HAS WITNESSES AND EVIDENCE TO PROVE THE SAME; THAT ON OR ABOUT MAY 16, 2017 THE DEFENDANT, WILLIAM FLEMMING AKA "BUBBA" DID, WHILE NEAR WESTOVER STREET IN THE CITY LIMITS OF LAKE CITY, FLORENCE CO, SC, WILLFULLY AND UNLAWFULLY VIOLATE THE SOUTH CAROLINA DRUG LAW. THE DEFENDANT DID DISTRIBUTE COCAINE BASE AKA "CRACK COCAINE" TO A CONFIDENTIAL INFORMANT WORKING WITH THE LAKE CITY POLICE DEPT. THE LOCATION OF THIS VIOLATION IS ACROSS THE STREET FROM J PAUL TRULUCK MIDDLE SCHOOL. THE DEFENDANT IS AWARE THAT THE SCHOOL IS WITHIN A 1/2 MILE RADIUS DUE TO BEING PREVIOUSLY CHARGED FOR DISTRIBUTING CRACK COCAINE AT OR NEAR THE SAME LOCATION.

Signature of Affiant

Affiant's Address 202 KELLEY ST.

LAKE CITY SC 29560

Affiant's Telephone (843) 374-5411

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAKE CITY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 05/16/2017 defendant WILLIAM TYREL FLEMMING

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of LAKE CITY) as set forth below:

DESCRIPTION OF OFFENSE: DRUGS / DISTRIBUTE, SELL, MANUF. OR PWID, OF CONT. SUB., NEAR SCHOOL

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/28/2017

Day Time (L.S.)

JACOB M THOMPSON II

Judge Code: 8167

Judge's Address 202 KELLEY STREET

LAKE CITY SC 29560

Judge's Telephone 843-374-5421

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Case: 2017A2120400357

ORIGINAL

FILED
2017 JUL -7 PM 1:34
DORIS POULOS/CLERK
CCCP 61B
FLORENCE COUNTY

131

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

ARREST WARRANT

2017A2120400358

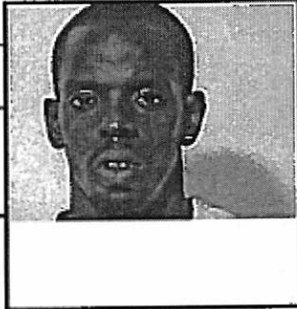
STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAKE CITY

THE STATE

against



WILLIAM TYREL FLEMMING

Address: 491 S BLANDING ST

LAKE CITY SC 29560

Phone: 3069 SSN: [REDACTED]

M Race: B Height: 5-6 Weight: 145

DOB: [REDACTED] DL#: [REDACTED]

Agency ORI#: SC0210200

Prosecuting Agency: LAKE CITY POLICE DEPARTMENT

Prosecuting Officer: PATRICK MILES

Offense: DISTRIBUTION CRACK COCAINE 2ND

OFFENSE Offense Code: 3015

Code/Ordinance Sec. 44-53-0375 (B) (2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

Date

Time

RETURN

A copy of this arrest warrant was delivered to defendant WILLIAM TYREL FLEMMING

on 6-24-2017

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

LAKE CITY MUNICIPAL COURT

202 KELLEY STREET

LAKE CITY, SC 29560

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAKE CITY

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

Personally appeared before me the affiant PATRICK MILES who

being duly sworn deposes and says that defendant WILLIAM TYREL FLEMMING

did within this county and state on 05/16/2017 to 05/16/2017 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LAKE CITY)

in the following particulars:

DESCRIPTION OF OFFENSE: 44-53-0375 (B) (2) / DISTRIBUTION CRACK COCAINE 2ND OFFENSE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE AFFIANT HAS WITNESSES AND EVIDENCE TO PROVE THE SAME; THAT ON OR ABOUT MAY 16, 2017 THE DEFENDANT, WILLIAM FLEMMING AKA "BUBBA" DID, WHILE NEAR WESTOVER STREET IN THE CITY LIMITS OF LAKE CITY, FLORENCE CO. SC, WILLFULLY AND UNLAWFULLY VIOLATE THE SOUTH CAROLINA DRUG LAW. THE DEFENDANT DID DISTRIBUTE A QUANTITY OF COCAINE BASE AKA "CRACK COCAINE" TO A CONFIDENTIAL INFORMANT WORKING WITH THE LAKE CITY POLICE DEPT. THIS VIOLATION WAS RECORDED AUDIO AND VIDEO BY THE NARCOTICS DIVISION. THE DEFENDANT HAS PRIOR CONVICTIONS FOR DISTRIBUTION AND IS CURRENTLY ON PROBATION FOR DISTRIBUTING CRACK COCAINE.

Signature of Affiant

Affiant's Address 202 KELLEY ST

LAKE CITY SC 29560

Affiant's Telephone (843) 374-5411

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

LAKE CITY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 05/16/2017 defendant WILLIAM TYREL FLEMMING

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of LAKE CITY) as set forth below:

DESCRIPTION OF OFFENSE: DRUGS / MANUFACTURE, DISTRIBUTION, ETC, COCAINE BASE, 2ND OFFENSE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/28/2017

Date Time (L.S.)

JACOB M THOMPSON II

Judge Code: 8167

Judge's Address 202 KELLEY STREET

LAKE CITY SC 29560

Judge's Telephone 843-374-5421

Issuing Court: ☐ Magistrate☐ Municipal☒ Circuit

Case: 2017-05-070

ORIGINAL

FILED
2017 JUL -7 PM 1:34
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY

133

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

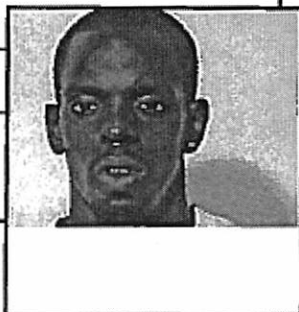
Telephone: _____

CODEFENDANTS

ARREST WARRANT
2017A2120400359

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LAKE CITY

THE STATE
against



WILLIAM TYREL FLEMMING
Address: 491 S BLANDING ST
LAKE CITY SC 29560
Phone: [REDACTED]-3069 SSN: [REDACTED]
S M Race: B Height: 5-6 Weight: 145
Date: [REDACTED] DL#: [REDACTED]
DOB: [REDACTED] Agency ORI#: SC0210200
Prosecuting Agency: LAKE CITY POLICE DEPARTMENT
Prosecuting Officer: JOHN STEWART
Offense: DISTRIBUTION OF CRACK COCAINE
NEAR A SCHOOL Offense Code: 0107
Code/Ordinance Sec. 44-53-0445 (A)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant WILLIAM TYREL FLEMMING
on 07/04/2017

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
LAKE CITY MUNICIPAL COURT
202 KELLEY STREET
LAKE CITY, SC 29560

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LAKE CITY

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

Personally appeared before me the affiant JOHN STEWART who
being duly sworn deposes and says that defendant WILLIAM TYREL FLEMMING
did within this county and state on 05/19/2017 to 05/19/2017 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LAKE CITY)
in the following particulars:
DESCRIPTION OF OFFENSE: 44-53-0445 (A) / DISTRIBUTION OF CRACK COCAINE NEAR A SCHOOL

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE AFFIANT HAS EVIDENCE AND WITNESS TO PROVE THAT ON FRIDAY MAY 19, 2017 THE DEFENDANT WILLIAM FLEMMING DID VIOLATE THE
SC DRUG STATUTE. THE DEFENDANT DID DISTRIBUTE A QUANTITY OF CRACK COCAINE TO A CONFIDENTIAL INFORMANT WORKING WITH THE
LAKE CITY POLICE DEPARTMENT NARCOTICS DIVISION. THIS INCIDENT TOOK PLACE ON OR AROUND WESTOVER ST AND WITHIN A HALF
MILE OF J PAUL TRULUK MIDDLE SCHOOL LOCATED ON CARLYLE ST ALSO IN THE CITY LIMITS OF LAKE CITY IN FLORENCE CO, SO THE
DEFENDANT IS AWARE OF THE SCHOOL LOCATION DUE TO BEING PREVIOUSLY CHARGED WITH THE SAME OFFENSE AT THE SAME
LOCATION. THIS IS A VIOLATION OF THE SC CODE OF LAWS AS AMENDED 1976. THIS CASE WAS INVESTIGATED BY THE LAKE CITY POLICE
DEPARTMENT CASE NUMBER 2017-05-094.

Signature of Affiant

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LAKE CITY

Affiant's Address 202 KELLEY ST
LAKE CITY SC 29560
Affiant's Telephone (843) 374-5411

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 05/19/2017 defendant WILLIAM TYREL FLEMMING

did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of LAKE CITY) as set forth below:

DESCRIPTION OF OFFENSE: DRUGS / DISTRIBUTE, SELL, MANUF. OR BWFD, OF CONT. SUB.,
NEAR SCHOOL

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 06/28/2017)

Date Time (L.S.))
JACOB M THOMPSON II

Judge Code: 8167

Judge's Address 202 KELLEY STREET
LAKE CITY SC 29560

Judge's Telephone 843-374-5421

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Case: 2017-05-094

ORIGINAL

135

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS