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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Courtney Clyburn Pope, Circuit Court Judge

RANDY SCHULTZ,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000570

APPENDIX

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State of South Carolina)	In the Court
)	Of General Sessions
County of Aiken)	

Indictment No.: 2016GS0201058
2016GS0201059
2016GS0201060

State of South Carolina, Plaintiff.)	
vs.)	Transcript of Record
Randy Schultz, Defendant.)	

December 5 and 7, 2017
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early III, Judge.

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

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Cassie W. Hall, Assistant Solicitor
Attorney for the State

Martin C. Puetz, Esquire
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Brenda J. Sigwald, Circuit Court Reporter
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(REPORTER'S NOTE: There were no exhibits entered during this hearing.)

Tuesday, December 5, 2017

THE COURT: Where's the defendant? Where's your client.

(The defendant entered the courtroom.)

THE COURT: All right. Ms. Beth Ann Young, you may call your next case.

MS. YOUNG: Thank you, Your Honor. State of South Carolina versus Randy Schultz, Indictment 2016GS021058 distribution of cocaine base.

THE COURT: All right. Ladies and gentlemen of the jury panel, we're now moving forward with the case just called by the State.

Mr. Schultz, would you please stand and face the jury panel.

(The defendant stood.)

THE COURT: Thank you, you may be seated.

Which indictment is it?

MS. YOUNG: 258. I'm sorry, Judge, 259. Thank you, for keeping me straight.

THE COURT: Now, ladies and gentlemen, the State is moving forward on the indictment against Randy Schultz, distribution of crack cocaine is the selling crack cocaine to an undercover operative officer. As I told you before that the indictment is not evidence in the case. It is simply by way this case comes into the courtroom and the

State has to prove all elements of the indictment to you beyond a reasonable doubt.

Any member of the jury panel related by blood or marriage, or do you now or have you in the past had a close personal or social relationship with the defendant, Randy Schultz? If so, please stand.

(No one stood.)

THE COURT: I am informed that the potential witnesses in the trial of the case are Investigator Otis "Lee" Jackson, Aiken County Sheriff's Office; Investigator Gary Benfield, Aiken County Sheriff's Office; Lieutenant Sean Ziegler, Aiken County Sheriff's Office; Investigator Jorge Ruelas, R-u-e-l-a-s, Aiken County Sheriff's Office; Investigator Chris Chavous, Aiken County Sheriff's Office; Investigator John Harvey, same; Amber Collins, same; and Marsha Kim Bell.

Any members of the jury panel related by blood or marriage now or in the past, or have you ever had a close personal or social relationship with any of the witnesses in the trial of the case? If so, please stand.

This is an Aiken County Sheriff's Office case. Juror number?

THE JUROR: 33, Amanda Courtney.

THE COURT: 33?

THE JUROR: Yes, sir.

THE COURT: Husband works for the sheriff's department. I will excuse you on this trial.

THE JUROR: So I --

THE COURT: No, ma'am, you've still got the civil one you've got to deal with. Two down one to go.

The State, the solicitor's office will be prosecuting the case with Ms. Beth Ann Young and Ms. Cassie Hall; the defendant is defended by Mr. Marten Puetz, of the -- practices in Aiken and Augusta.

Is that right, Mr. Puetz?

MR. PUETZ: Yes, sir, on a good day.

THE COURT: This is a good day, he's got Aiken.

Any member of the jury panel related by blood or marriage or have you now or in the past had a close personal or social relationship with either -- any of the lawyers?

(No one stood.)

THE COURT: Any member of the jury panel had legal services now or in the past performed by any of the three lawyers? If so, please stand.

Name and number.

THE JUROR: Juror number 183, Kenneth Ware. Mr. Puetz served from a family court matter a couple of times.

THE COURT: Is he now representing you or did he do it in the past?

THE JUROR: In the past.

THE COURT: In the past. And the fact that Mr. Puetz, a good lawyer, represented you in the past, would that in any way preclude or keep you from being fair in this case?

THE JUROR: No, sir.

THE COURT: Thank you, you may be seated.

Ladies and gentlemen, this involves alleged facts that said back in February 16 of last year, 2016, that the defendant, Mr. Schultz, sold a quantity of crack cocaine to an undercover agent.

Where did it happen? Here in Aiken County?

MS. YOUNG: Storm Court, Beech Island.

THE COURT: Storm Court? Anybody know anything about this case? Have you read about it? Heard anything on the radio? Anybody discussed it with you? Formed any opinion? Know anything at all?

(No one stood.)

THE COURT: As we discussed in the previous selection of the jury panel where everyone was present, including the lawyers, do I have any member of the jury panel -- this is a case that we call a drug sale case. Do I have any member of the jury panel for any reason whatsoever that you are unable to perform your services as a juror in the trial of this case, being fair to both to

the State and to the defendant involving the alleged sale of crack cocaine to an undercover agent; political reasons, personal reasons, any kind of reasons why you can't be fair and impartial in the trial of this case? If so, please stand.

(No one stood.)

THE COURT: Any additional questions by the State?

MS. YOUNG: None from the State, Your Honor.

THE COURT: Mr. Puetz?

MR. PUETZ: I have submitted my exhibit.

THE COURT: Your exhibit?

MR. PUETZ: Well it's questions. I handed them up.

THE CLERK: I put them up --

THE COURT: Thank you.

Any member -- I have to ask this again because it's a new case; but do I have any member of the jury panel, I know some of you have family members that are involved in law enforcement. Please stand again except for my lady who I've already excused.

Okay. Juror number, ma'am?

THE JUROR: 111, Samantha McGee.

THE COURT: And your husband's an FBI agent in Augusta.

THE JUROR: Yes, sir.

THE COURT: And the fact that he's an FBI agent,

would that in any way keep you from being fair and impartial in the trial of this case?

THE JUROR: No, sir.

THE COURT: Thank you, ma'am.

Sir, again, in the blue?

THE JUROR: 195. Bill Lewis. It's law enforcement by marriage.

THE COURT: And the fact -- wait a minute, you -- you're the one that had a -- by marriage to a sheriff's officer, right?

THE JUROR: Correct.

THE COURT: That was Humphries?

THE JUROR: Hawthorne.

THE COURT: I'm sorry. But you're not related to any of these officers I named?

THE JUROR: No, sir.

THE COURT: And the fact that you have that relationship with a law enforcement officer, would that in any way preclude or keep you from being fair and impartial in the trial of this case?

THE JUROR: No, sir.

THE COURT: Thank you, you may be seated.

Do I have any member of the jury panel who has a degree in criminal justice? Please stand.

Yes, ma'am, name and number?

THE JUROR: Number 144 Lisa Reed. I have a bachelors in criminal justice.

THE COURT: And the fact that you have a bachelor's degree in criminal justice, would that in any way keep you from being fair and impartial in the trial of this case?

THE JUROR: No, Your Honor.

THE COURT: Thank you, ma'am.

Any member of the jury panel a member of a neighborhood watch?

(No one stood.)

THE COURT: I have to ask this question once again. I'm sorry for being redundant, but this is a separate case. Do I have any member who's been a victim of a violent crime. We'll do that one, one more time. Please stand.

THE JUROR: Sir, I need you to stand in the blue.

THE COURT: Anyone else, members?

All right, sir, in the blue, long sleeve shirt.

THE JUROR: Jeff Gilliam, Juror 67.

THE COURT: And you told me earlier that you had two family members that were murdered; is that correct?

THE JUROR: Yes, yes, sir.

THE COURT: This is a drug case. Would you be able to set that aside and be able to be fair and impartial in the trial of this case?

THE JUROR: Yes, sir.

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THE COURT: Thank you, you may be seated.

Again, name and number?

THE JUROR: Beckman Herman, 78.

THE COURT: And your situation was you were --

THE JUROR: I was robbed --

THE COURT: Twice.

THE WITNESS: Correct.

THE COURT: And would you be able to set that aside and be a fair and impartial juror in the trial of a drug sale case.

THE JUROR: It was in a drug related incident.

THE COURT: All right, sir. And the fact that it was a drug related incident, would that change your opinion in this case?

THE JUROR: Potentially.

THE COURT: Sir?

THE JUROR: Potentially, yes, sir.

THE COURT: All right. I'm going to excuse you for this case. Stay with us for the civil case.

Your name and number again?

THE JUROR: Beckman Herman, 78.

THE COURT: Thank you, Mr. Herman.

Ma'am, once again in the gold necklace, your name and number?

THE JUROR: Tamesha Busby, 19.

THE COURT: And you had a family victim that was murdered; is that correct?

THE JUROR: Yes, sir.

THE COURT: And this is a drug case. Would that prior situation with your family keep you from being fair and impartial in this case?

THE JUROR: No, sir.

THE COURT: Thank you, you may be seated.

Ma'am, in the black, yours was a -- also name and number?

THE JUROR: 176 -- and my father was murdered but all of it was related to drugs.

THE COURT: It was related to drugs?

THE JUROR: Yes, sir.

THE COURT: And the fact that your father was murdered in a drug related case and this is a drug case, would that keep you from being fair and impartial?

THE JUROR: No, sir.

THE COURT: It would not? You could be fair and impartial?

THE JUROR: No, sir.

THE COURT: Could not. All right. I'm going to set you aside in this case, save you for the civil.

My Georgia man, name and number.

THE JUROR: 123 Mark Napier.

THE COURT: And you had a situation years ago, shot in the face, right?

THE JUROR: Yes, sir.

THE COURT: And would that keep you from being fair and impartial in the trial of this drug case?

THE JUROR: No, sir.

THE COURT: Thank you, you may be seated.

Ladies and gentlemen, obviously, this is a drug, an alleged drug sale case. So do I have any member of the jury panel who has any -- you or your family have any drug related issues in your family or close friends, such as do you have someone involved with drugs or having addiction to drugs or any type of drug problems that would keep you from being -- and would that keep you from being fair and impartial in the trial of a case where it's alleged that someone is selling drugs in the community?

(No one stood.)

THE COURT: Do I have -- last sort of overall question, does anyone have any reason whatsoever why you cannot serve as a fair and impartial juror in the trial of this case dealing with the alleged sale of a drug?

Any additional questions by --

Yes, ma'am, name and number?

THE JUROR: 135 Kelly Patterson. My nephew died of an overdose.

THE COURT: Well, the fact that your family has experienced that, ma'am, would that keep you, in this particular case, from being able to serve and be fair and impartial.

THE JUROR: Yes.

THE COURT: Thank you. And your name and number again?

THE JUROR: 135, Kelly Patterson.

THE COURT: All right. 135 is out on this one, save her for the civil.

Any additional questions by the State?

MS. YOUNG: None from the State, Your Honor.

THE COURT: Mr. Puetz?

MR. PUETZ: No, sir.

THE COURT: Five and five?

MS. YOUNG: Yes, sir.

THE COURT: All right. Once again we'll draw randomly, this time the State has five, the defendant has five.

THE CLERK: Now, ladies and gentlemen, please remember to bring any of your personal items up with you when your name is called.

Juror Number 4, Ronald Arant (white male).

What say for the State?

MS. YOUNG: Please present Mr. Arant.

THE CLERK: What says the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
Juror 161, Elizabeth Smith (white female).
What say for the State?
MS. YOUNG: Please present Ms. Smith.
THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
Juror Number 59, Janet Ford. (White female).
What say for the State?
MS. YOUNG: Please present Ms. Ford.
THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
Juror Number 5, Matthew Barker (white male).
What say for the State?
MS. YOUNG: Please present Mr. Barker.
THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
Juror Number 167, Steven Strother (white male).
What say for the State?
MS. YOUNG: Please present Mr. Strother.
THE CLERK: What say for the defense?

MR. PUETZ: Please excuse the juror.
THE CLERK: Please return to your seat.
Juror Number 67 Jeffrey Gilliam (white male).
What say for the State?
MS. YOUNG: Please present Mr. Gilliam.
THE CLERK: What say for the defense?
MR. PUETZ: Please seat the juror.
THE CLERK: Please have a seat in the jury box.
Juror Number 45 Jason Dove (white male).
What say for the State?
MS. YOUNG: Please excuse Mr. Dove from this case.
THE CLERK: Please return to your seat.
Juror Number 96, William Kay (white male).
What say for the State?
MS. YOUNG: Please present Mr. Kay.
THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
Juror Number 57 Martin Falmlen (white male).
What say for the State?
MS. YOUNG: Please present Mr. Falmlen.
THE CLERK: What say for the defense?
MR. PUETZ: Please excuse the juror.
THE CLERK: Please return to your seat.
Juror Number 123, Mark Napier (white male).

What say for the State?

MS. YOUNG: Please present Mr. Napier.

THE CLERK: What say for the defense?

MR. PUETZ: Please present the juror.

THE CLERK: Please have a seat in the jury box.

Juror Number 183 Kenneth Ware (black male).

What say for the State?

MS. YOUNG: Please excuse Mr. Ware from this case.

THE CLERK: Please return to your seat.

I have both the State and the defense having used two strikes.

Juror Number 106 Timothy Lowe (white male).

What say for the State?

MS. YOUNG: Please present Mr. Lowe.

THE CLERK: What say for the defense?

MR. PUETZ: Please excuse the juror.

THE CLERK: Please return to your seat.

Juror Number 14, John Bryan (white male).

What say for the State?

MS. YOUNG: Please present Mr. Bryan.

THE CLERK: What say for the defense?

MR. PUETZ: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

Juror Number 139 Ronald Price (white male).

What say for the State?

MS. YOUNG: Please present Mr. Price.
THE CLERK: What say for the defense?
MR. PUETZ: Please excuse the juror.
THE CLERK: Please return to your seat.
Juror Number 195 Phillip Willis (white male).
What say for the State?
MS. YOUNG: Please present Mr. Willis.
THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
Juror Number 182, Tammy Wappshott (white female).
What say for the State?
MS. YOUNG: Please present Ms. Wappshott.
THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
Juror 132, Patrice Oliver (black female).
What say for the State?
MS. YOUNG: Please present Ms. Oliver.
THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
Juror 191, Hope Williams (white female).
What say for the State?
MS. YOUNG: Please present Ms. Williams.

THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: We have twelve jurors, Your Honor.
THE COURT: Give me two alternates, two and one.
THE CLERK: Juror Number 61, Linda Gray Frazier (white female).
What say for the State?
MS. YOUNG: Please present Ms. Frazier.
THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
Juror Number 51 Connie Estrada (white female).
What say for the State?
MS. YOUNG: Please present Ms. Estrada.
THE CLERK: What say for the defense?
MR. PUETZ: Please present the juror.
THE CLERK: Please have a seat in the jury box.
THE COURT: Any motions by the State or the defense in connection with the jury selection?
MS. YOUNG: None from the State, Your Honor.
MR. PUETZ: No, sir.
THE COURT: All right. You're going to be my number two jury. So we're going to start the murder trial in the morning at 9:30, but out of an abundance of caution, call back tonight after 9:30.

They'll be designated as panel two.

Panel two. Something may happen. I don't know. But anyway, just check and if it says to call back again after Tuesday, do that. If everything goes according to plan, the murder trial will probably be -- go all day tomorrow and into Wednesday and we'll just sort of see where we are.

So call each night until you get the word to come back or the word not to come back. Is that fair enough?

THE BAILIFF: What time to call back?

THE CLERK: After six.

THE COURT: Didn't y'all all hear me?

THE JUROR: You said after 9:30.

THE COURT: Thank you, Mr. Whittle. He's had more judges than I've been in court. Call back after six tonight, please.

Thank you, Mr. Whittle.

Mr. Whittle will show you where to report back and then we'll get started whichever day we get started. There's all kind of things that could happen. Thank you y'all very much.

(The jury left the courtroom at 12:39 p.m.)

(The defendant pled guilty on Thursday, December 7, 2017.)

Thursday, February 7, 2017

GUILTY PLEA

MS. YOUNG: Randy Schultz.

RANDY SCHULTZ, was duly sworn

THE COURT: All right. This is the State versus Randy Schultz, there are three indictments, 161059, 161060, 161057, 57's a failure to stop for blue light; 59 and 60 are for distribution of crack cocaine third or subsequent offense.

Good morning Mr. Schultz, how are you?

THE DEFENDANT: All right.

THE COURT: Mr. Marty Puetz, you represent Mr. Schultz.

MR. PUETZ: Yes.

THE COURT: Have you had an opportunity to advise him of the charges and the potential sentences in each of these cases?

MR. PUETZ: Yes, I have.

THE COURT: As to the two distribution of drug cases, have you advised him that they are classified as serious and that the effect of that on strikes?

MR. PUETZ: Yes, sir, I have, that it's 85 percent and the sentencing range is 10 to 30 years.

THE COURT: That is correct. And that serious -- does he have any other strikes?

MS. YOUNG: Yes.

THE COURT: How many?
MS. YOUNG: One.
THE COURT: That this would be his second strike and what three strikes mean and all of the implications of that?
MR. PUETZ: Yes, sir. That is if he were to get another strike it would be LWOP, life without parole.
THE COURT: Yeah.
MR. PUETZ: It could be.
THE COURT: Could be. And in your opinion he understands all that?
MR. PUETZ: Yes, sir.
THE COURT: And have you advised him of his right to trial by jury.
MR. PUETZ: Yes, sir.
THE COURT: And how does he indicate to you he wishes to plea.
MR. PUETZ: Guilty.
THE COURT: And you agree with that decision?
MR. PUETZ: I do.
THE COURT: Mr. Schultz, I've got to ask you a few questions. If you understand them, answer them. If you don't understand them, please stop me and get me to explain it so you do understand it. If you answer them, then I will assume that you understood them; is that fair?

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THE DEFENDANT: Yes, sir.

THE COURT: You can stop me at any time and ask me about them.

Let's do the easy one first. You're charged with failure to stop for a blue light. That carries a minimum of 90 days up to 3 years or a fine of not less than 500. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, the two drug cases, those are distribution or sale of crack cocaine, third offense or more. They carry a mandatory minimum of 10 years up to 30 years. So my range in sentence is somewhere between 10 and 30 is what the legislature gives me the discretion to give; somewhere in that range. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: This is what is known as an 85 percent, no parole sentence, so whatever sentence you receive, you will have to do 85 percent of it before you're eligible for parole. So if you got a 10 year sentence, you would have to do 8 and a half; a 20 year sentence, you'd have to do 17; 85 percent.

THE DEFENDANT: Yes, sir.

THE COURT: And then you would be released into what we call community supervision program. So do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: It's classified as serious. This will be your second strike. In other words, you have a serious charge before and this is your second one. What that means is when you are released from incarceration, if you get involved in criminal activity that's classified as serious or most serious one more time, that would be three strikes and you would be subjecting yourself to the possibility of spending the rest of your life in jail without parole. It would be your third strike. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Any questions about any of that?

THE DEFENDANT: No, sir.

THE COURT: Understanding all of that, how do you wish to plea, not guilty or guilty?

THE DEFENDANT: Guilty.

THE COURT: By pleading guilty, you will give up your constitutional right to remain silent. You'll have to admit to me these sales.

THE DEFENDANT: Okay.

THE COURT: You will give up your constitutional right to a jury trial. We have a jury that we picked on Monday. They're sitting back there ready to go. Obviously if we do that, at that jury trial, you would have the right to confront or cross-examine everybody who testified

against you through your lawyer. You would have a right to put up your side of the story, present your defense by calling witnesses, introducing relevant exhibits, and taking the witness stand and testifying in your own defense.

If you exercise your constitutional right to remain silent, then I would tell the jury they could not hold the fact that you did not testify against you in any manner whatsoever. And I would instruct them that they could not even consider the fact that you did not testify when they deliberated your guilt or innocence. You would be presumed innocent throughout the trial and the State would have the burden to prove you guilty beyond a reasonable doubt to a jury of twelve people. And in order for the jury to convict you, all twelve jurors would have to unanimously agree that you were in fact guilty. And even if you were found guilty, you would still have the right to an appeal.

Do you understand your rights to trial by jury.

THE DEFENDANT: Yes, sir.

THE COURT: Understanding those right, do you still wish to plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Has anybody promised you anything, held out any hope of reward or threatened you in any manner in order to make you plead guilty?

THE DEFENDANT: No, sir.
THE COURT: Are you today, sir, under the influence of alcohol, drugs, or prescription medication?
THE DEFENDANT: No, sir.
THE COURT: Sir, are you today aware of any mental, nervous, or emotional conditions that would keep you from understanding my questions?
THE DEFENDANT: No, sir.
THE COURT: Have you understood my questions?
THE DEFENDANT: Yes, sir.
THE COURT: Are you satisfied with your lawyer? Mr. Marty Puetz?
THE DEFENDANT: Yes, sir.
THE COURT: In your opinion, has he had enough time to spend with you, to investigate the facts, and research the law so that he can properly represent you here today?
THE DEFENDANT: Yes, sir.
THE COURT: Is there anything else you want him to do for you today before we move forward other than speak up on your behalf?
THE DEFENDANT: No, sir.
THE COURT: And I ask you again, are you completely satisfied with his legal representation?
THE DEFENDANT: Yes, sir.
THE COURT: Are you pleading guilty of your own

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free will and accord?

THE DEFENDANT: Yes, sir.

THE COURT: For three separate events. Did you on February 1 of 2016 and again on February 16 of 2016, sell a quantity of crack cocaine to an undercover agent?

THE DEFENDANT: Yes, sir.

THE COURT: On both occasions?

THE DEFENDANT: Yes, sir.

THE COURT: Did you on March 23 last year, 2016, operate your vehicle and while doing so you were signaled to pull over by law enforcement by either a blue light, flashing light, or a siren, or a combination thereof and you failed to do so?

THE DEFENDANT: Yes, sir.

THE COURT: You're pleading guilty to all three indictments because you are, in fact, guilty?

THE DEFENDANT: Yes, sir.

THE COURT: I find your decision to plead guilty to be freely, voluntarily, and intelligently made. You've had the representation of an excellent lawyer, Mr. Marty Puetz who whom you say you're satisfied and I will accept your plea. Fair enough?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Let's do this: My jury is waiting back there. I've accepted his plea. Let me get

them in here and get them away from here before we go through sentencing.

MS. YOUNG: Yes, sir.

(The jury entered the courtroom at 9:47 a.m.)

THE BAILIFF: Jury is present, Your Honor.

THE COURT: Good morning.

THE JURY: Good morning.

THE COURT: I hope y'all have had a pleasant week and have just been anticipating coming into the courtroom and being with me all day today.

Okay. You want the good news or the bad news.

THE JURY: The bad.

THE COURT: The bad, that you don't get to spend any time with me today.

Good news, the guy we had the trial set for has just pled guilty. That's what -- I made y'all wait back there a little while so I could do that. I'm going to have to sentence him after -- I didn't want y'all to wait, so I'll sentence him in a little bit.

We've had a busy week. The murder trial we went through yesterday, we got a verdict yesterday about lunchtime. The jury found him guilty. It was a bad -- all killings are bad, but this one was particularly bad, shot up 12 or 13 times, with no rhyme or reason, just kids -- well, 26 years old.

You really got lucky, the civil case started Monday, it's still going and I'm not sure they're going to get through today. It's turned out right long. But anyway, we couldn't have gotten this case resolved without y'all being here ready, willing, and able to go. You will get a huge check from the county so you can buy big Christmas presents. And I'm going to be able to let y'all go.

You know, it was going to be fun having y'all, because one of your jurors, I used to work for her. Ms. Liz Smith over here was a secretary, paralegal, did everything in my office -- how long did we...

THE JUROR: You know, five years. I was trying to figure the day that you told me -- I came in on Monday pregnant. I'm trying to think. But anyway -- I was real big.

Let me explain myself. You said are you still here and I said, I'm supposed to go to the doctor as soon as I can. Sure enough Ian came the next day.

THE COURT: This sounds bad in today's world. I didn't have anything to do with it.

THE JUROR: No, he did not. He's a great boss.

THE COURT: You're a great person to work with. How is Ian doing?

THE JUROR: Great, he sends his regards. You know

he's 15. He's going to South Africa to see Grandma next year.

THE COURT: That's good.

THE JUROR: She's paying for it.

THE COURT: Liz was a good worker in the office when I was practicing law and all that craziness for all those years. We had a good law practice and she was a good helper in the law firm. I was looking forward to working with her.

Thank y'all so much and have a wonderful holiday season.

THE JUROR: I have a question.

THE COURT: Yes, ma'am.

THE JUROR: For those of us who had to miss work, can we get a note stating that we were here?

THE COURT: Can we, Mr. Harte? You think we can?

THE CLERK: Sure.

THE COURT: Those that need an excuse just step back in the jury room and we'll have somebody come up in just a second to take care of y'all. I should have mentioned that.

Have a great Christmas. Thank you y'all so much.

(The jury left the courtroom at 9:51 a.m.)

THE COURT: All right. Let's finish this thing.

(The defendant was brought into the courtroom.)

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THE COURT: All right. Ms. Young, if you will tell me the factual basis for the plea and his record as well as if you're nol prosing anything.

MS. YOUNG: Yes, sir, Your Honor. May it please the Court. Back in February of 2016, Aiken County Sheriff's Office narcotics investigators developed a confidential informant who stated that she could purchase crack cocaine from the defendant, Randy Schultz.

The first buy took place on February 1st, 2016. The confidential informant met with officers. She was equipped with recording equipment and issued documented money from the deputies. She went to the defendant's residence at 126 Storm Court in Beech Island. On that particular date, the defendant was standing in the door of his truck in a driveway. It was a 2007 F150 Super Crew, white truck. She walked up to him, she exchanged the funds for suspected crack cocaine and she left. She came back and turned that over to the officers. It was tested. It did come back positive for cocaine base .23 grams.

On February 17th, they did another undercover buy utilizing the same confidential informant, utilizing the same procedures, equipping her with the undercover surveillance equipment and also issuing her documented money. She went again to his residence, 126 Storm Court in Beech Island. Again, she exchanged the funds for the

suspected crack cocaine. On that particular date, Mr. Schultz was sitting on his step, and with regard to the evidence developed from the undercover videos, on that particular date it was extremely clear, that was the date that we were going to proceed to trial to today. They issued warrants for distribution.

In March Deputy Sharping with the warrants team observed Mr. Schultz driving, leaving a gas station, so he attempted to perform a traffic stop on Cary Drive -- or excuse me, he started following him on Cary Drive and then they went down to Old Trail Road. Two passengers jumped out of the truck and ran into the yard; and then there was a vehicle chase that lasted for some period and included reckless driving, such as speeding, running stop signs, and driving outside the line periodically. Ultimately, they were able to get him stopped and arrested him for the warrants. He had $1,684 in his truck on that date.

Your Honor, I'm going to pass up two sets of pictures from the video surveillance. The first ones are from February 1st. The ones on the back are more for the trial. And I think you'll agree that they're extremely clear and extremely damming in terms of a case like this.

THE COURT: How much was the total of the second sale.

MS. YOUNG: On the second sale it was 1.5 grams.

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But in the picture from the second sale, you can see the defendant taking the crack out of a Crown Royal bag and breaking off a smaller piece of crack from the bigger crack cookie that he took from the Crown Royal bag on the stoop next to him. And you can quite clearly see his face. He's also wearing the same distinctive work jacket for both sales.

He does have a prior record, Your Honor.

THE COURT: Hold on a second.

(There was a pause in the proceedings.)

THE COURT: Yes, ma'am?

MS. YOUNG: From Georgia in 1998, fleeing or attempting to allude. His South Carolina record starts in 1997, simple possession of marijuana; 1999 possession of less than one gram of crack or cocaine base, as well as resisting arrest; in 2003, he was convicted for trafficking cocaine base, 10 to 28 grams, second offense.

THE COURT: Hold on just a second. Trafficking 10 to 28, second?

MS. YOUNG: Yes, sir. As well as trafficking cocaine 28 to 100 second. He received a 9 year sentence of incarceration for those charges. He also has a DUS, second offense from 2011.

Your Honor, we had prepared to try this case in August and when we got ready to call it to court,

Mr. Schultz, who was out on bond at that time, cut off his electronic monitor and absconded, so we were forced to seek a bench warrant. He was picked up, I believe in early November, over in Georgia and was brought over here and has been in the jail since that time awaiting his trial.

THE COURT: So he did a 9 year sentence for two trafficking cases one 10 to 28 and one 28 to 100.

MS. YOUNG: Yes, sir.

THE COURT: And prior to that he had two simple possession of crack and marijuana. And now two sales here; is that where we're at?

MS. YOUNG: Yes, sir. And he -- I would just say this one thing because you often ask me this, he's considered higher up in the food chain. And the officers are here if you have any questions about that.

THE COURT: Mr. Puetz?

MR. PUETZ: Very briefly, Judge, I wanted to go ahead and hand up the two crime lab reports, as well as my client's employment check stub. He was working at Austin Industrial. Randy is --

THE COURT: What is Austin Industrial do. It looks like he had a good job, $11 an hour.

MR. PUETZ: He does -- he did, Judge, he's 38 years of age. He is married to his wife Ericka. They have five children. He has a son Deontae who is 18. He has a

daughter, Brandy, she attends Jackson Middle School. His third son or second son Tremaine goes to Redcliff Elementary, he's 9 years of age. And Akeme is 6 years of age. And he has a daughter who is 9 months of age. She was born March 5th of 2017.

He was released from custody, Judge. And here are his sentences for the three, basically two prior, given the fact that the trafficking in cocaine and the trafficking in crack cocaine were sentenced on the same day, it constitutes a second conviction.

I have gone over, extensively with Mr. Hayes at the public defender's office reviewing the statute 44-53-370 and it's my understanding that basically in 2010, South Carolina enacted the statute which allows a look back of up to 10 years. As a result, that 1998 conviction is beyond that 10 years, but we do not have any legal basis at this point in time to argue that these distributions constitute a second offense due to the fact that the label on the trafficking is a second, so that means that anything incident to that automatically becomes a third. So he's stuck with the 10 to 30 years, which is serious as the Court's gone over. And he indicated that it is an offense that's going to require that he serve 85 percent of whatever number the Court can impose.

He graduated from Silver Bluff High School and when

he was released from prison in 2011, he obtained employment and was working and supporting his family. His wife works at McDonalds -- excuse me, she is a manager at Wendy's, not McDonalds -- and they were raising their kids.

He had an automobile accident, single car accident, May 6 of 2015. It ended up, he has a rod in his leg as a result of it. He also had a bladder tear which required surgical intervention. And following that he had three to four months of physical therapy. He lost his job as a result of it.

He made a huge mistake. He'll acknowledge it. He turned back to selling drugs to satisfy bills and to basically put food on the table. And as a result, I think Ms. Bell, she ended up on January 22nd of 2016, I believe, re-signing her agreement to work as an informant and she came out and she made these two sales.

There's no violence in his background, no weapons offenses, nothing like that; and I acknowledge the fact, you know, he's violated the drug laws, but as I indicated -- my feelings and I know that my feelings are not controlling, probably not even listened to, but --

THE COURT: I'll listen to everything you tell me.

MR. PUETZ: Well, long story short, Judge, you know, to take someone who is engaging in something that is nonviolent and was -- it was illegal, but he does have some

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very redeeming qualities. He does have these family members he needs to support. He understands -- and the whole reason why this thing didn't result in a plea right off of the bat is just because of the fact we were trying to do something to get around the 85 percent. We were not successful in doing that, obviously, and I just want --

THE COURT: He's not successful in doing that because the law doesn't allow it.

MR. PUETZ: That's correct.

THE COURT: You can try. But -- you know, it's frustrating up here. You've got a man, a good job, five children, two little simple drug cases and then he gets under a trafficking situation with a lot, particularly 28 to 100 and gets a 9 year sentence because --

MR. PUETZ: He did 7 and a half years. It was 85 percent as well.

THE COURT: And, you know, he's not home very long. He's got children and he's got a job and I look at -- the wafer that he broke it off of was pretty sizable. So he's back in the business.

MR. PUETZ: Yes, sir, and like I said, I just can only point out to the Court the only reason he was back in it is because of that dang car wreck that he had where he seriously injured himself and got behind on his bills.

THE COURT: And he's got young children and he

knows what the drugs do to the young people in the community. And I don't know of any other way the stop it than to --

MR. PUETZ: Well --

THE COURT: Cut this head off, per se.

MR. PUETZ: Well, he would like to address the Court.

THE COURT: Certainly. Mr. Schultz, I'll be glad to hear from him.

THE DEFENDANT: Yes, sir, Your Honor. I know what I did was wrong, but if you give me another chance. I know what I'm looking for if I get caught again and I'm sorry for what happened.

THE COURT: You get caught again? You mean you're going to get back and start doing it?

THE DEFENDANT: No, sir. I know -- if I ever get out there and try it again, I know what I'm looking at.

MR. PUETZ: And that was a recommendation, or at least we're asking for concurrent treatment.

MS. YOUNG: Your Honor, I did negligent to answer one of the thing that you asked, which was the nol prosing any charges; an operating stash house and DUS will be nol prosed.

THE COURT: Thank you.

You know it's not a pleasant task that I have

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sitting up here with a young 38 year old man with a good job, five children, send him to jail for a long time. But it's not like that you don't know what's going on. If you're going to be a drug dealer, you take the risk of getting caught and with your prior record, you knew what the risk was.

I feel like my job requires that I try to make the streets safer for the regular citizen, try to protect people from drug abuse, drug use, and drug buying.

So on the two drug charges, the sentence of the Court is that you be committed to the department of corrections for 15 years. On the driving it's 3, all running concurrently.

Give credit for any time he's got.

Good luck.

MS. YOUNG: Thank you.

MR. PUETZ: Thank you.

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

State of South Carolina)
) **Certificate of Reporter**
County of Aiken)

I, Brenda J. Sigwald, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions in and for the State of South Carolina on the 5th and 7th days of December 2017.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 7th day of January, 2019.

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

WITNESSES

Aiken County Sheriff

Cpl. Paul Sharpton

Law Enforcement Case #: 16-016600

ARREST WARRANT NUMBER

2016A0210400139

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: June 2, 2016 Gerald Ussery

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS0201057

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE
vs.

RANDY SCHULTZ

CDR #: 0065

Indictment for

FAILURE TO STOP MOTOR VEHICLE WHEN SIGNALED BY LAW ENFORCEMENT VEHICLE

§ 56-05-0750(B)(1)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	FAILURE TO STOP MOTOR VEHICLE WHEN
COUNTY OF AIKEN	)	SIGNALED BY LAW ENFORCEMENT
	)	VEHICLE

§ 56-05-0750(B)(1)

At a Court of General Sessions, convened on June 6, 2016, the Grand Jurors of Aiken County present upon their oath:

That **RANDY SCHULTZ** did in Aiken County on or about March 23, 2016, in the absence of mitigating circumstances, unlawfully fail to stop while driving a motor vehicle on a road, street or highway of the state for a law enforcement vehicle after being signaled to do so by means of a flashing light and/or siren and the road conditions were such that a reasonable driver could hear and/or see the signals. All in violation of §56-5-750 of the Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Young

J. STROM THURMOND, SOLICITOR

ELECTRONICALLY FILED - 2018 Oct 12 1:39 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202395

WITNESSES

Aiken County Sheriff

Inv. Gary Benfield

Law Enforcement Case #: 16-009813

ARREST WARRANT NUMBER

2016A0210900014

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: June 2, 2016 Gerald Ussery

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS0201059

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE
vs.

RANDY SCHULTZ

CDR #: 3039

Indictment for

DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE)

§ 44-53-0375(B)(3)

J. STROM THURMOND, SOLICITOR

ELECTRONICALLY FILED - 2018 Oct 12 1:39 PM - AIKEN - COMMON PLEAS - CASE#2018CP020395

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)
	)	
COUNTY OF AIKEN	)	
	)	

§ 44-53-0375(B)(3)

At a Court of General Sessions, convened on June 6, 2016, the Grand Jurors of Aiken County present upon their oath:

That **RANDY SCHULTZ** did in Aiken County on or about February 16, 2016, distribute to an undercover operative a quantity of Cocaine Base (Crack Cocaine), a controlled substance under provisions of §44-53-110, *et. seq., Code of Laws of South Carolina* (1976), as amended, such distribution not having been authorized by law.

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

Elizabeth B. Young

J. STROM THURMOND, SOLICITOR

ELECTRONICALLY FILED - 2018 Oct 12 1:39 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202395

WITNESSES

Aiken County Sheriff

Inv. Gary Benfield

Law Enforcement Case #: 16-006489

ARREST WARRANT NUMBER

2016A0210900015

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: June 2, 2016 Gerald Ussery

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS0201060

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE
vs.

RANDY SCHULTZ

CDR #: 3039

Indictment for

DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE)

§ 44-53-0375(B)(3)

J. STROM THURMOND, SOLICITOR

ELECTRONICALLY FILED - 2018 Oct 12 1:39 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202395

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)
	)	
COUNTY OF AIKEN	)	
	)	

§ 44-53-0375(B)(3)

At a Court of General Sessions, convened on June 6, 2016, the Grand Jurors of Aiken County present upon their oath:

That **RANDY SCHULTZ** did in Aiken County on or about February 1, 2016, distribute to an undercover operative a quantity of Cocaine Base (Crack Cocaine), a controlled substance under provisions of §44-53-110, *et. seq., Code of Laws of South Carolina* (1976), as amended, such distribution not having been authorized by law.

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

Elizabeth B. Young

J. STROM THURMOND, SOLICITOR

46

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)
STATE VS.)
Randy Schultz)
AKA:)
Race: Black Sex: M Age: 38)
DOB: [redacted]1979 SS# [redacted])
Address:)
City,State,Zip: Beech Island, SC 29842-9100)
DL#: [redacted] SID#: [redacted])
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS0201057
A/W#: 2016A0210400139
Date of Offense: 3/23/2016
S.C. Code § : 56-05-0750(B)(1)
CDR Code #: 0065

SENTENCE SHEET

90 Days - 3 years OR $500

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Traffic / Failure to stop for a blue light, no injury or death - 1st offense

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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: Elizabeth B. Young 73947 Robert Fisher Matt C Puett 4691
Young, Elizabeth "Beth Ann" SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 3 ~~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: 16-GS-02-1059
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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	$ N/A
Proviso 61.6 (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)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Robert J. Kurtz
Court Reporter: Brenda Sigwald
Presiding Judge M Toal
Judge Code: 2136
Sentence Date: 12-7-17

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)
STATE VS.)
Randy Schultz)
AKA:)
Race: Black Sex: M Age: 38)
DOB: [redacted]-1979 SS#: [redacted])
Address:)
City,State,Zip: Beech Island, SC 29842-9100)
DL#: [redacted] SID#: [redacted])
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS0201059
A/W#: 2016A0210900014
Date of Offense: 2/16/2016
S.C. Code § : 44-53-0375(B)(3)
CDR Code #: 3039

SENTENCE SHEET 10-30 years and/or $50,000

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Drugs / manufacture, distribution, etc. of cocaine base, 3rd or sub. Offense

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(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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.

Elizabeth B. Young 73947 Randy Schultz Matthew Connell 4591
Young, Elizabeth "Beth Ann" SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*: the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150.00
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40 ea	$
3% to County (if paid in installments)		$ 8.25
TOTAL		$ 283.25

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge M Faust
Judge Code: 2136
Sentence Date: 12-7-17

Clerk of Court/ Deputy Clerk Robert J. Hunter
Court Reporter: Brenda Sigwald

SCCA/217 (07/2016)

ELECTRONICALLY FILED - 2018 Oct 12 1:39 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202395

48

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)
STATE VS.)
Randy Schultz)
AKA:)
Race: Black Sex: M Age: 38)
DOB: [redacted]-1979 SS#: [redacted])
Address:)
City,State,Zip: Beech Island, SC 29842-9100)
DL#: [redacted] SID#: [redacted])
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT CASE#: 2016GS0201060
A/W#: 2016A0210900015
Date of Offense: 2/1/2016
S.C. Code § : 44-53-0375(B)(3)
CDR Code #: 3039

SENTENCE SHEET

10 - 30 years and/or $50,000

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Drugs / manufacture, distribution, etc. of cocaine base, 3rd or sub. Offense
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(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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. Concurrent

ATTEST: Elizabeth B. Young 73947 Randy Schultz Matt Cheek 4591
Young, Elizabeth "Beth Ann" SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 15 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and/or payment
of $ _____ ; plus costs and assessments as applicable*: the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 16-GS-02-1059
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150.00
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 8.25
TOTAL		$283.25

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Robert J. Harte
Court Reporter: Brenda Sigmon
Presiding Judge W. Howard Conner
Judge Code: 2136
Sentence Date: 12-7-17

SCCA/217 (07/2016)

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18-2395

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)

IN THE COURT OF COMMON PLEAS
2016A0210900014
2016A0210900015

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

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention ____ Perry Correctional Institution
2. Name and location of Court which imposed sentence ____ Aiken Co. General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) ____ 2016650201059 Distr. 3rd
   (b) ____ 2016650201060 Distr. 3rd
   (c) ____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) ____ 12-7-17 15yrs
   (b) ____ 12-7-17 15yrs

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(c) ____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty ____

(c) after a plea of nolo contendere ____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
No

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

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) ____ Did not know I could appeal

(b) ____

(c) ____

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

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(a) ____

(b) ____

(c) ____

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

(a) ____

(b) ____

(c) ____

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. 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. ____

(d) the date of each such disposition:

i. N/A

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. N/A

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. N/A

ii. N/A

iii. N/A

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

i. N/A

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) N/A

(b) N/A

(c) N/A

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

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(a) your arraignment and plea? ✓

(b) your trial, if any? _____

(c) your sentencing? _____

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

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

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. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

___ Vacate conviction & sentence/new trial

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

No

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STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Aiken)

I, Randy Schultz, 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.

Randy Schultz

SWORN to and subscribed before me this 1st day of October, 2018.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires: My Commission Expires September 25, 2023

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

I, Randy Schultz, 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.

Randy Schultz
Applicant

SWORN or affirmed to and subscribed before me this 1st day of October, 2018.

Tamara Conwell
Notary Public

My Commission Expires: My Commission Expires September 25, 2023

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Revised 3/2003

Answer To Question #10 on PCR application

1) Involuntary Plea
2) Trial counsel was ineffective for failure to interview the State's key witness (CH) on his behalf.
3) Counsel failed to challenge the chain of custody of the allege drugs.
4) Counsel was ineffective for failure to investigate applicant's case.
5) Counsel failed to challenge the probable cause in applicant's case
6) Counsel failed to move to suppress the affidavit and search warrant thereby violating applicant's 4th amendment rights.
7) Motion To Suppress pursuant to 17-30-110

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Legal Citation

The applicant allege and can prove that he was denied effective assistance of trial counsel. The applicant submits that the extensive record speaks for itself as to the competency of counsel. Trial counsel for the applicant was not diligent in his representation of the applicant and did not perform well within the range of competence demanded of attorneys in criminal matters and did not perform within the wide range of reasonable professional assistance.

In Strickland v. Washington, 466 U.S. 668, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial, 104 S. Ct. 2064.

The applicant submits that counsel's performance was deficient and his performance prejudiced him.

Counsel's performance prejudiced the applicant to the point where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The applicant is requesting an evidentiary hearing and a new trial.

Applicant contend and can show that his conviction and sentence was in violation of the U.S. Constitution, S.C. Constitution and the laws of this state. The applicant is asserting a 4th, 6th, 8th and 14th amendment violation which sets forth a prima facie violation of his constitutional rights. Applicant's grounds for relief are constitutional dimension. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with demands of fair procedure.

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The following acts and omissions by counsel constituted ineffective assistance of counsel.

1) Involuntary Plea

The applicant alleged errors have not been previously litigated or waived in the proceeding resulting in the conviction or in any other proceeding that the petitioner has taken to secure relief from his conviction.

Allegations in applicants' PCR application must be deemed true until those allegations of involuntary plea are controverted by the State. Until allegations contained in verified application for PCR are controverted by the State, they are deemed to be true for purpose of determining whether an evidentiary hearing should be held.

A defendant waives several constitutional rights by pleading guilty, the due process clause requires that the guilty pleas are entered into voluntary, knowingly and intelligently. See Boykin v. Alabama, 395 U.S. 238 and Pittman v. State, 337 S.C. 597, 524 S.E. 2d 603 (1999)

Boykin requires that a defendant be made aware of:

1) the right to a jury trial;
2) the privilege against self-incrimination
3) The right to confront one's accusers.

Additionally, the South Carolina Supreme Court requires that a defendant entering a guilty plea be made aware of:

1) the nature + crucial elements of the offense (See Henderson v. Morgan, 96 S. Ct 2253

2) the maximum + any minimum penalty (Pittman v. State, 524 S.E. 2d)

3) the nature of the constitutional rights being waived. (Pittman, supra, Dover v. State, 405 S.E. 2d 39 and Hazel v. State, 271 S.E. 2d 602 (1980)

Applicant was denied a fair proceeding because of the ineffectiveness of counsel. If it were not for counsel's errors and omissions, the outcome of the proceeding would have been different. A valid waiver must be established under the due process clause and cannot be presumed from a silent record.

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2) Trial counsel was ineffective for failure to interview the state's key witness (CI) on his behalf.

In this application, applicant asserts ineffective assistance of counsel due to the attorney failing to interview the state's key witness (CI) before advising him to plead guilty. If applicant's case had gone to trial rather than to the guilty plea proceeding, the key witness (CI) could have changed the outcome, or at least changed his decision to plead to the charges. This prejudiced the applicant and the outcome of the case. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052

There is evidence in the record indicating defense attorney failure to conduct adequate investigation. Defense counsel could easily have investigated and discovered the facts and taken proper actions. The record in this case established a reasonable probability that, but for counsel's errors, applicant would not have pled guilty but would have insisted on trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366

3) Counsel failed to challenge the chain of custody of the allege drugs.

Trial counsel failed to object/challenge the introduction of the allege drugs admitted by the State. The chain of custody was incomplete and was not established pursuant to Rule 6(b), SCRCrimP. A complete chain of custody tracing possession from the evidences initial control to its final analysis, must be established as far as practible. State v. Carter, 344 S.C. 19, 544 S.E. 2d 835

A missing link in a chain of custody creates an issue of admissibility. The state did not submit or comply with Rule 6(b). Trial counsel failed to challenge or move to suppress the allege drugs despite several missing links in the chain. In Chisolm v. State, 584 S.E. 2d 401, the court applied the longstanding rule that where there are unexplained gaps in the chain of possession leaving to conjecture the identities of the people who handled the evidence and the manner of handling, the evidence is inadmissible.

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The crack cocaine should have been inadmissible because no evidence existed to establish either the whereabouts of the evidence between the date of arrest and how the last technician came into possession of the evidence bag. In other words, the identity of the persons handling the evidence was left to conjecture. Custodial signatures of an evidence bag fail to establish an adequate chain of custody where the custody where the custodians do not provide testimony under oath or produce sworn statements pursuant to Rule 6(b), SCRCrimP, id at 801, 584 S.E. 2d at 404.

Had trial counsel challenged and/or move to suppress the allege drugs, there is a reasonable probability that the outcome would have been different. Further, trial counsel could have preserved this issue for appeal. See Pulley v. State (2018)

4) Counsel was ineffective for failure to investigate the applicant's case.

Applicant contend that his counsel was ineffective because counsel never did investigate the case at all. Counsel's representation was not within the range and scope of competence relied upon.

The Sixth Amendment imposes a duty to investigate because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigative procedures are offered and made. An attorney's investigative decision must be assessed in light of the information known at the time of the decision, not in hindsight, and that the amount of pre-trial investigations work should be reasonable to defy precise measurements as it relates to the real evidence and the fantasy of the prosecutorial case. Strickland v. Washington, 466 U.S. 668. The Courts have therefore insisted that effective counsel conduct a reasonable amount of pre-trial investigation, not just obtaining what the solicitor offers you. Washington v. Watkins 655 F.2d 1346, 102 S. Ct. 2021; Davis v. Alabama, 596 F.2d 1214.

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when counsel fail to investigate and interview potential witnesses, and as a result has no reason to believe they would not be valuable in securing relief, his inaction is considered negligent rather than trial strategy. Workman v. Tate, 957 F. 2d 1339, 1345

5) Counsel failed to challenge the probable cause in applicant's case, thereby violating his 4th amendment rights.

6) Trial counsel failed to move to suppress the affidavit and search warrant in violation of the 4th Amendment and suppress allege drugs

The record in this case establish a reasonable probability that, but for counsel's errors, the applicant would not have pled guilty but would have insisted on going to trial, Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366

State of South Carolina
County of Aiken

Court of Common Pleas
Reviewing Authority

Randy Schultz
Applicant,

Indictment No. 201665020159
Indictment No. 201665020160

vs

State of South Carolina
Respondent

Motion To Suppress
S.C. Code Ann. 17-30-110

Now comes the applicant Randy Schultz in the above captioned case who move this Honorable Court to suppress all evidence garnered from an illegal control buy and the investigation by Investigator Gary Benfield of the Aiken County Sheriff and Narcotics office

To wit, Investigator Gary Benfield in violation of S.C. Code Ann. Section 17-30-70 and 17-30-80 did cause the applicant to be charged with Drugs/Distr. cocaine base 3rd or sub. offense x 2 Code Ann. 44-53-0375(B)(3), indictment No. 201665020159-60.

It would appear that the extent of Inv. Gary Benfield violations in this matter should extend to the scope to include but not limited to S.C. Code section 17-30-20 through 17-30-145. Furthermore, I was not aware, nor did my attorney make me privy to title 17-30 and/or the exclusive remedy for the violation of this chapter.

(1)

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In addition due to Investigator Gary Benfield breech of proper procedure and/or protocol as well as illegal actions, any and all evidence produced and seized in this matter by this Investigator should be suppressed and excluded from this case.

The following acts and omissions caused by Investigator Gary Benfield are as follows:

(1) Investigator Gary Benfield violated my Fourth (4th) Amendment right to privacy.

(2) Investigator Gary Benfield illegally garnered evidence in violation of Title 17, chapter 30 to include but not limited to subsection 70 (S.C. Code Ann. Section 17-30-70, by no application being processed and/or authorizing Order issuing for S.C. Code Ann. Section 17-30-80

(3) Investigator Gary Benfield illegally disclosed said evidence in violation of 17-30-75

(4) Investigator Gary Benfield also failed to report said evidence to the Administrative United States Court as outlined in 18 U.S.C.A. § 2519 and in violation of 17-30-130

(5) Investigator Gary Benfield failed to furnish and/or afford a copy of the court Order authorizing such actions against applicant and/or the application that was to have been processed

to obtain said court order under with interception would have been authorized in violation of 17-30-105, as is required by federal law; not less than ten (10) days prior to any hearing and/or not less than thirty (30) days prior to trial.

(6) Investigator Gary Benfield also acted against protocol of Federal Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (Act) as is codified in U.S.C.A. § 2510-2522

(7) Investigator Gary Benfield violated my 14th amendment right to due process by failing to adhere to these promulgated steps to obtain such authorization.

(8) Due to these violations and, illegal acts by Investigator Gary Benfield in this matter, he could be subject to prosecution pursuant to 17-30-20, prohibited acts, as a [illegible] of law.

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Conclusion

Therefore, the applicant would respectfully request this Honorable Court to suppress and exclude all garnered evidence in this case produced by Investigator Gary Benfield

Randy Schutt 10-1-18

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Dear Clerk,

Would you please stamp, clock and file the original and return the extra copy to me at your earliest

Thank Es

Randy Schultz
10-4-18

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Randy Schultz #298635
Perry Corr. Inst. Q-4-B-221
430 Oaklawn Rd.
Pelzer, S.C. 29669



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Liz Godard
Clerk of Court
P.O. Box 583
Aiken, S.C 29802

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STATE OF SOUTH CAROLINA COUNTY OFAIKEN Randy Schultz, SCDC #298635 Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT Case No.: 2018-CP-02-02395 **RETURN, MOTION FOR A MORE DFINITE STATEMENT, AND PARTIAL MOTION TO DISMISS**

In response to the post-conviction relief application filed October 12, 2018, by Applicant Randy Schultz, Respondent (the State) would show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. On February 1 and 17, 2016, Applicant sold crack cocaine to an undercover confidential informant at his residence in Beech Island, South Carolina. He was subsequently arrested for these crack cocaine distributions and indicted by the Aiken County Grand Jury for two counts of distribution of crack cocaine-third or subsequent offense (2016-GS-02-01059, -01060). Martin C. Puetz, Esquire, represented him on these charges. Deputy Solicitor Elizabeth B. Young of the Second Circuit Solicitor's Office prosecuted the case.

On December 5, 2017, Applicant's case was called to trial in the Aiken County Court of General Sessions before the Honorable Doyet A. Early, III, circuit court judge. Following jury selection, court was recessed for the day. On December 7, 2017, Applicant elected to forgo his jury trial and entered guilty pleas to both distribution indictments. During the plea, Applicant informed Judge Early he was pleading guilty because he was indeed guilty of distributing crack

cocaine, he was satisfied with the services of his attorney, he had not been pressured, coerced, or threatened to plead guilty, and that his guilty plea was freely and voluntarily entered. Applicant also addressed Judge Early and admitted his conduct was wrong. He told Judge Early he understood the sentencing range for each offenses, including the mandatory minimum sentence of ten years imprisonment, and that he would be required to serve at least eighty-five percent of his sentence before being eligible for early release on community supervision. Judge Early accepted Applicant's guilty pleas and sentenced him to concurrent terms of fifteen years imprisonment.

Applicant did not purse a direct appeal.

II. Allegations Raised and Relief Sought in Application

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

1. Involuntary guilty plea
2. Ineffective assistance of counsel
    a. "Trial counsel was ineffective for failure to interview the State's key witness (CI) on his behalf"
    b. "Counsel failed to challenge the chain of custody of the alleged drugs"
    c. "Counsel was ineffective for failure to investigate applicant's case"
    d. "Counsel failed to challenge the probable cause in applicant's case"
    e. "Counsel failed to move to suppress the affidavit and search warrant thereby violating applicant's 4th Amendment rights"
3. Motion to Suppress Pursuant to 17-30-110

As requested relief, Applicant states he is seeking a vacation of his sentence and a new trial.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, the plea transcript, and Applicant's

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

III. Response to Allegations of Involuntary Guilty Plea

Applicant asserts his guilty plea was involuntarily entered, however he fails to state with any specificity why his guilty plea was involuntary. The records from Applicant's plea proceeding fully support that Applicant's guilty plea was entered freely, voluntarily, and knowingly. This allegation is without merit.

In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging his or her guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985).

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of

cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Statements made during the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

In Applicant's case, the record fully supports the knowing and voluntary nature of Applicant's plea. Applicant indicated he understood the potential sentence for distribution of crack cocaine-third or subsequent offense, including the mandatory minimum sentence of ten years imprisonment and understood that it was a no-parole offense and he would be required to serve at least eighty-five percent of his sentence before being eligible for early release on community supervision. Applicant further indicated he understood all of her constitutional rights, including her right to a trial by jury. He also told the plea court he was pleading guilty freely and voluntarily.

Accordingly, the record conclusively refutes Applicant's allegation his plea was involuntary. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant also asserts his plea counsel was constitutionally ineffective for failing to interview the confidential informant, failing to challenge the chain of custody of the drugs, failure to investigate the case, failing to challenge the probable cause in Applicant's case, and failing to move to suppress the affidavit and the search warrant.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea

counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Failure to Investigate Applicant's case, including interviewing the Confidential Informant

Applicant asserts plea counsel was ineffective for failing to investigate his case, and specifically, for failing to interview the confidential informant. Applicant has failed to establish what impact, if any, this had on his case or his decision to plead guilty.

"Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary." Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014) (citing Strickland, 466 U.S. at 691). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to undertake a particular investigation should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Bagwell, 410 S.C. at 265, 763 S.E.2d at 633 (citing Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006)). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). "Counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions." Bagwell, 410 S.C. at 265, 763 S.E.2d at 634. (internal citations omitted). "[A] court deciding an actual ineffectiveness claim must judge the

reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690.

In the present case, the transcript reflects that both drug distributions were with an undercover confidential informant who was equipped with recording devices that captured the transactions. Additionally, during the plea proceeding, the prosecutor provided the plea court with still photographs from the recordings, which she describes as "extremely clear and extremely damming." (Tr. 31). Moreover, in mitigation, counsel explains to the plea court that Applicant admitted to distributing drugs to support his family after he was seriously injured in an automobile accident. (Tr. 34-36). Further, Applicant himself admits to the conduct, telling the plea court, "I know what I did was wrong." (Tr. 37). Based on the foregoing, it is completely reasonable that counsel may have decided that certain investigation, including interviewing the confidential informant, would have been fruitless in light of the strong evidence establishing Applicant's guilt and Applicant's ready admissions that he had distributed the drugs in question.

Failure to Challenge the Chain of Custody of the Drugs

Applicant asserts plea counsel was ineffective for failing to challenge the custody of the drugs. Applicant has failed to establish what impact, if any, this had on his case or his decision to plead guilty. Moreover, Applicant has failed to present any evidence to establish that the chain of custody was flawed in any manner.

Failure to Challenge the Probable Cause

Applicant asserts plea counsel was ineffective for failing to challenge the probable cause in his case. Applicant fails to provide any specificity as to what "probable cause" should have been challenged by counsel. Similarly, Applicant fails to set forth how this impacted his decision

to plead guilty. Without more information, it is impossible for Respondent to fully respond to this allegation.

Failure to Move to Suppress the Affidavit and Search Warrant

Applicant asserts plea counsel was ineffective for failing to "move to suppress the affidavit and search warrant thereby violating applicant's 4th Amendment rights." Applicant fails to provide any specificity as to what affidavits or search warrants counsel should have been challenged by counsel. Similarly, Applicant fails to set forth how this impacted his decision to plead guilty. Without more information, it is impossible for Respondent to fully respond to this allegation.

Respondent contends Applicant cannot meet his requisite burden of proof necessary for relief. However, the allegations of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V. Response to Motion to Suppress

Applicant also moves to suppress all evidence in his case pursuant to S.C. Code Ann. § 17-30-110. This is an improper motion that cannot be made in post-conviction relief, and accordingly, should be dismissed by the Court. See S.C. Code Ann. § 17-30-110 ("(A) Prior to any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, any aggrieved person may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the: (1) communication was unlawfully intercepted; (2) order of authorization or approval under which it was intercepted is insufficient on its face; or (3) interception was not made in conformity with the order of authorization or approval.")

VI. Motion for More Definite Statement

For several of Applicant's allegations of ineffective assistance of counsel or involuntary guilty plea, Applicant fails to set forth with specificity the facts and circumstances upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must ". . . specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to these allegations. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Response to Any and All Other Allegations

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

IX. Request for an Evidentiary Hearing

WHEREFORE, having made its return, the State requests an evidentiary hearing be held on the issues of ineffective assistance of counsel and involuntary guilty plea after applicant, through his counsel, amends the application to provide the required specificity for each allegation.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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

Feb. 4, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2018-CP-02-02395
	)	
RANDY SCHULTZ, #298635,	)	
	)	
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, Motion for a More Definite Statement, and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken, Esquire
Aiken & Hightower
2231 Devine Street, Suite 201
Columbia, South Carolina 29205

DATED this the 4th day of February 2019.

Kaitlyn S. Slice, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Randy Schultz #298635, Applicant vs. State of South Carolina, Respondent.	Case No.: 2018-CP-02-2395 **AMENDMENT TO PCR APPLICATION**

The Applicant, Randy Schultz (Schultz) , amends his PCR Application filed in the above captioned case as follows:

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

Schultz amends his response to item 10 to add the following:

a. Ineffective assistance of trial counsel

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

Schultz amends his response to Item 11 to add the following:

a. Ineffective assistance of trial counsel

i. Schultz's guilty plea was not made with or based on advice of competent counsel.

ii. Schultz's guilty plea was not intelligently made.

iii. Trial counsel did not prepare Schultz's case for trial, and Schultz was left with no choice but to plead guilty.

iv. Trial counsel did not discuss the elements of the offense or potential defenses with Schultz.

v. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Schultz so that Schultz could make an informed choice of whether to enter a plea or try his case.

vi. Trial counsel did not investigate Schultz's case.

vii. Trial counsel did not tell Schultz the possible penalty for his offense.

viii. Schultz asked trial counsel to appeal from his guilty plea, but trial counsel never filed an appeal.

ix. Trial counsel never investigated whether the CI in his case was authorized by any law enforcement agency to serve as a CI.

x. Trial counsel never interviewed the CI.

xi. If trial counsel did not know the identity of the CI, then trial counsel was ineffective for failing to move to compel the State to reveal the identity of the CI

xii. Trial counsel did not challenge the admissibility of the evidence secured by execution of a search warrant.

xiii. Trial counsel never reviewed the evidence with Ford.

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

Schultz amends his response to Item 19 to state the following:

Order vacating conviction and sentence.

Furthermore, Schultz requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues

arise during the hearing that have not been specifically addressed in the Application or this Amended Application.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

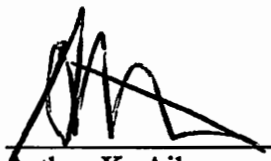
BY: _____

ARTHUR K. AIKEN
2231 Devine Street, Suite 201
Columbia, SC 29205
Phone: 803-799-5205
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Email: art@aikenandhightower.com
ATTORNEYS FOR APPLICANT

Columbia, South Carolina
May 6, 2019

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Randy Schultz #298635 Applicant, vs. State of South Carolina Respondent.	Case Number: 2018-CP-02-2395 **CERTIFICATE OF SERVICE**

I certify that on May 6, 2019, I served the Applicant's Amendment to PCR Application in this case on the government by delivering a copy of the Amendment to the Office of the Attorney General by mail addressed to Assistant Attorney General Jacob A. Isenberg, PO Box 11549, Columbia, SC 29211.



Arthur K. Aiken
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Columbia, South Carolina
May 6, 2019

State of South Carolina)
)
County of Aiken)

In the Court of Common Pleas
Second Judicial Circuit
2018-CP-02-02395

Randy Schultz,

Applicant,

vs.

State of South Carolina,

Respondent.

Transcript of Record

January 21, 2020
Aiken, South Carolina

B E F O R E:

The Honorable Courtney Clyburn Pope, Judge

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

Arthur K. Aiken, Esquire
Attorney for Applicant

Brianna L. Schill, Assistant Attorney General
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM, RVR
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter

I N D E X

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E X H I B I T S

NO.	DESCRIPTION	I.D.	EVID.
P-1	Informant Agreement	17	
P-2	SLED Use of Informant Policy	18	
P-3	Chain of Custody/Drug Analysis	21	23
P-4	Chain of Custody/Drug Analysis	23	25

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:01 a.m.)

THE COURT: All right. We have some PCRs scheduled for today. We have all of our parties in attendance?

MS. SCHILL: Yes, Your Honor. For the first case, we do.

THE COURT: All right. And that is Mr. Schultz?

MS. SCHILL: Correct, Your Honor.

THE COURT: Okay. Very good.

MS. SCHILL: Okay.

THE COURT: Go ahead.

MS. SCHILL: May it please the Court? The first case is *Randy Schultz v. the State of South Carolina*. And that's Case No. 2018-CP-02-2395. Mr. Schultz is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Schultz was indicted by Aiken County Grand Jury for two counts of distribution of crack cocaine, third or subsequent offense.

Martin Puetz, Esq., represented Mr. Schultz on these charges. Deputy Solicitor Elizabeth Young of the Second Circuit Solicitor's Office prosecuted the case. On December 5th, 2017, Mr. Schultz's case was called to trial in the Aiken County Court of General Sessions before the Honorable Doyet A. Early, III.

Following jury selection, court was recessed for the day. On December 7th, 2017, Mr. Schultz elected to forgo his jury trial and enter guilty pleas to both distribution indictments. Judge Early accepted applicant's guilty plea and sentenced him to concurrent terms of 15 years' imprisonment.

Mr. Schultz did not pursue a direct appeal. Mr. Schultz timely filed this PCR application on October 12th, 2018. Mr. Schultz filed an amended application on May 6th, 2019, alleging the following: (1) Schultz's guilty plea was not made with or based on advice of competent counsel; (2) Schultz's guilty plea was not intelligently made; (3) Trial counsel did not prepare Schultz's case for trial and Schultz was -- was left with no choice but to plead guilty; (4) Trial counsel did not discuss the elements of the offense or potential defenses with Schultz.

(5) Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Schultz so that he could make an informed choice of whether to plead or to try his case; (6) Trial counsel did not investigate his case; (7) Trial counsel did not tell Schultz the possible penalty for his offense.

(8) Schultz asked trial counsel to appeal from his guilty plea, but trial counsel never filed an appeal; (9)

Trial counsel never investigated whether the C.I. in this case was authorized by any law enforcement agency to serve as a C.I.; (10) Trial counsel never interviewed the C.I.

(11) If trial counsel did not know the identity of the C.I., then trial counsel was ineffective for failing to move to compel the state to reveal the identity of the C.I.; (12) Trial counsel did not challenge the admissibility of the evidence secured by execution of a search warrant; and finally, (13) Trial counsel never reviewed the evidence.

And applicant is present today and represented by Mr. Art Aiken, Esq. And I would just ask that Mr. Aiken clarify what allegations they plan on going forward with today, Your Honor.

THE COURT: All right. Mr. Aiken?

MR. AIKEN: There were some allegations with some citations of authority in the original PCR application. And I believe that all of those are covered by what has been gone over by Ms. -- Ms. Schill.

THE COURT: All right. Mr. Aiken, are you planning to go forward on all of the allegations ---

MR. AIKEN: I -- I ---

THE COURT: --- as ---

MR. AIKEN: --- do, Your Honor.

THE COURT: All right. All right. Very well. Okay.

Are you ready to present your case ---

MR. AIKEN: I ---

THE COURT: --- sir?

MR. AIKEN: --- I -- I am, Your Honor.

THE COURT: All right. Let's go forward.

MR. AIKEN: The applicant calls Randy Schultz.

(Whereupon, the witness came forward.)

RANDY SCHULTZ, having been first duly sworn, testified as follows:

DEPUTY CLERK OF COURT: Please take a seat in the witness box and state your full name for the Court.

THE WITNESS: My name is Randy Schultz.

THE COURT: Mr. Schultz, speak up just a little bit, okay?

THE WITNESS: My name is Randy Schultz.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. AIKEN:

Q Mr. Schultz, are you the Randy Schultz who's brought this postconviction-relief application?

A Yes, sir.

Q Now, you pled guilty in Aiken County; is that correct?

A Yes, sir.

Q And you pled guilty to two counts of distribution of crack cocaine, third or subsequent offense?

A Yes, sir.
Q Is that right?
A Yes, sir.
Q And I think -- didn't you also plead to failure to stop for a blue light?
A Yes, sir.
Q Okay. And following the plea, you got a three-year sentence on the failure to stop for a blue light, right?
A Yes, sir.
Q And you got a 15-year sentence on one distribution of crack, correct?
A Yes, sir.
Q And then, you got another 15-year sentence for distribution of crack, right?
A Yes, sir.
Q And were all those sentences run concurrent?
A Yes, sir.
Q So in other words, right now what you're, in effect, serving is 15 years?
A Yes, sir.
Q Okay. Now, I just need to make sure you understand this. Failure stop for a blue light, you -- do you understand that that carries 90 days to three years?
A Yes, sir.
Q Okay. Now, distribution of crack, third or subsequent

offense, do you understand that that carries 10 to 30 years?

A Yes, sir.

Q Okay. And so the second of crack, third or subsequent offense, would also carry 30 years, right?

A Yes, sir.

Q So if everything were run consecutive, you could end up with a 63-year sentence; is that ---

A Yes.

Q --- right?

A Yes, sir.

Q Okay. Now, you understand that if you win your PCR, this whole guilty plea and your sentence gets unwound, right?

A Yes, sir.

Q Okay. Do you understand, when that happens, you go back to where you were before ---

A Yes, sir.

Q --- facing the original charges?

A Yes, sir.

Q Facing that 63 years, potentially?

A Yes, sir.

Q And understanding all that, you still want to go forward with your PCR?

A Yes, sir.

Q Okay. Now, one of your allegations is that your guilty plea was involuntary. Tell me -- tell me what you mean by that. Why was your guilty plea involuntary?

A My plea was involuntary made according to *Hill v. Lockhart*, 474 U.S. 52, 1985. A plea should be intelligent and voluntarily made. Had I been properly informed, I would have continued my trial.

My claim is for ineffective assistance of counsel. My counsel wasn't effective for failure to investigate my case. Because my counsel failure -- counsel failure denied me my right to a fundamental fair trial. But counsel was ineffective for challenge -- for failure to challenge the chain of custody of the allege drug and fund.

Counsel was ineffective for failure to challenge the probable cause of my case. Counsel failed to move to press [sic] the affidavit and search warrant, thereby violating my Fourth Amendment right.

Trial counsel was ineffective for filing -- for not filing a motion to persist -- to -- to suppress -- suppress this pursuit [sic] to 17-30-10 -- 110. Trial counsel was ineffective for failure to interview the state key witnesses/C.I. on my behalf. *Strickland v. Washington*, 466 U.S. 668 104, ineffective assistance of counsel due to my attorney failing to interview the state key witness before advising me to plead guilty. If my case had gone to trial,

rather than to a guilty plea, the key witness, the C.I., could have changed the outcome or at least changed my decision to plead to this charge. This prejudiced -- prejudiced me and the outcome of my case.

THE APPLICANT: Next, Your Honor, I would like to submit this to the record, this indictment -- exhibit I have.

THE COURT: All right. Mr. Schultz, what we'll do is your attorney is handling your case.

THE APPLICANT: Uh-huh.

THE COURT: And so if he wishes to present that, it's proper for him to present that ---

THE APPLICANT: Oh, okay.

THE COURT: --- as -- as evidence.

(To the bailiff) Is his microphone on?

THE BAILIFF: It's lit up green.

THE COURT: Is it green? Okay.

All right. Mr. Schultz, just make sure -- you're doing a great job. Please make ---

THE APPLICANT: Uh-huh.

THE COURT: --- that you're speaking clearly.

THE APPLICANT: Oh, okay.

THE COURT: I want to make sure that everyone has the opportunity to hear you ---

THE APPLICANT: Okay.

THE COURT: --- to participate, okay?
THE APPLICANT: I'm sorry about that.
THE COURT: All right.
DEPUTY CLERK OF COURT: Try it again.
THE BAILIFF: It's lit up green, but ---
THE APPLICANT: Hello?
MS. SCHILL: I can't really hear.
THE COURT: I -- I -- I'm having a hard time hearing ---
DEPUTY CLERK OF COURT: Yeah. Try ---
THE COURT: --- Mr. Schultz ---
DEPUTY CLERK OF COURT: --- it now.
THE COURT: --- as well.
DEPUTY CLERK OF COURT: Talk into it now.
THE APPLICANT: Hello? Hello? You want me to start over?
THE COURT: No. I was able to hear your first testimony. Just give us one second. Let us see if we can get your microphone working correctly.
DEPUTY CLERK OF COURT: Try it now.
(Off the record briefly.)
THE COURT: There we go. All right. And so, Mr. Schultz, because your microphone is now working, you don't need to lean into it.
THE APPLICANT: Oh, okay.

THE COURT: We don't want you to yell it.

THE APPLICANT: Okay.

THE COURT: But you're doing a fine job. Just continue to answer your attorney's questions and speak into the microphone, okay?

Q You -- you mentioned something about preparation of your case for trial. What -- what would you have had Mr. Puetz do to prepare your case for trial that he did not do?

A Well, I would see -- see was the C.I. registered as an informant. And I have documents showing that she was not registered through the solicitor's office. And she have to be authorized by SLED, initiated by the SLED attorney general -- assistant attorney general, or the jurisdiction of a judge.

Q What -- what else would you have had him do, by way of preparing your case for trial?

A I would have him challenge the chain of custody of the drugs and fund.

Q Anything else you would've had him do, by way of preparing your case for trial?

A Yes, sir. I would -- what else? I would -- I would -- I would -- would -- wish he would've filed a motion to see was the C.I. registered.

Q What about suppression?

A Suppress -- 17-31-10?

Q What's that about?
A See, in probably any trial or any hearing -- proceedings before any court document, officer, any regular body of authority an aggrieved person may move to suppress the contents of intercepted wire or electronic communication of evidence deprived from on the grounds that the communication was unlawfully intercepted, the order or authorization, or approval which it was intercepted is -- is sufficient on its face.
Q Was there any wiretapping in your case?
A Yes, sir.
Q What -- what was the wiretapping?
A She had wore a wire.
Q She wore a wire?
A Yes, sir.
Q That recorded ---
A Yeah.
Q --- your conversation?
A Yes, sir.
Q And in your mind, that's wiretapping?
A Yes, sir.
Q And that -- that's governed by that statute concerning SLED and wiretapping?
A Yes, sir.
Q Okay. Now, did -- did Mr. Puetz review the elements

of a failure to stop for a blue light and distribution of crack cocaine with you? Did he explain to you what you had to have done to have committed that -- those offenses?

A No, sir.

Q Did -- did you discuss with Mr. Puetz any potential defenses you might have?

A No, sir.

Q Did Mr. Puetz advise you about the advantages and disadvantages of a plea, as compared to the advantages and disadvantages of a trial?

A Yes, sir.

Q Did Mr. Puetz explain to you that you had a right to a trial, where a jury would have to find you guilty beyond a reasonable doubt and their verdict would have to be unanimous?

A Yes, sir.

Q Did Mr. Puetz tell you the possible penalties for the offenses? In other words, what kind of sentences you could get?

A Yes, sir.

Q Did you discuss with Mr. Puetz any potential appeal from your guilty plea?

A I've -- I've tried to tell him to do something, but that -- that was it.

Q Well, specifically, did you -- did you discuss with

Mr. Puetz an appeal from your conviction and sentence following your plea?

A No, sir.

Q Did you ever do that at any time within ten days of your guilty plea?

A Well, yes, sir, I did. Because I had -- he didn't mention about the house arrest or none of that. So he had to go back and get a reconsideration.

Q But did you ever discuss an appeal from your sentence and ---

A No, sir.

Q --- conviction?

Did -- did Mr. Puetz know the identity of the C.I.?

A I -- no ---

Q Did he know who the C.I. was?

A No, sir.

Q Did he ever file a motion to have the government disclose the identity of the C.I.?

A No, sir.

Q Now, you mentioned something about chain of custody, challenging the chain of custody. What -- what was wrong with the chain of custody?

A Well, we have two investigators doing the -- a buy with the chain of custody. And you have one officer submitting this drugs to the analyst on the chain of

custody.
Q So ---
A And ---
Q --- is it your understanding that both of the officers involved in seizing the drugs have to do a chain-of-custody form?
A Yes, sir.
Q It was not sufficient to have just one officer?
A No, sir.
MR. AIKEN: If I may have just one moment, Your Honor.
THE COURT: Yes.
(Off the record briefly.)
MR. AIKEN: I -- I'm going to refer to the top, where it has an exhibit number.
MS. SCHILL: Okay.
MR. AIKEN: I'm at B -- Exhibit B.
MS. SCHILL: B?
MR. AIKEN: Yeah.
MS. SCHILL: Okay.
MR. AIKEN: Okay.
THE COURT REPORTER: Mr. Aiken, I'll mark this Petitioner's Exhibit 1.
MR. AIKEN: That'll be great.
(Whereupon, Petitioner's Exhibit 1 was marked for identification.)

Q Mr. Schultz, I'm showing you what's been marked Petitioner's Exhibit 1.
A Uh-huh.
Q Can you -- can you tell the Court what that is?
A This is a informant agreement.
Q All right. Is that the informant agreement with the C.I. in your case?
A Yes, sir.
Q All right. So how -- did you get this from Mr. Puetz?
A Yes, sir.
Q Okay. Yeah. It looks like the name of the informant is on here, but I will not put her on the record.

MR. AIKEN: I move to mark this as -- I mean, to enter this as Exhibit 1.

MS. SCHILL: Your Honor, I actually would object. I'm not sure how it's relevant (a); and (b) it can't be authenticated. We don't have this individual here. I don't know how he could speak to its validity.

THE COURT: I agree.

MR. AIKEN: All right. (To the court reporter) You can mark this as Exhibit 2.

(Whereupon, Petitioner's Exhibit 2 was marked for identification.)

MR. AIKEN: Exhibit C. You ready? Brianna, you ready?

MS. SCHILL: I'm sorry?

MR. AIKEN: You ready?

MS. SCHILL: Yeah.

MR. AIKEN: Okay.

Q I'm showing you what's been marked Petitioner's Exhibit No. 2. And can you tell me what that is?

A This right here is a (as read): "South Carolina Law Enforcement Division, 440 [sic] Broad River Road, Columbia, South Carolina 2982 -- 2920 -- 10: The Use of Informants in Investigation."

Q All right. And how does that have anything to do with your case?

A The -- well, this is right here showing how she received special consideration and she was signed up as an informant back in 2007. It says she was signed up as informant 2007. So how she got special legal consideration and she reach the agreement?

Q All right. How -- how did she get special consideration?

A About getting pulled -- once she got pulled over, she got her charges dismissed.

Q All right. And -- yeah. Let me see that.

A (Complied.)

Q And is it your position that the government violated this publicity?

A Yes, sir.
Q In what way?
A By the -- giving her special legal consideration. And it says it on this form -- I mean, on this agreement: If you get caught doing anything illegal, you will not receive any special legal consideration. If you'll ---
Q Okay.
A --- go to page ---
Q Are -- are you talking about ---
A --- an informant ---
Q --- a traffic stop that happened before she had an encounter with you?
A Yes, sir.
Q And she was not prosecuted on that?
A No, sir.
Q Okay.

MR. AIKEN: I move to admit this as Petitioner's Exhibit 2.

MS. SCHILL: Your Honor, I do have some objections: (1) still based on relevance; (2) same thing with authentication. We don't have anyone from SLED here. To my knowledge, SLED was not involved in this case.

So yeah. It can't be authenticated. And once again, we don't have this individual here. And it seems like a whole lot of speculation on the applicant's part.

THE COURT: I agree. I don't see the relevance in that. And so it -- it will not be entered in.

MR. AIKEN: Can you mark those two.

THE COURT REPORTER: Mr. Aiken, you want these marked separately?

MR. AIKEN: Together, please.

THE COURT REPORTER: Okay.

(Whereupon, Petitioner's Exhibit 3 was marked for identification.)

MR. AIKEN: This is Exhibit F. Actually, I've got F and G together.

MS. SCHILL: Okay. Hold on a second. I'm sorry. What is F? I see G.

(Whereupon, Ms. Schill and Mr. Aiken conferred.)

Q Now, you mentioned something about chain of custody. And refresh my memory. What -- what was wrong with the chain of custody?

A We have two different investigators doing a -- a controlled buy with this C.I. And then, you have one investigator submitting it to the analyst. And then, we don't have no custodian form to or from the analyst.

Q So was one investigators, Investigator Benfield?

A Yes, sir.

Q Okay. I'm showing you what's been marked Petitioner's Exhibit 3. What -- what are -- what are those two

documents?
A These are the chain-of-custody form. You have two different investigator. And one -- one investigator's name is on the analyst -- given it to analyst department.
Q Only Investigator Benfield?
A Only Investigator Benfield.
Q And the second page of Exhibit 3, is that the actual drug analysis?
A Yes, sir.
Q Okay. And what -- what's wrong with that?
A Well, we have Investigator Benfield now. And then, on the other one -- well, he's on both of them. And then, you have two investigators on the chain of custody.
Q Did you have it going from Benfield to somebody else and then to the analyst, or Benfield and the other officer did not sign it over to the analyst?
A They did not sign it over to the analyst.
Q In other words, both of them didn't sign it over to the analyst?
A Uh-huh.
MR. AIKEN: Your Honor, I move to admit this as Petitioner's Exhibit 3.
THE COURT: Any objection?
MS. SCHILL: Yes, Your Honor. Once again, I'm going to object on relevance and also can't authenticate it. We

don't have any of the individuals from the sheriff's office here. Seems like a lot of it is speculation on the applicant's part, once again.

THE COURT: I'm going to allow -- I'm going to overrule. I'm going to allow this -- this particular exhibit to come in.

(Whereupon, Petitioner's Exhibit 3 was entered into evidence.)

(Whereupon, Petitioner's Exhibit 4 was marked for identification.)

Q Mr. Schultz, I'm showing you what's been marked Petitioner's Exhibit No. 4.

A Uh-huh.

Q Can you tell me what that is?

A That's the chain-of-custody form ---

Q All right.

A --- from, I guess, Investigator Phillip Anders.

Q All right. And what -- was that -- was that different items on the two chain-of-custody forms?

A Different investigator.

Q Different investigator or different items? Let me see.

A (Complied.)

Q So one -- one, Exhibit 3, would've been February the 1st of 2016, right?

A Uh-huh.
Q And then, Exhibit 4 would be February 17th, 2016?
A Uh-huh.
Q Were those different ---
A Yes, sir.
Q --- interactions?
A Yes, sir.
Q Okay. And Phillip Anders signed the chain -- or -- or executed the chain-of-custody form. Is the problem that Benfield didn't also sign the form?
A Yeah. Benfield signed the form. Why is it Phillip Anders is not on this analyst that's -- giving it to the analyst.
Q As producing it to the analyst?
A Uh-huh.
Q Which would be the second page of Exhibit 4?
A Yes, sir.
Q I see. So essentially, the same problem as the other chain of custody on the drugs, Exhibit 3?
A Yes, sir.
Q Same problem with Exhibit 4?
A Yes, sir.
Q Okay.
MR. AIKEN: I move to admit Petitioner's Exhibit 4.
THE COURT: Any objection?

MS. SCHILL: I'm sorry. I don't have numbers on mine. So ---

MR. AIKEN: Oh, I apologize.

MS. SCHILL: No. That's okay.

MR. AIKEN: It's I and K.

MS. SCHILL: Yes, Your Honor. Just for the record, I'd object with the same objections as before: relevance and the authentication issues. We don't have anyone from the sheriff's office here.

THE COURT: All right. Very well. Overruled. And I'll allow that exhibit to be entered in.

(Whereupon, Petitioner's Exhibit 4 was entered into evidence.)

MR. AIKEN: I think 1 and 2 were -- the objection was sustained. And then, 3 and 4 are -- are actually in ---

THE COURT: That's correct.

MR. AIKEN: --- in evidence. Okay.

THE COURT: That's correct.

MR. AIKEN: Okay. May I have just one moment, please ---

THE COURT: Yes.

MR. AIKEN: --- Your Honor?

THE COURT REPORTER: Mr. Aiken?

MR. AIKEN: Yes.

THE COURT REPORTER: I still need those.

MR. AIKEN: I'm going to give them to you.

THE COURT REPORTER: Okay.

MR. AIKEN: There you are.

THE COURT REPORTER: Thank you.

(Off the record briefly.)

MR. AIKEN: That's all I have, Your Honor.

THE COURT: All right. The state has any cross-examination?

CROSS-EXAMINATION

BY MS. SCHILL:

Q Mr. Schultz, how are you doing?

A All right.

THE COURT: I can -- I can hear you.

MS. SCHILL: Is it on?

THE COURT: It is.

DEPUTY CLERK OF COURT: It should be. Yeah. It is.

MS. SCHILL: Okay. All right.

Q How many times did you meet with Mr. Puetz prior to the start of your trial and ultimately your guilty plea?

A Over probably about three times.

Q Three times?

A (No audible response.)

Q Were those in-person meetings, or did you meet over the -- or did you talk over the phone or ---

A Person.

Q All right. Did Mr. Puetz review the discovery with you, the evidence that the state had against you?
A Yes, sir. Yes, ma'am.
Q Okay. And did he discuss the elements of each of those crimes that you were charged with?
A Not at the time.
Q No?
A (No audible response.)
Q Did he discuss the defenses to the charges you were charged with?
A Not at the time.
Q No?
A (No audible response.)
Q Did he -- did Mr. Puetz discuss the advantage -- advantages and disadvantages of pursuing with your trial, as opposed to pleading guilty?
A No. No, ma'am.
Q All right. Do you recall giving up your constitutional rights when you pled guilty?
A Yes, ma'am.
Q You do?
A (No audible response.)
Q Okay. Do you recall telling the judge, when you ultimately pled guilty, that you had not been treated for any mental disability?

A Yes, ma'am.
Q Yes?
A (No audible response.)
Q Okay. Do you recall telling the judge you were not threatened or coerced into pleading guilty?
A Yes, ma'am.
Q Yes?
A (No audible response.)
Q Do you recall telling the judge that you were not promised anything in exchange for pleading guilty, other than your sentence?
A Say that again?
Q Do you recall telling the judge that you weren't -- you weren't promised anything in exchange for pleading guilty, other than, you know, the sentence you were receiving under the terms of your plea agreement?
A Yes, ma'am.
Q Okay. And do you recall telling the Court on two different occasions during your guilty-plea hearing that you were satisfied with counsel? That you were satisfied with your counsel's representation of you in your case?
A Yes, ma'am.
Q Yes?
A (No audible response.)
Q Okay. Do you recall telling the Court that you had

enough time to speak with counsel regarding your case?
A Yes, ma'am.
Q Yes?
A (No audible response.)
Q Okay. Do you recall telling the Court that you didn't want Mr. Puetz to do anything else for you regarding your case before the Court accepted your guilty plea?
A No, ma'am.
Q You don't recall that?
A No, ma'am.
Q Okay.
MS. SCHILL: May I approach, Your Honor?
THE COURT: Yes.
MS. SCHILL: Okay.
Q I'm just going to hand you a copy of your transcript. This is from your guilty-plea hearing. So I'll hand that to you. And I'll just ask you to turn to page 25. And the part I'm specifically referencing to with this question is starting on line 18. And the Court says (as read): "Is there anything else you want him to do for you today before we move forward, other than speak on your behalf?"
And how did you reply? Your reply is on line 21.
A No, sir.
Q Okay. Do you recall telling the judge at your guilty-plea hearing that you were pleading guilty because you

were, in fact, guilty?
A Yes, sir.
Q I'm sorry?
A Yes, ma'am.
Q Yes?
A (No audible response.)
Q Okay. Do you recall telling the judge you were pleading guilty on your own free will?
A Yes, ma'am.
Q Okay. And regarding your -- I believe you testified earlier that you did not discuss an appeal with Mr. Puetz; is that correct? Is my memory correct?
A Yes, ma'am.
Q Okay. So you did not -- so you didn't ask him to file an appeal for you at all?
A Because, you know, right at the time, I didn't know I can do an appeal. So I didn't ask him, so he was ---
Q Okay.
A So I asked him -- so I asked him to -- to -- I had -- what -- what about my -- he went back and got a reconsideration about -- about house arrest.
Q Okay. On what basis do you now want an appeal?
A What basis?
Q Yeah. Like, why do feel you deserve an appeal?
A Because I wasn't -- he -- I feel like he didn't

investigate my case.
Q Okay.
MS. SCHILL: Beg the Court's indulgence, Your Honor.
THE COURT: All right.
(Off the record briefly.)
MS. SCHILL: Those are all the questions I have.
THE COURT: All right. Any redirect?
MR. AIKEN: Just very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. AIKEN:
Q Mr. Schultz, have you been studying up on the law since you've been in prison?
A Somewhat. Yes, sir.
Q Do you feel like you have a better understanding of it than you had at the time you made your guilty plea?
A Yes, sir.
Q If you had understood the law, as you understand it now, back when you pled guilty, would you have said you were satisfied with your lawyer?
A No, sir.
Q Thank you.
THE COURT: Any recross?
MS. SCHILL: No, Your Honor. Thank you.
THE COURT: All right. This witness may step down. Thank you, Mr. Schultz.

(Whereupon, the witness exited the witness stand.)

THE COURT: Mr. Aiken, do you have any further witnesses to present?

MR. AIKEN: Nothing -- nothing further from the applicant, Your Honor.

THE COURT: All right. You're -- are you resting at this time?

MR. AIKEN: Yes, Your Honor.

THE COURT: Okay. All right. State's case?

MS. SCHILL: Yes, Your Honor. The state would call Mr. Marty Puetz.

THE COURT: Very well.

(Whereupon, the witness came forward.)

MARTIN PUETZ, having been first duly sworn, testified as follows:

DEPUTY CLERK OF COURT: Please take a seat in the witness box and state your full name for the Court.

THE WITNESS: Martin Charles Puetz.

DIRECT EXAMINATION

BY MS. SCHILL:

Q Hi, Mr. Puetz. Thanks for coming in today. How long have you been practicing law?

A Forty-one years.

Q How much of that has been in criminal law?

A The -- about 50 percent of my practice is criminal

defense.

Q Okay. How did you become involved in Mr. Schultz's case?

A Randy, to my recollection, came in and retained me. Once -- well, or maybe his wife did, because he was in custody. And initially, his bond was denied and we filed a motion and had a hearing in front of the general-sessions-court judge and got him a bond. So it would've been his wife, I believe, that would've came in and retained me before he got out on bond.

Q Okay. How many times did you meet with Mr. Schultz?

A I don't have an exact record of the number of times. But I -- it's my recollection that we met five to seven times.

Q Okay. I -- I'm assuming by meet, you -- you mean meet in -- you met in person?

A Yes.

Q Okay. Did you ever talk to him over the phone, or was it solely in-person meetings?

A We primarily met in person.

Q Okay. Did you discuss the elements and defenses of the charges with Mr. Schultz?

A On -- yes. We went over the charges that were made on February 1st of 2016, February 17th of 2016. He was charged with distribution, third offense, crack cocaine.

And we did, in fact, discuss that he had to -- the state must prove that he knowingly sold crack cocaine to the individual that approached him on February 1st and February 17th.

Q Okay. I ---

A Willfully ---

Q --- know you ---

A --- knowingly distributed it.

Q Okay. I know you kind of just gave a brief synopsis. But could you give sort of a summary of the facts for the Court?

A Well, this young lady -- or lady, Marsha Kim Bell, was the informant. Randy had told me initially that it was his belief that her name was Miranda. At some point in time -- I think it was in August of 2017, while Randy was out on bond -- we learned that her name was Marsha Kim Bell.

He actually told me that Marsha had had a relationship with his father-in-law and he knew who her boyfriend was. And so we knew who she was by August of 2017.

Q Okay. Thank you. Let me come back to the C.I. stuff soon. But can you sort of discuss your investigation of Mr. Schultz's case?

A Well, the investigation was primarily short-circuited, for want of a better term, once we saw the videos and the still photographs from each of the sales. Randy, on either

February 1st or February 17th, actually pulled out a bag of crack cocaine and got a small piece out and handed it to Marsha Kim Bell, who was standing right in front of him. She was wearing a video-recording device. To my recollection, there was no audio to it.

But you could see her driving up into his yard. He was sitting out on the back steps of the porch area. She approached him; gave him some money. He -- he pulled out this bag and got a small piece of crack cocaine and handed it to her, and then she went back to her car and left.

Q Okay.

A So, I mean, once we found out who she was, saw that they had analyzed the pieces of whatever it was he handed to her, and it came back that it was crack cocaine, that was about the extent of the investigation.

Q Uh-huh.

A So if she was here in December -- on December 7th of 2017 when we selected the jury, it was going to be a tough hustle, I thought -- and I explained that to Randy. Randy at that point in time was in custody. He had -- was supposed to be here -- I think it was in August or September of 2017. He fled, and he ultimately got picked up on -- for a bond violation and was held at the Aiken County Detention Center.

Q Okay.

A And I went over there and saw him. I have a recollection of seeing him at least one time for an hour or an hour and a half at the detention center, going over the information we had about Marsha Kim Bell.

Q Okay. Could you go through a -- a little bit about the -- the plea-offer history? Because from my understanding, you guys proceeded to trial, but it wasn't until after jury selection, he ultimately decided to plead guilty. So how did that plea offer come about?

A I don't think it -- I think we -- we pretty much pled straight-up, except that there was an agreement that there was going to be a recommendation of concurrent treatment. And, you know, the state, at one point in time, was asking for 20 years. And I'm not exactly sure how we were able to get it down to 15 years. But the judge -- that's the sentence he imposed.

Q Okay. So whenever you had -- you broke for the day after the jury selection and Mr. Schultz decided he wanted to plead guilty, what was that conversation with him like? What occurred during that conversation?

A I -- I don't really recall it in -- in depth. But I believe that Randy, realizing that Marsha Kim Bell was going to be available to testify, that that made his decision -- or it was based upon that that he decided to go ahead and enter a guilty plea.

Q Okay. Whose decision is it ultimately to plead guilty or go to trial, you or the client's decision?

A It's -- it's a client's decision.

Q Okay.

A I mean, I had, you know, the voir dire. We selected the jury. I had the request to charge prepared. So it would've been -- I mean, I was prepared to try the case if I had to.

Q Okay. Do you think it was in his best interests to plead guilty?

A I do.

Q Okay. Did you -- I guess we'll talk a little bit now about his right to appeal. I think -- I'm sure you heard his testimony earlier. It says you guys did not discuss the appeal.

A I have no recollection that I did discuss with him his right to appeal. One thing that we did -- that I did do, after he had pled guilty, I learned that you could, in fact, possibly get credit for the time that you had been out on electronic monitoring.

I filed a motion to reconsider the sentence, asking Judge Early to enter an order giving him credit for the 482 days that he had been out on electronic monitoring. And the judge took the motion under advisement and ultimately entered an order giving him credit for the 482 days.

Q Okay.
A But I don't think, in all candor, that I told him he has a right to appeal.
Q Okay. Did you see any possible meritorious issues for appeal?
A I did not.
Q Okay. Sitting here today, do you see any possible meritorious legal issues for appeal?
A No, ma'am.
Q Okay.
A That's my opinion, but ---
Q Okay. I'm sorry. I'm going back a little bit. But I'm just going to hand you these exhibits that the applicant -- I'm not sure what numbers they were. So ---
MR. AIKEN: She -- she should have all of them.
MS. SCHILL: Okay.
Q They were -- it's just Exhibits 1 through 4. These are the two chain-of-custody documents.
A Yes, ma'am.
Q Yeah. Those -- those are the ones. Have you seen those before?
A Yes, ma'am.
Q Okay. And you reviewed them?
A Yes.
Q Did you see anything wrong with the chain of custody

for the drugs in this case?
A No, ma'am, I didn't.
Q Okay. And just to make it clear for the record, so he was charged with distribution stemming from two different incidents; is that correct?
A That's correct. One ---
Q Okay.
A --- one ---
Q So that would explain why there's two different signatures; is ---
A Yes.
Q --- that right? Okay.
A Yes.
Q Okay.
MS. SCHILL: Beg the Court's indulgence, Your Honor.
THE COURT: Okay.
(Off the record briefly.)
Q Did you watch the video, or were you just given the still shots?
A I believe that we both were allowed to see the video here. I can't swear to that. But I do know I -- I had watched it at some point in time. Because like I said, you could see Randy take out the bag of crack and give a small piece to the lady, Marsha Kim Bell.
Q Okay. And both videos for both of the incidents ---

A Yes.
Q --- you saw them? Okay.
Okay. And I -- I apologize if this is repetitive. Did you guys discuss the possible penalties for each of the offense, what ---
A Yes.
Q Okay. Under (a) the terms of the plea agreement; but also, if he didn't and he proceeded to trial, the maximum that he could receive?
A Yes.
Q Yes?
A (No audible response.)
Q Okay. And did you guys discuss the advantages and disadvantages of continuing on with his guilt -- or continuing on with his jury trial versus taking on a guilty plea?
A We did. I mean, at that point in time, when you're sitting here, you've got a jury selected, but the informant's here and is going to take the stand and testify, I didn't think he had a defense to the case.
Q Okay.
A And I told him that.
Q Okay. Okay.
MS. SCHILL: Those are all the questions I have, Your Honor.

THE COURT: All right. Cross-examination?

CROSS-EXAMINATION

BY MR. AIKEN:

Q Ms. Bell was an important witness for the government, wasn't she?

A Yes.

Q For a lot of reasons, not the least of which is she's the only one that could authenticate the video, right?

A Yes, sir.

Q In other words, without her that video doesn't come in evidence, right?

A Yes, sir.

Q This critical witness, Ms. Bell, did you ever interview Ms. Bell?

A I did not.

Q Did you have any idea of what she was going to say from the witness stand?

A Just that -- I mean, Randy had told me that she was a crack addict. And it was my recollection that she was working off charges, and that was pretty much it.

Q Did you investigate her background at all? Did you -- did you try to get a -- a -- a report of her criminal convictions or anything like that?

A Yes. I saw where she had been prosecuted in federal court back in 1996. And I think -- let me look at my file

here. Ironically, it -- it appears as though she had been arrested on December 4th of 2017, three days before she was to be here in court and testify, and was charged with possession of crack cocaine, third. So I did have the number of times or her arrests over here in Aiken County. And then, like I said, she had, in fact, been prosecuted in federal court in 1996.

MR. AIKEN: May I have just one moment, Your Honor?

THE COURT: Yes.

(Off the record briefly.)

A And just for the record, this printout for -- for her arrests here in Aiken County, it was printed out December 6th of 2017, so I know I had it.

Q I see.

(Off the record briefly.)

MR. AIKEN: That's all we have, Your Honor. Thank you.

THE COURT: All right. Any redirect from the state?

MS. SCHILL: No, Your Honor.

THE COURT: All right. You done with ---

MS. SCHILL: We would ask ---

THE COURT: --- this witness?

MS. SCHILL: --- that he be released.

THE COURT: All right.

MS. SCHILL: Thank you.

THE COURT: This witness may be excused. Thank you, Mr. Puetz.

THE WITNESS: Thank you, Judge.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right.

MS. SCHILL: The state has no further witnesses. The state rests. Thank you.

THE COURT: All right. All right. You ready for closing arguments?

MR. AIKEN: Your -- Your Honor, I'll -- I'll allow my amendment to the postconviction-relief application to stand as my closing argument.

THE COURT: Very well.

And any closing arguments from the state?

MS. SCHILL: No, Your Honor, as I think the testimony speaks for itself, so ---

THE COURT: All right. Well, what I'll do is I'll contact the parties -- I'm not going to rule on this at this moment. But I will contact the parties before the end of the week ---

MS. SCHILL: Okay.

THE COURT: --- and give you instructions as to who will prepare an order and as to what my ruling is.

MS. SCHILL: All right. Thank you.

THE COURT: Okay?

MR. AIKEN: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon, the proceeding was concluded at 10:53 a.m.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Aiken County, South Carolina, on the 21st day of January, 2020.

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



Maryann S. Nevers, CVR-M-CM, RVR
Official Court Reporter

Columbia, South Carolina
June 8, 2020

Ex. B

INFORMANT AGREEMENT

During my association with the Aiken County Sheriff's Office, as an informant, I the undersigned, do herby agree to be bound by the following conditions and procedures while so associated:

MKB 1. I agree that I have no police power under the State of South Carolina, Aiken County, or any local governmental subdivisions and have no authority to carry a weapon while performing my activity as an Informant.

MKB 2. I acknowledge that I am associated with the Aiken County Sheriff's Office as an Informant on a case or time basis as an independent contractor and that any payment I receive form the Aiken County Sheriff's Office will not be subject to Federal or State Income Tax Withholding or Social Security. All reporting of income is the responsibility of the Informant.

MKB 3. I further acknowledge that as an Informant and independent contractor, I am not entitled to Workmen's Compensation or Unemployment Compensation from the State of South Carolina, and I shall not hold the County of Aiken, or the Aiken County Sheriff's Office liable for any injuries or damage incurred by reason of my association with the Aiken County Sheriff's Office.

MKB 4. I agree not to use the Aiken County Sheriff's Office or any of its agents as credit references or employment references unless prior approval is obtained from the agent from whom I am associated.

MKB 5. I agree not to divulge to any person, except the agent with whom I am associated, my status as an Informant for the Aiken County Sheriff's Office unless required to do so in court and shall not represent myself to others as an employee or representative of the Aiken County Sheriff's Office.

MKB 6. I agree that my association with the Aiken County Sheriff's Office does not afford me any special privileges.

MKB 7. I further agree to maintain a strict accounting of all funds provided to me by the Aiken County Sheriff's Office as part of my activity as an Informant. I understand that misuse of State and/or County funds could be grounds for criminal prosecution against me.

MKB 8. I agree that after making a purchase of anything of evidentiary value, I will contact the agent with whom I associate as soon as possible for delivery of such evidence to him/her.

MKB 9. I agree that violation of any of the above enumerated provisions will be grounds for immediate termination as an Informant and possible criminal charges.

MKB 10. Finally, I agree to cooperate with the Aiken County Sheriff's Office of my own free will, and not as a result of any intimidation or threats.

INFORMANT'S SIGNATURE : Marsha Kim Bell DATE: 2-27-07 / 1-22-16

INVESTIGATOR'S SIGNATURE : [signature] DATE: 2-27-07 / 1-22-16

You are hereby assigned Confidential Informant # 07-005 when attempting to contact your controlling agent, identify yourself using your CI number.

PETITIONER'S EXHIBIT 10 01/21/2020 MSP

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

4400 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

13.30 USE OF INFORMANTS IN INVESTIGATIONS

POLICY: 13.30	DATE: JANUARY 1, 1992	REVISION DATE: AUGUST 4, 2017
TITLE: USE OF INFORMANTS IN INVESTIGATIONS		PAGE 1 OF 4

RESPONSIBLE AUTHORITY: APPROPRIATE MAJOR

RELATED STANDARDS/STATUTES/REFERENCES: CALEA 42.2.7 a., b., c., d., f., g.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

GENERAL PURPOSE: The purpose of this policy is to provide regulations for the control and use of confidential informants (CI).

POLICY: In many instances, a successful investigation cannot be conducted without the use of CIs. While the use of CIs is an effective tool in investigations, it can be undermined by the misconduct of either the CI or the agent utilizing the informant. Therefore, it shall be the policy of this agency to take necessary precautions by developing sound informant control procedures. **(CALEA 42.2.7 f.)**

SPECIFIC PROCEDURES:

A. Establishment of an Informant File System

1. The Major for Narcotics, Alcohol and Vice Services or his/her designee shall be responsible for developing, maintaining, and securing master informant files and an indexing system. **(CALEA 42.2.7 a., c.)**

2. A file shall be maintained on each CI used by agents. Each file shall be coded with an assigned informant control number and shall contain the following information: **(CALEA 42.2.7 b.)**

   a. Informant's name;

   b. Name of agent initiating use of the informant;

   c. Informant's photograph, fingerprints, and criminal history record;

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d. Briefs of information provided by the CI and its subsequent reliability. If an informant is determined to be unreliable, the informant's file shall be placed in the unreliable informant file;

e. Signed informant agreement; and

f. Update of active or inactive status of informant.

3. The confidential informant files shall include an indexing system. An informant history summary, coded with the informant control number, shall be prepared to correspond to each informant file, and include the following information. **(CALEA 42.2.7 c.)**

a. Special skills, avocations;

b. Date of birth;

c. Aliases;

d. Height, weight, hair color, eye color, race, sex, scars, tattoos, or other distinguishing features;

e. Current home address and telephone number;

f. Residential addresses over the last five (5) years;

g. Current employer, position, address, and telephone number;

h. Marital status and number of children;

i. Vehicles owned and their registration numbers; and

j. Places frequented.

4. Informant files shall be maintained in a secured area. **(CALEA 42.2.7 c.)**

5. The informant files shall be utilized in order to: **(CALEA 42.2.7 b.)**

a. Provide a source of background information about the informant;

b. Provide a history of the information received from the informant;

c. Enable review and evaluation by the appropriate supervisor of information given by the informant; and

d. Minimize incidents that could be used to question the integrity of agents or the reliability of the CI.

6. Access to the informant files shall be restricted to the Chief, Assistant Chief, the Majors, designee(s) for administration of records, and Captains, as necessary. **(CALEA 42.2.7 c.)**

7. Sworn personnel may only review an individual's informant file upon the approval of the appropriate Captain or higher authority. **(CALEA 42.2.7 c., d.)**

B. Use of Informants

1. Before using an individual as a CI, an agent must receive initial approval from a supervisor authorized to make this approval.

2. The agent shall compile sufficient information through a background investigation in order to determine the reliability and credibility of the individual.

3. After the agent receives initial approval to use an individual as a CI, an informant file shall be opened.

4. No person determined to be unsuitable for use as a CI shall be utilized in such capacity.

5. An agent wishing to utilize any person known to be previously determined unsuitable as an informant shall receive prior approval from the Chief or the appropriate Major.

C. General Guidelines for Handling CIs **(CALEA 42.2.7 f.)**

1. All CIs are required to sign and abide by the provisions of an informant agreement.* The agent utilizing the CI shall discuss each of the provisions of the agreement with the CI, with particular emphasis on the following:

   a. Informants are not law enforcement officers. They have no arrest powers, are not permitted to conduct searches and seizures, and may not carry a weapon;

   b. Informants may be arrested if found engaging in any illegal activity. They will receive no special legal considerations; and

   c. Informants are not to take, and the department will not condone, any actions that may be considered entrapment. Entrapment occurs where the informant encourages, persuades, or otherwise motivates a person to engage in criminal activity that they would not otherwise engage in. When necessary, consultation with the appropriate solicitor will take place.

2. No member of this agency shall knowingly maintain a social relationship with CIs while off duty, or otherwise become personally involved with CIs. Members of this agency shall not solicit, accept gratuities, or engage in any private business transaction with a CI.

3. Whenever possible, an agent shall always be accompanied by another agent/officer when meeting with a CI.

4. Juveniles shall only be utilized as CIs in accordance with Division regulations and state laws pertaining to juveniles. Before using a juvenile as a CI, agents should get written permission for the juvenile to participate in the investigation from the juvenile's parent or guardian. Juveniles should never be put in potential danger during an investigation and should actively participate in an investigation (e.g. purchase alcohol without an ID) only under closely supervised conditions. **(CALEA 42.2.7 g.)**

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E & F

AIKEN COUNTY SHERIFF'S OFFICE

STATEMENT OF PROOF OF CHAIN OF CUSTODY

RULE 6 FORM B

INITIAL STATEMENT OF PROOF OF CHAIN OF CUSTODY

CONTROL NO: A 012331 IN LAB NO.: L16-0108

AGENCIES CASE NO. 16-006489

This is to certify that I CI #07-005 (Name) am employed by CI for ACSO (Name of Agency) and that on 2-1-16 (Date), I seized from Rudy Schultz (Name) at or near 126 Storm Court (Place Where Seized) the following substance(s) or container(s):

(DESCRIPTION OF SUBSTANCE OR ITS CONTAINER TO DISTINGUISH IT)

Growing at Suspected Check residence

On 2-1-16 (Date), I made delivery of the above described substance(s) or container(s) to Inv. Bethel (Name) of ACSO (Agency) in substantially the same condition as when I received it.

07-005
PRINT Name of Submitting Officer

07-005
Signature

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AIKEN COUNTY SHERIFF'S OFFICE

STATEMENT OF PROOF OF CHAIN OF CUSTODY

RULE 6 FORM C

SUBSEQUENT **STATEMENT OF PROOF OF CHAIN OF CUSTODY**

CONTROL NO: A 012337 L2 LAB NO.: L16-0108

AGENCIES CASE NO. 16-000459

This is to certify that I Inv. Gary Bentell (Name) am employed by ACSO (Name of Agency) and that on 2-1-16 (Date), I received in person (Specify whether by Mail or in Person) from CI # 07-005 (Name) of CI for ACSO (Name of Agency) the following substance(s) or container(s) which were originally seized by CI # 07-005:

(Description of Substance or its container to distinguish it.)

Quantity of Suspected Crack Cocaine

On 2-1-16 (Date), I made delivery of the above described substance(s) or container(s) to Dep Locke (Name or Place) of ACSO (Agency).

Bentell
PRINT Name of Submitting Officer

Signature

EXHIBIT G

Aiken County
Sheriff's Office Forensic Lab
Michael E. Hunt, Sheriff

DRUG ANALYSIS DEPARTMENT

Date: 02/11/2016
Lab Number: L16-0108
Incident Date: 02/01/2016
Your Case #: 16-006489
Control #: A012331
(S): Schultz , Randy

Gary Benfield
Aiken County Sheriff's Office
420 Hampton Avenue, NE
Aiken SC 29801

The items submitted for analysis were examined with your assurance that the submitted specimens have not nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE: **L16-0108**

Item 1 Rock-like substance.

Results:

Cocaine Base (Crack) found	0.23 gram(s)	C-II

I am a Forensic Chemist employed by the Aiken County Sheriff's Office, certified by the South Carolina Law Enforcement Division (SLED) as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this state by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environment Control.

I used the following legally reliable forensic laboratory procedures in this analysis:

- ☑ Chemical Test
- ☐ Microscopic Test
- ☑ Infrared Spectroscopy
- ☐ Ultraviolet Spectroscopy
- ☑ Gas Chromatography
- ☑ Mass Spectrometry
- ☑ Physical Test
- ☑ Published Literature
- ☐ Other:

Signature: Amber Collins

Amber Collins

2-22-16

Date

Exhibit H

FORM A
REPORT OF ANALYSIS FOR CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)

I, Amber Collins, am a Chemist employed by the Aiken County Sheriff's Office (ACSO), certified by the South Carolina State Law Enforcement Division (S.L.E.D.) as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have _9_ year(s) and _4_ month(s) experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than _15_ time(s). I have received the following training to be a chemical analyst:

Bachelors of Science, Chemistry - 2003
Marijuana Analyst Certification, South Carolina Law Enforcement Division (S.L.E.D.) - 2006
Training in Forensic Chemistry, S.L.E.D. - Department of Drug Analysis - 2006
American Chemical Society, Member - 2007
Clandestine Laboratory Investigating Chemist (CLIC), Member - 2007
CLAN Lab Certified -2008

On February 01, 2016, Aiken County Sheriff's Office submitted the following item(s) for analysis:

L16-0108

I tested this (these) item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☑	Chemical Test	☑	Gas Chromatography
☐	Microscopic Exam	☑	Mass Spectroscopy
☑	Infrared Spectroscopy	☐	Liquid Chromatography
☐	Ultraviolet Spectroscopy	☑	Published Literature
☑	Physical Test	☐	Other_____

And am of the opinion the item(s) contain(s) the controlled substance:

See Report

Sworn before me on this 22 day of Feb., 2016 in Aiken (Place). My commission expires on 5-14-2025.
Notary Signature Amanda Courtney

Amber Collins
Amber Collins
Chemical Analyst
ACSO
(Place)
2.22.16
(Date)

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AIKEN COUNTY SHERIFF'S OFFICE

STATEMENT OF PROOF OF CHAIN OF CUSTODY

RULE 6 FORM B

INITIAL **STATEMENT OF PROOF OF CHAIN OF CUSTODY**

CONTROL NO: A 012340 / 2 LAB NO.: L160184

AGENCIES CASE NO. 16-009813

This is to certify that I CI# 07-005 (Name) am employed by ACSO (Name of Agency) and that on 2-17-16 (Date), I seized from Randy Shultz (Name) at or near Storm Ct Beech Island, SC (Place Where Seized) the following substance(s) or container(s):

(DESCRIPTION OF SUBSTANCE OR ITS CONTAINER TO DISTINGUISH IT)

Unknown quantity of suspected crack cocaine

On 2-17-16 (Date), I made delivery of the above described substance(s) or container(s) to Phillip Anders (Name) of ACSO (Agency) in substantially the same condition as when I received it.

07-05
PRINT Name of Submitting Officer

Signature

PETITIONER'S EXHIBIT A 01/21/2025 EV

AIKEN COUNTY SHERIFF'S OFFICE

STATEMENT OF PROOF OF CHAIN OF CUSTODY

RULE 6 FORM C

SUBSEQUENT **STATEMENT OF PROOF OF CHAIN OF CUSTODY**

CONTROL NO: A 012340 / N LAB NO.: L16-0184

AGENCIES CASE NO. 16-009813

This is to certify that I Phillip Anders (Name) am employed by ACSO (Name of Agency) and that on 2-17-16 (Date), I received IN Person (Specify whether by Mail or in Person) from CI# 07-005 (Name) of ACSO (Name of Agency) the following substance(s) or container(s) which were originally seized by CI# 07-005:

(Description of Substance or its container to distinguish it.)

unknown quantity of suspected crack cocaine

On 2-17-16 (Date), I made delivery of the above described substance(s) or container(s) to Drug Locker (Name or Place) of ACSO (Agency).

Phillip Anders
PRINT Name of Submitting Officer

Signature

Exhibit K

Aiken County
Sheriff's Office Forensic Lab
Michael E. Hunt, Sheriff

DRUG ANALYSIS DEPARTMENT

Date: 03/10/2016
Lab Number: L16-0184
Incident Date: 02/17/2016
Your Case #: 16-009813
Control #: A012340
(S): Shultz , Randy

Gary Benfield
Aiken County Sheriff's Office
420 Hampton Avenue, NE
Aiken SC 29801

The items submitted for analysis were examined with your assurance that the submitted specimens have not nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE: L16-0184

Item 1 Cellophane containing rock-like substance.

Results:

Cocaine Base (Crack) found	0.15 gram(s)	C-II

I am a Forensic Chemist employed by the Aiken County Sheriff's Office, certified by the South Carolina Law Enforcement Division (SLED) as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this state by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environment Control.

I used the following legally reliable forensic laboratory procedures in this analysis:

- [x] Chemical Test
- [ ] Microscopic Test
- [x] Infrared Spectruscopy
- [ ] Ultraviolet Spectroscopy
- [x] Gas Chromatography
- [x] Mass Spectrometry
- [x] Physical Test
- [x] Published Literature
- [ ] Other:

Signature:
Ambers Collins
Amber Collins
3-21-16
Date

Exhibit L

FORM A
REPORT OF ANALYSIS FOR CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)

I, Amber Collins, am a Chemist employed by the Aiken County Sheriff's Office (ACSO), certified by the South Carolina State Law Enforcement Division (S.L.E.D.) as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have _9_ year(s) and _5_ month(s) experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than _15_ time(s). I have received the following training to be a chemical analyst:

Bachelors of Science, Chemistry - 2003
Marijuana Analyst Certification, South Carolina Law Enforcement Division (S.L.E.D.) - 2006
Training in Forensic Chemistry, S.L.E.D. - Department of Drug Analysis - 2006
American Chemical Society, Member - 2007
Clandestine Laboratory Investigating Chemist (CLIC), Member - 2007
CLAN Lab Certified -2008

On February 17, 2016, Aiken County Sheriff's Office submitted the following item(s) for analysis:

L16-0184

I tested this (these) item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☑	Chemical Test	☑	Gas Chromatography
☐	Microscopic Exam	☑	Mass Spectroscopy
☑	Infrared Spectroscopy	☐	Liquid Chromatography
☐	Ultraviolet Spectroscopy	☑	Published Literature
☑	Physical Test	☐	Other_____

And am of the opinion the item(s) contain(s) the controlled substance:

See Report

Sworn before me on this 21 day of March, 2016 in Aiken (Place). My commission expires on 5-14-2025.
Notary Signature: Amanda Courtney

Amber Collins
Amber Collins
Chemical Analyst
ACSO (Place)
3-21-16 (Date)

STATE OF SOUTH CAROLINA COUNTY OFAIKEN	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Randy Schultz, SCDC #298635 Applicant, v. State of South Carolina, Respondent.	Case No.: 2018-CP-02-02395 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed on October 12, 2018, by Randy Schultz (Applicant). The State (Respondent) filed a Return on February 4, 2019, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 21, 2020, at the Aiken County Courthouse. Applicant was present at the hearing and represented by Arthur Aiken, Esquire (PCR Counsel). Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Martin C. Puetz, Esquire, (Counsel), also testified. 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 and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. On February 1 and 17, 2016, Applicant sold crack cocaine to an undercover confidential informant at his residence in Beech Island, South Carolina. Applicant was subsequently arrested for these crack cocaine distributions and indicted by the Aiken County Grand Jury for two counts of distribution of crack cocaine-third

or subsequent offense (2016-GS-02-01059, -01060) and for failure to stop for a blue light (2016-GS-02-01057). Counsel represented Applicant on these charges. Deputy Solicitor Elizabeth B. Young of the Second Circuit Solicitor's Office prosecuted the case.

On December 5, 2017, Applicant's case was called to trial in the Aiken County Court of General Sessions before the Honorable Doyet A. Early, III. Following jury selection, court was recessed for the day. On December 7, 2017, Applicant elected to forgo his jury trial and entered guilty pleas as indicted. Judge Early accepted Applicant's guilty pleas and sentenced him to fifteen years of imprisonment for each drug charge and three years for failure to stop for a blue light, all to run concurrently.

Applicant did not pursue a direct appeal.

ALLEGATIONS RAISED

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

1. Involuntary guilty plea
2. Ineffective assistance of counsel
    a. "Trial counsel was ineffective for failure to interview the State's key witness (CI) on his behalf"
    b. "Counsel failed to challenge the chain of custody of the alleged drugs"
    c. "Counsel was ineffective for failure to investigate applicant's case"
    d. "Counsel failed to challenge the probable cause in applicant's case"
    e. "Counsel failed to move to suppress the affidavit and search warrant thereby violating applicant's 4th Amendment rights"
3. Motion to Suppress Pursuant to 17-30-110

On May 6, 2019, Applicant filed an amended application alleging the following claims:

1. Ineffective Assistance of Trial Counsel
    a. Schultz's guilty plea was not made with or based on advice of competent counsel.
    b. Schultz's guilty plea was not intelligently made.

c. Trial counsel did not prepare Schultz's case for trial, and Schultz was left with no choice but to plead guilty.
d. Trial counsel did not discuss the elements of the offense or potential defense with Schultz.
e. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Schultz so that Schultz could make an informed choice of whether to enter a plea or try his case.
f. Trial counsel did not investigate Schultz's case.
g. Trial counsel did not tell Schultz the possible penalty for his offense.
h. Schultz asked trial counsel to appeal from his guilty plea, but trial counsel never filed an appeal.
i. Trial counsel never investigate whether the CI in his case was authorized by any law enforcement agency to serve as a CI.
j. Trial counsel never interviewed the CI.
k. If trial counsel did not know the identity of the CI, then trial counsel was ineffective for failing to move to compel the State to reveal the identity of the CI.
l. Trial counsel did not challenge the admissibility of the evidence secured by execution of a search warrant
m. Trial counsel never reviewed the evidence with [Schultz].

A hearing was held on January 21, 2020. At the outset of the hearing, PCR Counsel indicated Applicant would be going forward only on the allegations set forth in Applicant's amended application.

FACTUAL BACKGROUND

The Solicitor's Office summarized the facts at Applicant's guilty plea hearing as follows:

"Back in February of 2016, Aiken County Sheriff's Office narcotics investigators developed a confidential informant who stated that she would purchase crack cocaine from the defendant, Randy Schultz.

The first buy took place on February 1st, 2016. The confidential informant met with officers. She was equipped with recording equipment and issued document money from deputies. [The informant] went to the defendant's residence [. . .]. On that particular date, the defendant was standing in the door of his truck in a driveway. It was a 2007 F150 Super Crew, white truck. She walked up to him, she exchanged the funds for suspected crack cocaine and she left. She came back and turned that over to the officers. It was tested. It did come back positive for cocaine base .23 grams.

On February 17th, they did another undercover buy utilizing the same confidential informant, utilizing the same procedures, equipping her with the undercover surveillance

equipment and also issuing her documented money. She went again to his residence [. . .]. Again, she exchanged the funds for the suspected crack cocaine. On that particular date, Mr. Schultz was sitting on his step, and with regard to the evidence developed from the undercover videos on that particular date it was extremely clear, that was the date that we were going to proceed to trial to today. They issued warrants for distribution.

In March, Deputy Sharping with the warrants team observed Mr. Schultz driving, leaving a gas station, so [. . .] he started following him on Cary Drive and then they went down to Old Trail Road. Two passengers jumped out of the truck and ran into the yard; and then there was a vehicle chase that lasted for some period and included reckless driving, such as speeding, running stop signs, and driving outside the line periodically. Ultimately, they were able to get him stopped and arrested him for the warrants. He had $1,684 in his truck on that date."

(GP Tr. 30-32).

SUMMARY OF PCR TESTIMONY

Applicant's Testimony

Applicant testified his plea was involuntary. Applicant testified Counsel did not discuss the elements of the crimes for which he was charged. Applicant testified Counsel did not discuss the pros and cons of going to trial versus pleading guilty.

Applicant testified he told Counsel "to do something" after his plea hearing, but they did not discuss an appeal. Applicant testified Counsel did not know the identity of the confidential informant (CI) and did not ask the State to disclose the identity of the CI Applicant testified only one of the two officers who participated in the controlled buys signed the chain of custody form and sent the drugs to the chemical analyst.

Applicant testified he met with Counsel three times in-person prior to his trial/guilty plea hearing. Applicant testified he reviewed the State's evidence with Counsel. Applicant testified he and Counsel did not discuss the elements or defenses to his charges, nor did they discuss the advantages and disadvantages of going to trial versus pleading guilty. Applicant testified he recalled giving up his constitutional rights at his guilty plea hearing. Applicant testified he told the court at his guilty plea hearing that he was not coerced, threatened, or promised anything

outside of the terms of the guilty plea for pleading guilty. Applicant testified he told the plea court he was not suffering from any mental disability at the time of his guilty plea hearing. Applicant testified he told the plea court he was satisfied with Counsel's representation. Applicant testified he told the plea court he had enough time to discuss his case with Counsel. After reviewing the plea hearing transcript, Applicant testified he recalled telling the plea court he did not want Counsel to do anything else regarding his case. Applicant recalled telling the plea court he was in fact guilty. Applicant testified he recalled telling the plea court he was pleading guilty on his own free will.

Applicant testified he did not ask Counsel to appeal because he did not know he could appeal his case. Applicant testified he wanted an appeal because he felt that Counsel did not investigate his case.

Counsel's Testimony

Counsel testified he has been practicing law for forty-one years and approximately half of his practice has been in criminal law. Counsel testified he became involved in Applicant's case because either Applicant or his wife retained him. Counsel testified he met with applicant approximately five-to-seven times in person. Counsel testified he discussed the elements and defenses to Applicant's charges. Counsel testified he reviewed the evidence with Applicant.

Counsel testified he knew the identity of the CI by August 2017 because Applicant told him who the CI was. Counsel testified Applicant had a personal connection to the CI. Counsel testified there were two different surveillance videos from two different controlled buys which clearly depicted Applicant as the drug dealer.

Counsel testified his investigation consisted of viewing the videos and still shots from the controlled buys, investigating the background of the CI, and reviewing the drug analysis

documents. Counsel testified Applicant plead straight up to his charges after jury selection. Counsel testified the State asked for twenty years imprisonment, but the judge imposed a fifteen year prison sentence. Counsel testified he believed Applicant expressed an interest in pleading guilty after jury selection because he realized the CI was going to testify.

Counsel testified it is always his client's decision to plead guilty or go to trial. Counsel testified he would have continued trying Applicant's case if Applicant had wanted to finish his trial. Counsel testified he believed it was in Applicant's best interest to plead guilty.

Counsel testified he could not specifically recall discussing Applicant's right to appeal his guilty plea. Counsel testified he subsequently learned that Applicant could get credit for electronic monitoring, so he filed a motion to reconsider Applicant's sentence. Counsel testified the court ultimately gave Applicant credit for 482 days. Counsel testified he did not see any meritorious issues for appeal at the time of Applicant's guilty plea or at the time of Applicant's PCR hearing.

Counsel testified he reviewed the chain of custody documents from both of the controlled buys in preparation for Applicant's trial and did not see anything wrong with either of the documents. Counsel testified there were two distinct controlled buys, which explained why there were different investigator names listed on each sheet.

Counsel testified he and Applicant discussed the possible sentences for each of his charges. Counsel testified they discussed the pros and cons of going to trial versus pleading guilty. Counsel testified he did not believe Applicant had any viable defenses and he told Applicant that he had no viable defenses.

On cross-examination, Counsel testified the CI was an important witness for the State, primarily because the CI would have authenticated the surveillance video. Counsel testified he did not interview the CI. Counsel testified Applicant told him the CI was a crack-addict who was

working off drug charges. Counsel testified he obtained the CI's criminal history and learned that she was prosecuted in federal court in 1996.

APPLICABLE LAW

Ineffective Assistance of Counsel

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. The 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. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and

that, 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. 668.

Involuntary Guilty Plea

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid

reasons why he should be allowed to depart from the truth of his statements." *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea/trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Involuntary Guilty Plea[1]

Applicant alleges his plea was involuntary because he made the decision to plead guilty based on the advice of incompetent counsel.

Applicant testified his plea was not voluntarily and intelligently made because he did not discuss the elements of the offenses, the possible sentences, or the advantages or disadvantages of going to trial versus pleading guilty with Counsel. Counsel testified he discussed the elements of the offenses, the possible sentences, and the advantages and disadvantages of going to trial versus pleading guilty with Applicant. Counsel testified his investigation consisted of reviewing the chain of custody and chemical analysis documents, reviewing the still shots and surveillance videos of the controlled buys, and researching the CI's background. Counsel testified he believed it was in Applicant's best interest to plead guilty, and that it was ultimately Applicant's decision to plead guilty. Counsel testified he would have continued with Applicant's trial had he wanted to.

[1] This section discusses allegations 1(a), 1(b), and 1(e) of Applicant's amended application.

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant's plea was entered freely and voluntarily. Counsel's credible testimony shows Applicant wanted to plead guilty and received a great benefit in accepting the State's plea offer. Counsel credibly testified Applicant had all the pertinent information regarding his charges when he decided to plead guilty, including the elements of the offenses, the potential sentences, and the advantages and disadvantages of pleading guilty versus going to trial. Applicant testified at his plea hearing that he was not suffering from any mental disability. (GP Tr. 25). Applicant also told the plea court he was not under the influence of drugs or alcohol at the time of his guilty plea. (GP Tr. 25). Applicant testified at his plea hearing that he was pleading guilty on his own free will. (GP Tr. 25-26). Applicant testified at his plea hearing he was satisfied with his legal services from Counsel. (GP Tr. 25). Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing that his plea was not entered freely and voluntarily. Therefore, this allegation is denied and dismissed with prejudice.

Ineffective Assistance of Counsel

1. Failure to Prepare Case for Trial

Applicant alleges Counsel was ineffective for failing to adequately prepare for a trial.

To establish counsel failed to adequately prepare for trial, the applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel 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 presented at the PCR hearing); *Moorehead*, 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).

Counsel testified he reviewed the evidence against Applicant in preparation for trial. Counsel testified Applicant ultimately chose to plead guilty because the CI was going to testify against him. Applicant also testified he and Counsel reviewed the State's evidence against him.

This Court finds the testimony of Counsel and Applicant as to this allegation credible. Counsel reviewed the evidence and file pertaining to Applicant's case. Applicant waived his right to a jury trial by pleading guilty. Moreover, as previously discussed, Applicant testified at his guilty plea hearing that he was satisfied with Counsel's representation and that he did not need any more time to discuss his case with Counsel. (GP Tr. 25.) This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding the preparation of Applicant's case. Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency, as Applicant has not provided any evidence showing how any additional preparation could have helped his case. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

2. *Failure to Discuss Elements of the Offenses and Possible Defenses*

Applicant alleges Counsel was ineffective for failing to discuss the elements of the offenses and possible defenses with Applicant.

Applicant testified Counsel did not discuss the elements of the offenses and did not discuss or defenses with him. However, Counsel testified he discussed the elements of the offenses with Applicant. Counsel also testified Applicant did not have any viable defenses, and he told Applicant that he did not have any viable defenses.

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding this allegation. Counsel credibly testified he discussed the elements of the offenses and any possible defenses to the extent Applicant had any defenses. Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

3. *Failure to Investigate*

Applicant alleges Counsel was ineffective for failing to sufficiently investigate Applicant's case.

"[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)). 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)).

As mentioned above, Counsel testified he reviewed the evidence the State had against Applicant, including but not limited to, witness statements, incident reports, and the drug analysis. Applicant testified he generally did not think Counsel did an adequate job at investigating his case, but provides no specific allegations.

This Court finds Counsel's testimony on this issue credible, while also finding Applicant's testimony not credible. Counsel credibly testified he investigated Applicant's case. Additionally, Applicant has not provided any testimony or evidence showing Counsel would have uncovered any additional evidence by way of additional investigation. Accordingly, this Court finds Applicant has failed to show how Counsel was deficient.

This Court further finds Applicant failed to meet his burden of proof as to prejudice, which requires Applicant to show this Court what further information Counsel would have uncovered through additional investigation. Moreover, Applicant has failed to credibly show there is a reasonable probability he would not have pleaded guilty and would have insisted on continuing his trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Accordingly, this allegation is denied and dismissed with prejudice.

4. Failure to Discuss Possible Penalties

Applicant asserts Counsel was ineffective for failing to discuss the possible penalties with Applicant.

Counsel testified he discussed the possible penalties with Applicant, both under the terms of the plea agreement and if he were to be tried and convicted at trial. Applicant testified Counsel did not discuss the possible penalties for the offenses. This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony on this issue not credible. The credible testimony shows Counsel discussed the possible penalties with Applicant. Therefore, this Court finds Applicant has failed to establish how Counsel was deficient in any way regarding this allegation.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

5. *Failure to File a Direct Appeal*

Applicant alleges Counsel was deficient for failing to file a direct appeal after Applicant requested an appeal.

Pursuant to *Roe v. Flores-Ortega,* 528 U.S. 470, 480 (2000), "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Id.* Further, "a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." *Id.*

Applicant testified he told Counsel "to do something" after his plea hearing, but did they did not discuss an appeal. Counsel testified he could not specifically recall whether he discussed Applicant's right to appeal his guilty plea. Counsel testified he subsequently learned that Applicant could get credit for electronic monitoring, so he filed a motion to reconsider Applicant's sentence. Counsel testified the court ultimately gave Applicant credit for 482 days. Counsel testified he did not see any meritorious issues for appeal at the time of Applicant's guilty plea or at the time of Applicant's PCR hearing.

This Court finds Counsel's testimony as to this issue very credible, while also finding Applicant's testimony not credible. This Court finds Counsel was not deficient for failing to file an appeal. In this case, Applicant's PCR arises out of a guilty plea. As Counsel testified, Applicant did not request an appeal. As Counsel testified, there were no possible meritorious issues for appeal. This Court finds Applicant had no legitimate basis for an appeal. Accordingly, this allegation is denied and dismissed with prejudice.

6. Failure to Identify and Interview Confidential Informant[2]

Applicant alleges Counsel was ineffective for failing to investigate whether the CI was authorized to serve as a CI, failing to compel the State to identify the CI, and for failing to interview the CI.

Applicant testified Counsel did not know the identity of the CI and did not ask the State to disclose the identity of the CI. Counsel testified he knew the identity of the CI by August 2017 because Applicant told him the name of the CI. Counsel testified Applicant had a personal connection to the CI. Counsel testified the CI was an important witness for the State, primarily because the CI would have authenticated the surveillance video. Counsel testified he did not

[2] This discussion encompasses allegations 1(i)-1(k) of Applicant's amended allegations.

interview the CI, and that Applicant told him the CI was a crack-addict who was working off drug charges. Counsel testified he obtained the CI's criminal history and learned that she was prosecuted in federal court in 1996. Counsel testified he believed the CI was a legitimate informant used by the State.

This Court finds Counsel's testimony as to this issue very credible, while also finding Applicant's testimony not credible. Contrary to Applicant's testimony, Counsel knew who the CI was because Applicant told him the name of the CI. Counsel investigated the CI's criminal background. The CI was a legitimate informant who partook in a controlled buy that was recorded on videotape and clearly depicted Applicant as the drug dealer. Additionally, Applicant did not provide any evidence of information that would have been uncovered had Counsel personally interviewed the CI. Accordingly, this allegation is denied and dismissed with prejudice.

7. *Counsel did not challenge the admissibility of the evidence secured by execution of a search warrant*

In his amended PCR application, Applicant alleges Counsel was ineffective for failing to challenge evidence secured by a search warrant. Applicant did not provide any evidence in support of this claim. Additionally, Applicant's charges arose from controlled buys, and not as the result of any search warrant. Accordingly, this Court considers this allegation waived and abandoned, and this Court denies and dismisses this allegation with prejudice.

8. *Failure to Review Evidence with Applicant*

Applicant alleges Counsel was ineffective for failing to review the State's evidence with Applicant. Counsel testified the evidence primarily consisted of videos and still shots of the two controlled buys. Counsel testified he reviewed the evidence with Applicant. Applicant also testified he reviewed the evidence with Counsel.

This Court finds Counsel's and Applicant's testimony as to this allegation credible. Counsel and Applicant credibly testified Counsel reviewed the evidence with Applicant. Accordingly, this Court denies and dismisses this allegation with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Counsel was not deficient in any manner regarding his performance, nor was Applicant prejudiced by Counsel's representation. Furthermore, the record and the PCR testimony show Applicant freely and voluntarily entered his plea. Accordingly, all allegations are 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;

2. Applicant shall be remanded to the custody of SCDC.

AND IT IS SO ORDERED.

COURTNEY C. POPE
Presiding Circuit Court Judge
Second Judicial Circuit

Feb 21, 2020