

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Aiken County

Honorable Larry B. Hyman, Circuit Court Judge

—————
WALLACE GLOVER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001987

—————
APPENDIX
—————

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
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Division of Appellate Defense
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(803) 734-1330

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ATTORNEYS FOR RESPONDENT

RECEIVED

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S.C. SUPREME COURT

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State of South Carolina
County of Aiken

Court of General Sessions

State)
)
)
 v.)
)
 Wallace Glover)
)
)
 Defendant.)

Transcript of Record
2016-GS-02-00866

March 22, 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:

Elizabeth Young, Assist. Solicitor
Attorney for the State

De Grant Gibbons, Public Defender
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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WITNESS

I N D E X

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E X H I B I T S

NO. DESCRIPTION ID. EVD.

(No Exhibits.)

P R O C E E D I N G S

* * *

WALLACE GLOVER,

being first duly sworn, testified as follows:

THE DEFENDANT: Yes, ma'am.

THE COURT: Mr. Gibbons, you represent Wallace Glover in Indictment 16-GS-02-866; that is an indictment for distribution of crack cocaine third or subsequent offense.

MR. GIBBONS: I do, Your Honor.

THE COURT: And have you advised him of the charges, the potential penalty, the fact that this is an 85-percent, no-parole sentence?

MR. GIBBONS: Your Honor, I have and I would like to put something on the record, if I could, if I may.

Your Honor, I'm going to hand up to Mr. Glover a copy of the statute, 44-53-375. At the end of B, subsection 3, which deals with third offense, there is a provision that says if all the priors are possessions, they may be eligible for parole. I told him I can't guarantee that, that's up to Corrections, but I am going to provide him with that statute and a copy of his rap sheet to take with him to deal with that on the other side.

1 I told him I couldn't promise him anything, but
2 that's what the law said and I was going to provide
3 him with that today.

4 THE COURT: And if it's applicable to him, then
5 it would not be an 85-percent sentence?

6 MR. GIBBONS: Correct; that's something
7 Corrections will need to figure out. I'm going to
8 give him the tools he needs to talk with them about
9 that right here today.

10 THE COURT: All right. Have you also advised
11 him this is also a serious offense and this would
12 constitute his first strike under South Carolina's
13 three-strike law?

14 MR. GIBBONS: Yes, sir.

15 THE COURT: And have you also advised him it is
16 a mandatory ten-year sentence?

17 MR. GIBBONS: I have.

18 THE COURT: Up to 30?

19 MR. GIBBONS: Correct.

20 THE COURT: Have you advised him of his right
21 to trial by jury?

22 MR. GIBBONS: I have, Your Honor. And we've
23 gone back and forth about that, but he wishes to
24 plead guilty here today.

25 THE COURT: He understands that we have a jury

1 on call ready here in the courthouse to be drawn to
2 try the case?

3 MR. GIBBONS: Yes, sir.

4 THE COURT: Does he indicate to you he wishes
5 to plead guilty?

6 MR. GIBBONS: He does, Your Honor.

7 THE COURT: Do you agree with that decision?

8 MR. GIBBONS: Absolutely.

9 THE COURT: Mr. Glover, good morning. How are
10 you today?

11 THE DEFENDANT: Doing all right, sir.

12 THE COURT: I've got to ask you some questions.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you don't understand my
15 questions, please stop me, tell me to repeat them so
16 you'll understand them.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If you answer them, I'll assume you
19 understood them. Fair?

20 Number one, you're charged with distribution of
21 crack cocaine, a third or subsequent drug offense.
22 Do you understand that charge?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Please respond to me. She has to
25 take everything down, the court reporter.

1 Under the statutory scheme this offense comes
2 under, it requires me to give you a minimum of ten
3 years and I have the discretion to give you up to 30
4 years in the State Department of Corrections and
5 fine you up to \$50,000. Do you understand that?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: There's a possibility, depending on
8 what your prior offenses were, that this could be an
9 85-percent, no-parole sentence. So if you got a
10 ten-year sentence, you'd have to do eight and a half
11 years before you were eligible for release into a
12 community supervision program. Or, as Mr. Gibbons
13 has shown you, under the statute, if the prior
14 offenses did not deal with distribution or simple
15 possession, that may not be applicable to you. Do
16 you understand that?

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: It is classified under South
19 Carolina law as a serious offense, which means --

20 I assume this is his first strike?

21 MS. YOUNG: It's his second strike, Your Honor.
22 He has an armed robbery conviction from 1996.

23 THE COURT: Under South Carolina law, you now
24 have two strikes under our three-strike law. You
25 had an armed robbery back in the past, which was a

1 serious or most serious offense, now you have this
2 serious offense, that's two. If you get that third
3 one when you get out, you would be subjecting
4 yourself to the possibility of being incarcerated
5 for the rest of your life, in prison for the rest of
6 your life, without the possibility of parole. Do
7 you understand that?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Do you have any questions about any
10 of that I just went over?

11 THE DEFENDANT: No, sir.

12 THE COURT: Understanding what you're charged
13 with, the possible sentence, the possibility of it
14 being a no-parole, 85-percent sentence, this is your
15 strike; and one more strike will subject you to the
16 possibility of life in prison without parole, how do
17 you wish to plead to this particular charge in front
18 of me today?

19 THE DEFENDANT: Guilty, sir, Your Honor.

20 THE COURT: Mr. Glover, when you plead guilty,
21 you will give up your constitutional right to remain
22 silent. You will have to admit to me that you sold
23 the drug to an undercover agent or confidential
24 informant, as they call them. Do you understand
25 that?

1 THE DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: As you and I discussed on Monday,
3 we have a jury ready, willing, and able to serve in
4 this case. So if you plead guilty, you'll give up
5 your right to a jury trial. During that jury trial,
6 you would have the right, through your lawyer, to
7 confront and cross-examine everybody who testified
8 against you, you would have the right to tell your
9 side of the story by calling witnesses, introducing
10 relevant exhibits, and getting on the stand yourself
11 and testifying and telling your side of the story.

12 If you exercise your constitutional right to
13 remain silent, then I would tell the jury they could
14 not hold the fact that you did not testify against
15 you in any manner whatsoever, and I would instruct
16 them that they could not even consider the fact that
17 you did not testify when they deliberated your guilt
18 or innocence.

19 You would be presumed innocent throughout the
20 trial and the State would have the burden of proving
21 you guilty beyond a reasonable doubt to a jury of 12
22 people, and in order for that jury to convict you,
23 all 12 jurors would have to unanimously agree that
24 you were, in fact, guilty. And even if you were
25 found guilty, you would still have the right to an

1 appeal. Do you understand your rights to trial by
2 jury?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Understanding those rights, do you
5 still wish to plead guilty?

6 THE DEFENDANT: Yes, sir.

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

10 THE DEFENDANT: No, sir, Your Honor.

11 THE COURT: Mr. Gibbons has been your lawyer.
12 Are you satisfied with his legal representation?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: In your opinion, has he had enough
15 time to spend with you, enough time to investigate
16 the facts and research the law so that he can
17 properly represent you here today?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: Is there anything else you want him
20 to do for you today before we move forward, other
21 than speak up on your behalf?

22 THE DEFENDANT: That's it, Your Honor.

23 THE COURT: Are you today, sir, under the
24 influence of alcohol or drugs or prescription
25 medication?

1 THE DEFENDANT: No, sir, Your Honor.

2 THE COURT: Mr. Glover, are you today aware of
3 any mental, nervous, or emotional conditions which
4 would keep you from understanding my questions?

5 THE DEFENDANT: No, sir, Your Honor.

6 THE COURT: Have you understood all of my
7 questions?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Do you have any questions you'd
10 like to ask of me?

11 THE DEFENDANT: No, sir, Your Honor.

12 THE COURT: Are you pleading guilty of your own
13 free will?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: And did you, sir, here in Aiken
16 County, on or about February 1 of last year, 2016,
17 sell a quantity of crack cocaine to an undercover
18 agent?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: You're pleading guilty because you
21 are guilty?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: I find your decision to plead
24 guilty to be freely, voluntarily, and intelligently
25 made, you've had the representation of an excellent

1 lawyer in Mr. Gibbons with whom you say you're
2 satisfied, and I will accept the plea. If you
3 disagree with these proceedings, you have 10 days
4 from today's date to file a notice of intent to
5 appeal. Do you understand that?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 MS. YOUNG: Thank you, Your Honor. May it
8 please the Court. On February 1st of last year,
9 Aiken County Sheriff's Office narcotics officers did
10 an undercover operation regarding the purchase of
11 crack cocaine from the defendant. The Aiken County
12 Sheriff's Office developed a confidential informant
13 who was able to go to that locate at his residence,
14 which is on Olivia Way here in Aiken County, to
15 purchase crack.

16 The CI was wired with surveillance equipment.
17 The CI was searched and the CI's vehicle was
18 searched as well, and the CI was provided with
19 documented 20-dollar funds from the Aiken County
20 Sheriff's Office. The CI did go to the residence
21 and completed a hand-to-hand transaction inside
22 where the CI gave \$20 and received a quantity of
23 crack. The CI then turned that over to the
24 Sheriff's Office. It was tested and came back
25 positive for .13 grams. There was an additional

1 prior purchase that took place on January 26th that
2 we will be nol-prossing upon this guilty plea.

3 Your Honor, the video in this case is probably
4 in some of the top video in all my years of doing
5 drug prosecution. You could clearly see the
6 defendant's face and see the defendant place the
7 crack in the CI's hand in color and black and white.
8 We had prepared this case for trial back in August,
9 and upon being shown the video, Mr. Glover
10 absconded. He had to be picked up on a bench
11 warrant.

12 We've been working on this, getting this ready
13 for trial this week. He finally decided to plead
14 guilty. I do have Investigator Harvey who's been
15 very responsive and helpful in getting this case
16 ready. He's present for the guilty plea.

17 Your Honor, he has a prior record as follows:
18 From South Carolina, 1987, carrying a pistol; 1995,
19 possession of less than one gram of crack; 1996,
20 armed robbery; 2009, possession of less than one
21 gram of meth or cocaine base. And the following
22 convictions that he received federally: In 1990,
23 conspiracy to possess or distribute cocaine, two
24 counts; 1994, probation violation; 1996, forgery.
25 Those are all within the federal system.

1 MR. GIBBONS: Your Honor, Mr. Glover is 50
2 years of age. He has five children, three of which
3 are living at home with his fiancée, ages ten, nine,
4 and six. He has two grown children, ages 22 and 30.

5 Your Honor, this case, as I told you the other
6 day, Mr. Glover has never really thought this was a
7 triable, winnable case. His -- he had some legal
8 theories that weren't really what the true law is
9 that apply in this case, and that's been the holdup
10 most of the time.

11 THE COURT: Well, I'm afraid we're getting
12 legal advice over there in the jail from people who
13 are trying to practice law and have no earthly idea
14 what they're talking about. And it's causing
15 problems for the defendants detrimentally to them as
16 opposed to helping them.

17 MR. GIBBONS: That's correct, Your Honor. But
18 for those issues, I think we would have been here
19 long before we are here now.

20 THE COURT: I understand.

21 MR. GIBBONS: Mr. Glover has told me it's been
22 hard for him. He had some big, hard bumps when he
23 was a younger man, and after paying his debt to
24 society, he got out and it was tough to find a job,
25 tough to make a living, tough to get along. You're

1 familiar with that situation.

2 Your Honor, he does sheetrock and painting;
3 that's probably the most viable jobs he's able to
4 do. They are seasonal and he does have a hard time
5 keeping a roof over his family. He knows that he
6 shouldn't be doing this stuff --

7 THE COURT: Particularly with his record,
8 because it doesn't give me any room to move much.

9 MR. GIBBONS: That's right. We would ask the
10 Court to take into consideration the advice he did
11 follow that put him in kind of a bad place here
12 today and consider giving him the minimum sentence
13 in this case.

14 THE COURT: Sentence of the Court is that you
15 be committed to the Department of Corrections for 10
16 years. Good luck to you.

17 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit 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 all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Aiken County, South Carolina, on the 22nd of March, 2017.

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

December 28, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
County of Aiken)
Wallace Glover)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2017CP0202128

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 Waterloo Correctional Institution
2. Name and location of Court which imposed sentence Aiken Court Court
of General Session, Aiken S.C.
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) _____
 - (b) Distribution of Cocaine Base

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- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 22, 2017
 - (b) Ten years
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty yes
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) No issues were preserved for review.
 - (b) _____

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

- (a) Abuse of Discretion
- (b) Inspector Assistant of Counsel
- (c) W

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

- (a) The Court sentenced W for third offense; one offense was out dated.
- (b) Counsel failed to ascertain and/or inform
- (c) the Court of prior conviction could not be considered.

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

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

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) _____
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Mr. Grant Gilborn's
Public Defender
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment Plea, & Sentencing
 - ii. _____
 - iii. _____

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

Correction of Sentence.

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

No

STATE OF SOUTH CAROLINA

County of Aiken

VERIFICATION

I, Wallace G. Lowe, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Wallace G. Lowe

SWORN to and subscribed before me this 13th day of August, 2017.

Judith A. Scarborough (L.S.)
Notary Public

My Commission Expires: March 2021

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

I, Wallace Glover, 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.

Wallace Glover
Applicant

SWORN or affirmed to and subscribed before me this
23 day of August, 2017

Judith C. Davidson
Notary Public

My Commission Expires: March 2024

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	FOR THE SECOND JUDICIAL CIRCUIT
Wallace Glover, SCDC #231429,)	Case No.: 2017-CP-02-2128
Applicant,)	
v.)	RETURN AND MOTION FOR A MORE
State of South Carolina,)	DEFINITE STATEMENT
Respondent.)	

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on September 5, 2017, would respectfully show this Court:

I.

Wallace Glover (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In June 2016, the Aiken County Grand Jury indicted Applicant for distribution of cocaine base (crack cocaine) (2016-GS-02-00866). The charge resulted from an incident which occurred on February 1, 2016, where Applicant sold 0.13 grams of cocaine base to an Aiken County Sherriff's office confidential informant during an undercover narcotics operation. This was a hand-to-hand transaction which occurred at Applicant's residence in Aiken, South Carolina. The informant was wired with surveillance equipment which produced a video clearly showing Applicant's face and his placing of the narcotics in the informant's hand. Applicant absconded upon being shown the video and was subsequently arrested through a bench warrant.

Applicant was represented by Public Defender De Grant Gibbons, Esquire. Assistant Solicitor Elizabeth B. Young, of the Second Circuit Solicitor's Office, prosecuted the case. On March 22, 2017, Applicant before the Honorable Doyet A. Early, III to plead guilty to the offense of distribution of crack cocaine, third or subsequent offense. Pursuant to negotiations between

Applicant and the State, another charge from a prior drug purchase was dismissed in exchange for Applicant's plea. Judge Early accepted his guilty plea to one count of distribution, third offense and sentenced Applicant to ten years in prison.

II.

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

1. Abuse of Discretion
 - a. "The court sentenced was for third offense, one offense was outdated."
2. Ineffective Assistance of Counsel
 - a. "Counsel failed to ascertain and/or inform the court of prior conviction could not be considered."

Applicant requests that his sentence be "corrected". Respondent notes that pursuant to the Uniform Post-Conviction Procedures Act, sentence reduction is not a form of relief which can be granted.

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

III.

Respondent submits that Applicant's allegations for ineffective assistance of counsel are without merit. Defendants are guaranteed the right to effective counsel under due process and the Sixth Amendment of the U.S. Constitution. U.S. Const. amend. VI.; Strickland v. Washington, 466 U.S. 668 (1984); Roscoe v. State, 345 S.C. 16, 546 S.E. 2d 417 (2001). In a post-conviction relief action, the applicant bears the burden of proving the allegations provided in the application by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must prove that the conduct of counsel

“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. at 669.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test in Strickland. Id. at 686. 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, attorneys are held to an objective standard of “reasonably effective assistance” under “prevailing professional norms”. Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. The proper analysis for performance is whether an attorney provided representation within the range of competency required in criminal cases. Butler v. State, 286 S.C. 442, 334 S.E.2d 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement”. Id. (Citing Strickland at 466 U.S. 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, the applicant must show that counsel’s deficient assistance produced “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-118, 386 S.E.2d at 625. With respect to counsel in a guilty plea proceeding, the applicant must show that there is a reasonable probability that, but for counsel’s errors, he would not have plead guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's allegation regarding "abuse of discretion" raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to support the allegation of ineffective assistance to counsel or to explain with any specificity whatsoever the facts upon which his claim is based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Applicant must specify any claims he intends to raise at the PCR 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), SCRPC. 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, SCRPC. 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), SCRPC.

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.

VII.

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

[signature page to follow]

VIII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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Telephone: (803) 734-3737

July 6, 2018

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2017-CP-02-02128

WALLACE GLOVER, #231429

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

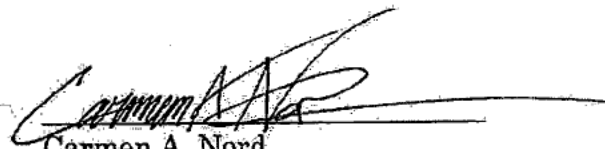
STATE OF SOUTH CAROLINA,

Respondent.

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

Mr. Arthur Kerr Aiken
Aiken & Hightower
2231 Devine Street Suite 201
Columbia, South Carolina 29205

DATED this 6TH day of July, 2018.



Carmen A. Nord
Legal Assistant
For Respondent

State of South Carolina)	In the Court of Common Pleas
County of Aiken)	Second Judicial Circuit
	2017-CP-02-2128

Wallace Glover,)	
)	
Applicant,)	
)	
vs.)	Transcript of Record
)	
State of South Carolina,)	
)	
Respondent.)	
)	
)	

August 27, 2018
Aiken, South Carolina

B E F O R E:

The Honorable Larry B. Hyman, Jr., Judge

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

Arthur K. Aiken, Esquire
Attorney for Applicant

Julie A. Coleman, Assistant Attorney General
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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Proceedings 4

TESTIMONY - WITNESS

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
P-1	Arrest Record	8	9
P-2	Released Date Calculation	10	34

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:08 a.m.)

THE COURT: Yes, ma'am.

MS. COLEMAN: May it please the Court? This is *Wallace Glover v. the State of South Carolina*, Docket No. 2017-CP-02-2128. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court.

In June 2016 the Aiken County Grand Jury indicted applicant for distribution of cocaine base/crack cocaine. That's 2016-GS-02-866. Applicant was represented by Public Defender De Grant Gibbons, Esq., and assistant solicitor Elizabeth B. Young, Esq., of the Second Circuit Solicitor's Office prosecuted the case.

On March 22, 2017, applicant pled guilty as indicted before the Honorable Doyet A. Early, III. Judge Early sentenced the applicant to 10 years in prison. He did not appeal his guilty plea or sentence.

Applicant filed this timely application for postconviction relief on September 5th, 2017, alleging he was being held in custody unlawfully based on the following allegations: abuse of discretion; the Court sentence was for a third offense, and one offense was outdated; and ineffective assistance of counsel; counsel failed to ascertain and/or inform the Court of the prior -- that the

1 prior conviction could not be considered.

2 The state made its return and motion for more definite
3 statement on July 6th, 2018. Applicant served an amended
4 applicant on October 13, 2018, which should be in your
5 packet, Judge.

6 THE COURT: I have it.

7 MS. COLEMAN: Good. And Mr. Glover is present today
8 and represented by Mr. Art Aiken.

9 THE COURT: All right. Mr. Aiken?

10 MR. AIKEN: We're ready to proceed, Your Honor.

11 THE COURT: Very well.

12 MR. AIKEN: In lieu of an opening statement, I'll just
13 rely on the amendment to the application that sets forth

14 ---

15 THE COURT: Very well.

16 MR. AIKEN: --- his -- his -- his position.

17 THE COURT: Okay.

18 MR. AIKEN: The applicant calls Wallace Glover.

19 CLERK OF COURT: Mr. Glover, come forward, please.

20 (Off the record briefly.)

21 (Whereupon, the witness came forward.)

22 WALLACE GLOVER, having been first duly sworn,
23 testified as follows:

24 CLERK OF COURT: He's been sworn, Your Honor.

25 Have a seat in the witness chair. State your full

1 name. Watch your step.

2 THE WITNESS: (Complied.) Wallace Glover.

3

4

DIRECT EXAMINATION

5 BY MR. AIKEN:

6 Q Mr. Glover, you were convicted on a guilty plea --
7 excuse me.

8 MR. AIKEN: I apologize, Your Honor. I'm -- I got
9 myself confused here.

10 THE COURT: I was -- I was looking at the sentencing
11 sheet, and it looks like it was a plea ---

12 MR. AIKEN: It ---

13 THE COURT: --- before Judge Early.

14 MR. AIKEN: It was. I -- I was looking for my copy of
15 a transcript. I've got it. I'm sorry, Judge.

16 THE COURT: Uh-huh.

17 MR. AIKEN: I apologize.

18 Q -- on March 22nd, 2007 [sic]. And it looks like you
19 pled guilty to manufacturing or distribution of cocaine,
20 third or subsequent offense; is that correct?

21 A Yes, sir.

22 THE COURT: And I believe it was 2017.

23 MR. AIKEN: 2017. I'm sorry ---

24 THE COURT: Yes, sir.

25 MR. AIKEN: --- Your Honor.

DIRECT EXAMINATION BY MR. AIKEN - WALLACE GLOVER

7

1 THE WITNESS: Yeah, 2017.

2 THE COURT: All right.

3 Q Now, Mr. Glover, you were represented by De Grant
4 Gibbons?

5 A Yes, sir.

6 Q Okay.

7 A It's a mistake.

8 Q To -- tell me about what -- what happened leading up
9 to the plea.

10 A Oh, leading up to the plea?

11 Q (Nodded head up and down.)

12 A It was a -- it was a plea from -- from 10 to 30. I
13 was to receive on the lower end, which was 10 years and --
14 and for distribution -- distribution of cocaine.

15 THE COURT: All right. I -- I'm a little confused.
16 Isn't that what he received, 10 years?

17 MR. AIKEN: Ten years, yes, sir.

18 THE WITNESS: Yeah, 10 years.

19 THE COURT: Okay. All right.

20 MR. AIKEN: Yes, sir.

21 A And ---

22 Q Now, was there some discussion prior to the plea about
23 what was going to be done about arguments concerning prior
24 offenses?

25 A Yeah. Oh. Okay. On the prior offenses, anything

1 that's past ten years, under the 44-53-470 enhancement law,
2 it could not be counted. So they counted me as a third
3 offense and -- and then enhanced me -- enhanced me that
4 that third -- to a third offense, which was 10 to 30.

5 MR. AIKEN: May I approach ---

6 A And ---

7 MR. AIKEN: --- the witness, Your Honor?

8 THE COURT: Okay.

9 A Yeah. And that was one of the issues.

10 Q Mr. Glover ---

11 A Yes, sir.

12 MR. AIKEN: (To the court reporter) If you could mark
13 that for me, please.

14 (Whereupon, Petitioner's Exhibit 1 was marked for
15 identification.)

16 Q Mr. Glover, I'm showing you what's been marked
17 Petitioner's Exhibit 1. Is that -- is that your rap sheet?

18 A Yes, sir.

19 Q Now, it looks like, according to your rap sheet, you
20 had a prior possession of less than 1 gram of ice or crack
21 cocaine in 1993; is that right?

22 A Yes, sir.

23 Q And it looks to me like there was a second charge, a
24 possession of less than 1 gram of meth or cocaine base,
25 first, from 2009; is ---

DIRECT EXAMINATION BY MR. AIKEN - WALLACE GLOVER 9

- 1 A Yeah ---
- 2 Q --- that correct?
- 3 A --- 2009. That is correct.
- 4 Q And you had some federal convictions too, didn't you?
- 5 A Yes.
- 6 Q And what were the federal convictions for?
- 7 A That was in 1989, which is for -- for possession.
- 8 Q Okay.
- 9 A It's 1989.
- 10 MR. AIKEN: I -- I move to admit that as Exhibit 1.
- 11 THE WITNESS: Okay.
- 12 MS. COLEMAN: No objection, Your Honor.
- 13 THE COURT: All right.
- 14 (Whereupon, Petitioner's Exhibit 1 was entered into
- 15 evidence.)
- 16 Q Now, Mr. Glover, before your plea -- well, let me --
- 17 let me ask you this: Before your plea were you given any
- 18 information about how your sentence was going to be
- 19 computed?
- 20 A I was -- that it was going to be, like, a 10-to-30 and
- 21 -- and the -- the solicitor had done enhanced me from
- 22 second to third -- for second -- from second offense under
- 23 third offense.
- 24 MR. AIKEN: Can you mark this, please?
- 25 A Yeah. So that's what I was trying to figure out.

DIRECT EXAMINATION BY MR. AIKEN - WALLACE GLOVER 10

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

3 THE COURT: Ms. Coleman?

4 MS. COLEMAN: Yes, Your Honor.

5 THE COURT: Would you have any objection to -- to Mr.
6 Aiken just telling me what he is -- is attempting to show
7 here? If -- if I could sort of grasp the basis ---

8 THE WITNESS: Uh-huh.

9 THE COURT: --- of this thing, the dates and times.

10 MR. AIKEN: Yes, sir.

11 THE COURT: Of course, I'll be happy to hear his --
12 his testimony.

13 MR. AIKEN: Yes, sir.

14 THE COURT: Okay. But just tell me where we're going

15 ---

16 MR. AIKEN: Yes, sir.

17 THE COURT: --- because I'm having trouble ---

18 MR. AIKEN: I'm ---

19 THE COURT: --- following.

20 MR. AIKEN: I -- I'll -- I'll tell you, Your Honor.
21 Let me -- let me go back to my table to make sure I get
22 this exactly right, Judge.

23 Under Section 44-53-375, which is the statute
24 concerning the penalties for meth ---

25 THE COURT: Prior offenses.

DIRECT EXAMINATION BY MR. AIKEN - WALLACE GLOVER 11

1 MR. AIKEN: --- and crack ---

2 THE COURT: Yeah.

3 MR. AIKEN: --- and prior offenses, for a third or
4 subsequent offense, it says (As read): "Notwithstanding
5 any other provision of law, a person convicted and
6 sentenced pursuant to this subsection for a third or
7 subsequent offense in which all prior offense were for
8 possession of a controlled substance, pursuant to
9 Subsection (A) may have the sentence suspended and
10 probation granted and is eligible for parole, supervised
11 furlough, community supervision, work release, work
12 credits, education credits, and good-conduct credits."

13 So my -- my position is this, Your Honor: Under this
14 statute, since it specific references Subsection (A), the
15 prior offenses that are -- that are -- that count under
16 this statute are prior offenses for possession and
17 manufacture of methamphetamine and cocaine base. What --
18 what he's got, Your Honor -- and it refers to Subsection
19 (A), which is the possession statute -- what he's got, Your
20 Honor, is two prior possessions of crack cocaine, less than
21 an ounce.

22 And the problem with the case, Your Honor, is that the
23 plea, while Mr. Gibbons discussed the prior offenses, he
24 never requested that the judge consider giving him a
25 suspended sentence or perhaps given him probation. And

1 it's readily apparent ---

2 THE COURT: Okay.

3 MR. AIKEN: --- from the ---

4 THE COURT: Let -- let ---

5 MR. AIKEN: --- transcript ---

6 THE COURT: --- me ask you this, though.

7 MR. AIKEN: Yes, sir.

8 THE COURT: All right. And I -- I just -- let --
9 well, I want to be clear here. In any case the potential
10 sentence was 10 to 30; is -- is that correct?

11 MR. AIKEN: It -- in any ---

12 THE COURT: But it could have been suspended, right?

13 MR. AIKEN: That -- that's correct.

14 THE COURT: The range is 10 to 30. And -- and I'm --
15 Ms. Coleman, I believe you would agree that that is the
16 range?

17 MS. COLEMAN: Yes, Your Honor.

18 THE COURT: Okay. But your position, Counsel, is that
19 the attorney did not ask the Court or point out to the
20 Court that whether or not the Court was aware of it -- the
21 Court may have been fully aware that it's suspendible. But
22 at any rate, the attorney did not ask the Court to consider
23 a suspension of the sentence; is that what ---

24 MR. AIKEN: That's correct, Your Honor.

25 THE COURT: Okay. All right. Is there anything in

DIRECT EXAMINATION BY MR. AIKEN - WALLACE GLOVER 13

1 the record that would suggest that the Court was under the
2 impression that it could not be suspended or probation
3 given?

4 MR. AIKEN: This is what the Court said, Your Honor.
5 The Court said (As read): "Under the statutory scheme this
6 offense comes under, it requires me to give you a minimum
7 of 10 years. And I have the discretion to give you up to
8 30 years in the state department of corrections."

9 So it seems from that the -- the Court was under the
10 impression that the Court had to give him 10 years.

11 THE COURT: Okay. All right. But you -- your
12 client's complaint -- his -- his only complaint with his
13 attorney is that he did not tell him or did not argue to
14 the Court that this was suspendible or probation could be
15 given?

16 MR. AIKEN: That's correct.

17 THE COURT: That's it?

18 Is -- is that -- is that right ---

19 THE WITNESS: Yes, sir, Your Honor.

20 THE COURT: Is that what the -- the issue here is, Mr.
21 Glover?

22 THE WITNESS: Yes. And ---

23 THE COURT: And you're saying that the record would
24 show that your attorney never mentioned that to the judge?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay.

2 MR. AIKEN: Actually, Your Honor, he did mention -- if
3 I could find it real quick. Mr. Gibbons said (As read):
4 "Your Honor" -- this is on page 4 of the transcript --
5 "Your Honor, I have and I would like to put something on
6 the record, if I could, if I may. Your Honor, I'm going to
7 hand up to Mr. Glover a copy of the statute, 44-53-375. At
8 the end of (B) Subsection (3) that was the subsection that
9 I was reading to you, which deals with third offense.
10 There is a provision that says if all the priors are
11 possessions, they may be eligible for parole."

12 So he mentions the possibility that he might be
13 eligible for parole.

14 "I told him I can't guarantee that. That's up to
15 corrections, but I'm going to provide him with that statute
16 and a copy of his rap sheet to take with him to deal with
17 that on the other side. I told him I couldn't promise him
18 anything, but that's what the law said and I was going to
19 provide him with that today."

20 So he indicated that under (B) (3), Mr. Glover may have
21 qualified for parole, but he never mentioned to the Court
22 that the Court had the option of ---

23 THE COURT: Uh-huh.

24 MR. AIKEN: --- suspending the sentence and even
25 giving probation.

DIRECT EXAMINATION BY MR. AIKEN - WALLACE GLOVER 15

1 THE COURT: Okay. Is there anything in the record
2 that the Court, again, was unaware that that was a
3 possibility?

4 MR. AIKEN: Well ---

5 THE COURT: I mean ---

6 MR. AIKEN: --- that ---

7 THE COURT: --- don't we assume that Judge Early was
8 versed in the law and that he would understand it?

9 MR. AIKEN: I -- I -- I don't -- I don't doubt that,
10 Your Honor. But it -- it -- it looks to me like when he
11 said about what is in the statutory scheme and that says it
12 requires me to give you a minimum of 10 years, it sounds
13 like he was under the impression that he had to give him 10
14 years.

15 THE COURT: Okay. All right. Well -- well, let --
16 let me ask you this: Ms. Coleman, do you agree that that's
17 essentially what this witness has told me?

18 MS. COLEMAN: Yes, Your Honor.

19 THE COURT: I -- I -- I mean, do we -- I -- I -- I was
20 having a little trouble following him.

21 MR. AIKEN: Yes, sir.

22 THE COURT: And can we just agree that that is what
23 his testimony has been?

24 MR. AIKEN: That's correct.

25 THE COURT: Okay. All right. Do you need to ask

1 anything else?

2 MR. AIKEN: I ---

3 THE COURT: I mean, I don't want to cut you short.

4 MR. AIKEN: I understand, Your Honor.

5 THE COURT: I -- I just -- I -- I was getting a little
6 confused right --- .

7 MR. AIKEN: Yes, sir.

8 THE COURT: --- for a moment there. And I think I
9 clearly hear -- see it now and understand what he's saying.
10 Okay.

11 MR. AIKEN: I -- I have just a few ---

12 THE COURT: Okay.

13 MR. AIKEN: --- more questions ---

14 THE COURT: Okay.

15 MR. AIKEN: --- Your Honor.

16 THE COURT: Certainly. Go ahead.

17 Q Now, Mr. Glover, did Mr. Gibbons ever explain to you
18 that under the circumstances of your case, you could
19 possibly have gotten a suspended sentence or even
20 probation?

21 A I never -- no. I never -- we never discussed that.

22 Q Now ---

23 A I didn't see that until after I -- after I did the
24 research.

25 Q If you had understood that there was a possibility

CROSS-EXAMINATION BY MS. COLEMAN - WALLACE GLOVER 17

1 that you could have gotten a suspended sentence or
2 probation, would you have pled guilty?

3 A If it's suspended sentence -- hold on. Repeat the
4 question again, please.

5 Q Okay. If you had understood, if Mr. Gibbons had told
6 you that there is a possibility that you could get
7 probation and perhaps a suspended sentence, would you have
8 pled guilty to the 10-year sentence?

9 A If there was a strong possibility?

10 Q Yes, a strong possibility.

11 A Yeah. If it's a -- if it's a strong possibility,
12 yeah, because I trust my attorney.

13 Q Okay. Thank you, Mr. Glover.

14 A All right.

15 THE COURT: Ms. Coleman?

16 MS. COLEMAN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. COLEMAN:

19 Q So, Mr. Glover, you're not complaining about the
20 actual guilty plea, are you? You just -- are you saying
21 you want a suspended sentence instead?

22 A No. I'm complaining that -- about this -- see, the
23 10, it turned into a 85 ---

24 Q Uh-huh.

25 A --- and -- and he gave me a calculation sheet that

1 calculated -- I was -- I was to do 65 percent.

2 Q Uh-huh.

3 A And with work credit, that would also drop it down to

4 -- to, like, 50 percent, which would -- which would be 50

5 percent to max the whole sentence out -- well, not max the

6 10 sentence of 65 out with -- with the eligibility --

7 eligibility of parole ---

8 Q Okay.

9 A --- which that was the calculation sheet he gave me.

10 Q Okay. So you're not -- you don't want a new trial on

11 this, do you? Like, are you okay with the guilty plea?

12 You don't regret pleading guilty? Your only complaint is

13 about the parole eligibility and your -- the possibility of

14 a suspended ---

15 A Of course ---

16 Q --- sentence?

17 A --- I want a new trial.

18 Q You do want a new trial?

19 A Yeah.

20 Q Okay.

21 A Yes, ma'am.

22 Q So you're saying you would not have pled guilty if you

23 had known about this?

24 A If he would've represented me -- if he -- if he

25 would've represented me properly and -- and advised me

CROSS-EXAMINATION BY MS. COLEMAN - WALLACE GLOVER 19

1 properly, then I would not have pled guilty, ma'am.

2 Q Okay. How many times did you meet with Mr. Gibbons
3 before you pled guilty?

4 A I -- I'm going say that it was -- it was about -- I
5 think he came there about -- I would say about two or three
6 times.

7 Q Okay.

8 A About the ---

9 Q Did he review all the discovery with you?

10 A Each time, it was about -- it was about five or ten
11 minutes.

12 Q Okay. Did you discuss any possible defenses with your
13 attorney to use at trial?

14 A No, ma'am.

15 Q Okay. Did you give your attorney any leads or
16 witnesses to investigate?

17 A Let's see.

18 Q Like an alibi witness or anybody?

19 A No, not the alibi witness.

20 Q Okay.

21 A I don't have a alibi witness.

22 Q Now, at the guilty plea, do you remember waiving your
23 constitutional rights, like your right to a jury trial and
24 your right to remain silent?

25 A Yes, ma'am.

1 Q All right. Do you remember telling the judge that you
2 were satisfied with your attorney's services?

3 A Do I remember that?

4 Q Uh-huh.

5 A This the day I got sentenced, right?

6 Q Yes. You told the plea judge that you were satisfied
7 with your attorney, right?

8 A Let me see. Yeah. Because I thought it was 65
9 percent.

10 Q Okay. But you didn't have any complaints about him at
11 that time?

12 A Well, I was going say something, but the judge said,
13 "Let me finish out." And then at -- at the end of getting
14 sentenced, I didn't have any -- I didn't have a chance -- I
15 didn't have a chance to intervene and speak on my own
16 behalf.

17 Q Okay. So you pled guilty under the impression that
18 you might get a suspended sentence? Is that right? Is
19 that what you're saying? Or you might get 65 percent
20 parole? You might have to serve 65 percent of your
21 sentence?

22 A Yeah, 65 percent ---

23 Q Okay.

24 A --- which was 50 percent with all the work credits and
25 the eligibility of parole on there ---

CROSS-EXAMINATION BY MS. COLEMAN - WALLACE GLOVER 21

1 Q Okay.

2 A --- in every single year.

3 Q Okay. There's no doubt that you're guilty of this,
4 right?

5 A No, ma'am.

6 Q Okay.

7 A No. I wasn't say I'm guilty, ma'am.

8 Q And do you still want a trial on these charges?

9 A Yes, ma'am.

10 Q Okay. Thank you. Nothing further.

11 MR. AIKEN: No redirect.

12 THE COURT: Counsel, is there an issue as to whether
13 or not it was a third offense or not?

14 MR. AIKEN: Whether this was a third offense?

15 THE COURT: Yes.

16 MR. AIKEN: I don't ---

17 THE COURT: I mean, we're talking about 65 percent, 85
18 -- I mean, was it a nonparolable offense?

19 MR. AIKEN: It ---

20 THE COURT: Really?

21 MR. AIKEN: It was. It -- it was, based on his rap
22 sheet, a third offense ---

23 THE COURT: All right.

24 MR. AIKEN: --- under ---

25 THE COURT: So it's ---

1 MR. AIKEN: --- this statute.

2 THE COURT: So -- so that -- that's not really an
3 issue here?

4 MR. AIKEN: If it was a third offense, yes, sir.

5 THE COURT: Okay. All right. I just want to make
6 certain I was understanding what he was saying, because he
7 -- I thought he was saying, you know, I was eligible for
8 parole. You know, if it's a third offense, it's my
9 understanding he's not eligible for parole; it's an 85-
10 percenter, right?

11 MR. AIKEN: Actually, under (B) (3), he can -- he can
12 get a suspended sentence ---

13 THE COURT: Well, I understand.

14 MR. AIKEN: --- and probation.

15 THE COURT: I understand that. I understand ---

16 MR. AIKEN: Yes, sir.

17 THE COURT: --- that. At sentencing, he could've --
18 but whatever he's sentenced to, that's an 85-percenter,
19 though? I'm -- I'm talking about parole; is that correct?

20 MR. AIKEN: That would be 85 ---

21 THE COURT: Okay.

22 MR. AIKEN: --- percent.

23 THE COURT: Yeah, okay.

24 MR. AIKEN: Yes, sir.

25 THE COURT: All right. Well, I -- I -- and -- and

CROSS-EXAMINATION BY MS. COLEMAN - WALLACE GLOVER 23

1 that's if it's a third offense. I'm just -- I -- I seem to
2 be getting little whiffs of, perhaps he's saying: "I wasn't
3 a third offense; I shouldn't have been even in that 85
4 percent, nonparolable category.

5 MR. AIKEN: Yes, sir.

6 THE COURT: Okay. But that's not the case?

7 MR. AIKEN: Well, he ---

8 THE COURT: That ---

9 MR. AIKEN: No. He had two -- two prior possession of
10 cocaine.

11 THE COURT: And that was my understanding.

12 MR. AIKEN: And then he had this third offense.

13 THE COURT: I understand. Okay.

14 MR. AIKEN: So it was No. 3.

15 THE COURT: Okay. Did you have any other questions?

16 MR. AIKEN: Oh. No, Your Honor.

17 THE COURT: You may step down. Thank you, sir.

18 THE COURT REPORTER: Your Honor, I believe the witness
19 has one of the exhibits.

20 THE WITNESS: Yeah. that right there?

21 THE COURT REPORTER: The one in your hand there.

22 THE WITNESS: Sorry.

23 THE COURT REPORTER: That's okay. Thank you.

24 Thank you, Your Honor.

25 THE COURT: All right. You may step down, Mr. Glover.

DIRECT EXAMINATION BY MS. COLEMAN - DE GRANT GIBBONS 24

1 (Whereupon, the witness exited the witness stand.)

2 THE COURT: Anything further, Mr. Aiken?

3 MR. AIKEN: No, Your Honor.

4 THE COURT: All right.

5 MS. COLEMAN: The state ---

6 THE COURT: Ms. Coleman?

7 MS. COLEMAN: --- calls Public Defender Grant Gibbons.

8 THE COURT: All right.

9 (Whereupon, the witness came forward.)

10 THE WITNESS: Good morning, Judge.

11 THE COURT: Good morning.

12 DE GRANT GIBBONS, having been first duly sworn,
13 testified as follows:

14 THE WITNESS: My name is Grant Gibbons. Last name is
15 G-i-b-b-o-n-s.

16 DIRECT EXAMINATION

17 BY MS. COLEMAN:

18 Q Good morning, Mr. Gibbons.

19 A Good morning.

20 Q I'll start out with some background; then we can dive
21 into the issues a little bit. How long have you been
22 practicing law?

23 A Since 1991.

24 Q Okay. Were you appointed to this case?

25 A Yes, I was.

DIRECT EXAMINATION BY MS. COLEMAN - DE GRANT GIBBONS 25

1 Q Okay. Do you recall when you were appointed?

2 A February 23rd of '16.

3 Q Okay. About how long did you represent Mr. Glover
4 before his guilty plea?

5 A I want to say almost a year.

6 Q Okay.

7 A I'm not sure.

8 Q What were the facts in this case, as the state was
9 alleging?

10 A Well, they had two distributions. And there was a
11 video from two different angles of a hand-to-hand exchange,
12 clearly showing Mr. Glover's face and the transaction.

13 Q Okay. Was this a -- with a confidential informant?

14 A Yes, it was.

15 Q Okay. How many times did you meet with the applicant
16 before his guilty plea?

17 A I met with him at least three or four times before the
18 guilty plea. And I explained to him what had gone on. I
19 got some still photographs. I think, eventually, I showed
20 him the video and ---

21 Q Uh-huh.

22 A --- and it was, you know, my advice to him that there
23 was not a defense to the case.

24 Q Okay. Did he seem to understand your discussions
25 about the discovery in his case?

1 A Yes, he did.

2 Q Okay. Did he present you with any defenses or
3 witnesses to investigate?

4 A No.

5 Q Okay. Did you explain to him the elements of the
6 charges and what the state was required to prove?

7 A I did.

8 Q Okay. How would you characterize the state's evidence
9 in this case?

10 A It was one of the strongest videos I had seen.

11 Q All right. Before the guilty plea, did you review the
12 applicant's constitutional rights?

13 A I did.

14 Q Okay. Did he ever tell you he didn't understand
15 something?

16 A He seemed to understand everything I was saying. I
17 mean, he was in a bad position. He didn't like what he was
18 facing, but he understood what was going on.

19 Q Yeah. Now, what was -- did the applicant end up
20 accepting a plea offer from the state?

21 A He did. I got a -- an e-mailed offer from the
22 solicitor's office that was an offer to plead to a
23 negotiated 10 years.

24 Q Okay. And did he accept that plea, that negotiated
25 sentence?

DIRECT EXAMINATION BY MS. COLEMAN - DE GRANT GIBBONS 27

1 A We were getting ready to go to trial. I was all
2 prepped for trial. And he left the courthouse and we had
3 to postpone the trial. He was later picked up. And at
4 that point he pled guilty.

5 Q Okay.

6 THE COURT: Was the negotiation off the table at that
7 time?

8 THE WITNESS: It was never officially pulled off the
9 table. That was what we had been discussing. I know that
10 the sentence sheet did not indicate that.

11 THE COURT: Well, was it a negotiated sentence?

12 THE WITNESS: It -- it was offered as a negotiated
13 sentence. There was never anything else offered. It was
14 pretty much our understanding that we were getting in -- a
15 benefit of getting the minimum sentence.

16 THE COURT: Okay. Well, let -- let me -- I -- and I
17 hate to interrupt you. But ---

18 MS. COLEMAN: You're fine.

19 THE COURT: --- let -- let me just ---

20 THE WITNESS: No problem.

21 THE COURT: --- ask you one thing here. How many
22 charges did he have initially?

23 THE WITNESS: He had two distributions.

24 THE COURT: Two distributions?

25 THE WITNESS: Yes, sir.

- 1 THE COURT: And he pled to?
- 2 THE WITNESS: One.
- 3 THE COURT: One distribution?
- 4 THE WITNESS: Correct.
- 5 THE COURT: Okay. All right. I just wanted to be
6 clear on that. All right. Okay. So there was a deal?
- 7 THE WITNESS: Right. Your Honor, I have the -- the --
8 the e-mail I got on February the 28th says (As read):
9 "He's indicted for distribution-third, two -- two counts --
10 two counts; my offer is for him to plead to one count as
11 indicted for a negotiated 10-year sentence, which is the
12 minimum. I will *nolle pros* the other indictment."
- 13 THE COURT: So you negotiated the ---
- 14 THE WITNESS: That was in an e-mail. Yes, sir.
- 15 THE COURT: Well, the negotiated was 10 years?
- 16 THE WITNESS: That's correct, Your Honor.
- 17 THE COURT: All right. Okay.
- 18 THE WITNESS: The sentence sheet doesn't indicate
19 negotiated. The -- the -- not -- that box was not checked.
20 But at that point that's all we had been talking about ---
- 21 THE COURT: Okay.
- 22 THE WITNESS: --- Mr. Glover and I and the solicitor.
- 23 THE COURT: All right. Go ahead.
- 24 MS. COLEMAN: Thank you, Your Honor.
- 25 Q And regardless of the negotiation, Judge Early

DIRECT EXAMINATION BY MS. COLEMAN - DE GRANT GIBBONS 29

1 sentenced him to 10 years; is ---

2 A Correct.

3 Q --- that right?

4 Okay. What is your understanding of his parole
5 eligibility at this point?

6 A Well, I -- I think it's kind of unclear.

7 Q Okay.

8 A He has the armed robbery conviction back in the day
9 and -- and -- and I -- I think that kind of prevents him
10 from getting paroled on a -- a -- a charge after that.

11 Q Uh-huh.

12 A But I wasn't sure about that. And I know the parole
13 board does what they want to do many times. So I was
14 hopeful that he could get parole. That's why I provided
15 him with the -- the tools he needed to show corrections
16 that his priors were possessions and ---

17 Q Uh-huh.

18 A --- and sent that with him when he left, hope --
19 hoping that it would work out that way.

20 Q Okay. And did you give him those documents during the
21 plea?

22 A I did.

23 Q On the record?

24 A I did.

25 Q Okay.

1 A And I went -- followed him back after the plea and
2 explained what he needed to -- to argue when he got to
3 corrections.

4 Q Okay. Did you explain to him the possibility that he
5 could get 85 -- have to serve 85 percent?

6 A I did.

7 Q Okay. And did the judge explain this at the plea?

8 A He did.

9 Q Okay. So in your opinion, was he aware that he might
10 have to serve 85 percent?

11 A Yes.

12 Q Okay. Is there any question that this was his third
13 offense, in terms of enhancement purposes, for the drug
14 conviction?

15 A No. He -- he has two prior possessions and a federal
16 charge, which was some kind of conspiracy to possess. I'm
17 not sure if it was a possession with intent or not. But
18 since he had already had more than one first offense ---

19 Q Right.

20 A --- the look back of ten kind of was out the door and
21 it -- it went clear back as far as there was a record. And
22 so ---

23 Q Uh-huh.

24 A --- they would all fall under -- from my
25 interpretation of the law, under prior offenses.

DIRECT EXAMINATION BY MS. COLEMAN - DE GRANT GIBBONS 31

1 Q Yeah. Were you present in the courtroom today when
2 Mr. Aiken was explaining his argument about the possession
3 charges?

4 A Yes.

5 Q Are you under the same understanding of the -- the
6 possession offenses possibly being able to ask for a
7 suspended sentence?

8 A I am. And that's why I provided the defendant with
9 the -- the priors and the statute that -- that was argued
10 by his counsel.

11 Q Okay. So is that something that you believe you
12 should have asked the Court for during the plea?

13 A I -- I -- he got his 10-year sentence, which is what
14 we all had anticipated him getting. And the judge has
15 nothing to do with the parole eligibility. That -- that
16 completely takes places in the parole board. So I provided
17 him with the tools he needed to go forward from there.

18 Q Okay. Was there anything else you think you could
19 have done to help him get the parole eligibility?

20 A Not that I can think of.

21 Q Okay. Is there any question in your mind that his
22 guilty plea was knowing and voluntary?

23 A No.

24 Q Okay. He seemed to understand everything?

25 A He did.

1 Q Okay. And do you believe pleading guilty was in his
2 best interests?

3 A Absolutely.

4 Q Why do you think so?

5 A Well, they could've tried him for the third. And
6 then, they had a -- a almost equally strong case that they
7 could've tried him again.

8 Q Uh-huh.

9 A And nothing good could've come of that.

10 Q Okay. Any you -- did you believe the evidence, the
11 videotape of him, was strong evidence?

12 A Absolutely.

13 Q Okay. Whose decision was it to plead guilty?

14 A Mr. Glover.

15 Q Okay. Did he ever indicate that he wanted to go to
16 trial?

17 A He did.

18 Q Okay.

19 A He did, and I had prepared for trial.

20 Q Okay.

21 A I had my jury -- jury voir-dire questions ready to go.
22 And -- and we were ready to strike a jury.

23 Q Okay. But ultimately, he choose to plead guilty?

24 A Correct.

25 Q Okay. Nothing further. Thank you.

1 CROSS-EXAMINATION

2 BY MR. AIKEN:

3 Q Hello, Mr. Gibbons.

4 A Hello.

5 Q How are you?

6 A I'm good. How are you today?

7 Q Any question in your mind that all of Mr. Glover's
8 prior were possessions?9 A I don't know for sure about the federal charge,
10 because I'm not familiar with their statute.

11 Q Okay.

12 A But the other two were possessions.

13 Q Well, under 44-53-375(B) (3) ---

14 A Correct.

15 Q --- if all of his priors were possessions, couldn't he
16 have gotten a suspended sentence or perhaps probation?17 A The law doesn't prohibit it. But that was not the
18 offer we were all under the understanding was being made to
19 him.20 Q Now, did you discuss with Mr. Glover the possibility
21 that -- that his sentence would be 65 percent?22 A I told him I couldn't tell him what would happen at
23 the parole board, but I was giving him the tools, and if
24 they found him probation -- or parole-eligible, he very
25 well could've gotten down to 65 percent. But that was up

1 to the parole board.

2 Q I'm showing you what's been marked Petitioner's
3 Exhibit 2. Is -- is that a release-date-calculation that
4 you performed for Mr. Glover?

5 A It is.

6 Q Okay. And that has a parole-eligibility date of
7 November 25th of 2018?

8 A Correct.

9 Q And earliest possible release date, January 20th,
10 2022?

11 A Correct. You want that back?

12 MR. AIKEN: If we could admit that into evidence,
13 please, Your Honor.

14 THE WITNESS: Your Honor, I think he moved that into
15 evidence.

16 THE COURT: Oh, yes. Any objection?

17 MS. COLEMAN: No objection.

18 THE COURT: Without objection, it's admitted. I'm
19 sorry.

20 (Whereupon, Petitioner's Exhibit 2 was entered into
21 evidence.)

22 MR. AIKEN: If I could have just one moment, Your
23 Honor.

24 (Off the record briefly.)

25 Q Mr. Gibbons, did ---

REDIRECT EXAMINATION BY MS. COLEMAN - DE GRANT GIBBONS 35

1 A Yes.

2 Q --- did -- do you remember when you gave Mr. Glover
3 Exhibit 2?

4 A I gave him that when I gave him the -- the rest of the
5 packet.

6 Q Right before the plea?

7 A Right at the end of the plea, I believe.

8 Q At the end of the plea?

9 A Yes, sir.

10 Q All right. Thank you.

11 MS. COLEMAN: Just briefly, Your Honor.

12 THE COURT: Uh-huh.

13 REDIRECT EXAMINATION

14 BY MS. COLEMAN:

15 Q Do you believe that the applicant's potential parole
16 eligibility was a factor that -- that helped determine his
17 decision to plead guilty or go to trial?

18 A I bent over backward to tell him I couldn't control
19 the parole-eligibility side and what could happen could be
20 nothing; could be parole eligibility; and that it was up to
21 him at that point.

22 Q And would his parole eligibility have been the same if
23 he had been convicted at trial versus pleading guilty?

24 A Yes.

25 Q Okay. Thank you. Nothing further.

1 THE COURT: Anything further?

2 MR. AIKEN: Nothing further ---

3 THE COURT: All right.

4 MR. AIKEN: --- from the ---

5 THE COURT: You may ---

6 MR. AIKEN: --- applicant.

7 THE COURT: --- step down.

8 (Whereupon, the witness exited the witness stand.)

9 (Off the record briefly.)

10 MS. COLEMAN: Nothing further from the state.

11 THE COURT: All right. Anything further in reply?

12 MR. AIKEN: No, Your Honor. I believe you've heard my
13 argument.

14 THE COURT: All right.

15 MS. COLEMAN: And very briefly, Your Honor, this is --
16 it seems to be that there's no question that this is his
17 third offense, based on his prior offenses. The only issue
18 that seems to be at play here is whether or not he was
19 parole-eligible or eligible for a suspended sentence.

20 I think the testimony today shows that his parole
21 eligibility would've been the same regardless of if he pled
22 guilty or went to trial ---

23 THE COURT: Let me ---

24 MS. COLEMAN: --- if he ---

25 THE COURT: --- let me ---

1 MS. COLEMAN: --- had been ---

2 THE COURT: --- ask you ---

3 MS. COLEMAN: --- convicted.

4 THE COURT: --- this.

5 MS. COLEMAN: Uh-huh.

6 THE COURT: Is there anything -- and -- and I -- I
7 believe this is the -- the point we're -- we're missing.
8 Is there anything to suggest that Judge Early did not
9 understand that this was a suspendible sentence? The
10 lawyer doesn't have to tell me what to do.

11 MS. COLEMAN: Uh-huh.

12 THE COURT: I usually know what the sentence is. Is
13 there anything to suggest in this record ---

14 MS. COLEMAN: Not that I know ---

15 THE COURT: --- that ---

16 MS. COLEMAN: --- of, Your Honor.

17 THE COURT: --- that Judge Early did not understand
18 that?

19 MS. COLEMAN: No. I -- I didn't see any indication of
20 that in the record.

21 THE COURT: Well, Mr. Aiken, your client testified
22 that he went into this plea expecting a 10-year sentence,
23 which is a lawful sentence; in fact, it's the minimum
24 sentence under ---

25 THE APPLICANT: Sixty-five percent.

1 THE COURT: --- this statute. Now, it could be
2 suspended; probation could be given parole. I don't -- or
3 -- or -- or probation could be given instead of a sentence.
4 But no one disputes the fact that he pled guilty, expecting
5 to receive 10 years. I mean, isn't that what it's about?

6 THE APPLICANT: At 65 ---

7 THE COURT: I mean, does ---

8 THE APPLICANT: --- percent.

9 (Whereupon, Mr. Aiken and the applicant conferred.)

10 THE COURT: Does anybody -- anybody suggest that --
11 that this judge was unaware that he could suspend the
12 sentence or give probation?

13 MR. AIKEN: The -- the only thing I can say about
14 that, Your Honor, is what was in the plea transcript about
15 the judge saying that 10 years was the minimum.

16 THE COURT: Well, what I've seen the -- in the plea
17 transcript is the statute actually being handed up to the
18 judge.

19 MS. COLEMAN: Uh-huh. Uh-huh.

20 THE COURT: I mean, the judge has got it right there
21 in front of him. Judge Early has been around a long time
22 or a good -- good, long time. And I -- and it's
23 unconceivable to me that he would not be aware. This -- he
24 doesn't say that I can't suspend it; that I can't give
25 probation.

1 But everybody seems to have been under the impression,
2 when this plea was entered: I'm pleading guilty; I'm
3 taking the deal; I'm expecting 10 years. And that's
4 exactly what happened.

5 I mean, it -- isn't that what -- what happened ---

6 THE APPLICANT: Well, see ---

7 THE COURT: --- Mr. Aiken? Isn't that exactly what
8 happened? Didn't he get exactly what he was asking for or
9 expecting when he went -- when he did this plea?

10 MR. AIKEN: I think his response that -- that he's
11 trying to make himself is that his understanding was it was
12 going to be at 65 percent, rather than 10 years at 85
13 percent.

14 THE COURT: Okay. Well, then, would -- I -- I
15 thought, a -- a moment ago, we were clear on the fact that
16 it was a third offense and it would be an 85 percent?

17 MR. AIKEN: I -- I think that's -- that's the law.
18 But he's -- he says that his understanding was that he was
19 supposed to get 65 percent.

20 THE COURT: Well, I'm looking here at the transcript.
21 And in the transcript, we -- Mr. Gibbons puts on the record
22 that he's talked with him about probation -- or -- or
23 parole, rather, and that he's giving him a copy of the rap
24 sheet and the statute. And the Court says (As read): "If
25 it's applicable to him, then it would not be in the 85

1 percent." What's the Court say in there ---

2 MS. COLEMAN: Your Honor, I ---

3 THE COURT: --- Ms. Coleman?

4 MS. COLEMAN: I would also point to page 7, from lines
5 7 to 16. The Court goes over this again and advises the
6 applicant: "There's a possibility that this could be an 85
7 percent, no-parole sentence."

8 THE COURT: Oh. That's what I was looking at.

9 MS. COLEMAN: And he says (As read): "Or, as Mr.
10 Gibbons has shown you, under the statute, if the prior
11 offenses did not deal with distribution or simple
12 possession, that may not be applicable to you. Do you
13 understand that?"

14 And he replied that he did understand that.

15 THE COURT: And he -- he very clearly, Mr. Aiken,
16 tells him that -- at that point -- I -- that's what I was
17 actually looking for ---

18 MS. COLEMAN: Uh-huh.

19 THE COURT: --- that it could be a 85 percent. And I
20 think the Court and Mr. Gibbons were making it clear: We
21 can't promise you anything about probation ---

22 MS. COLEMAN: Yes, Your Honor.

23 THE COURT: --- or -- I mean, parole, rather -- I'm
24 confusing them this morning -- parole; that it could be 85
25 percent.

1 MS. COLEMAN: Yes, Your Honor.

2 THE COURT: All right.

3 MS. COLEMAN: I -- I think the -- well, my position is
4 the applicant, from the record and from Mr. Gibbons'
5 testimony, was aware that he could serve 85 percent. That
6 was something he knew going into the plea. He did get the
7 deal that he hoped for by pleading guilty.

8 And based on all this information and the evidence
9 that he was facing against him, I don't believe that he
10 would've gone to trial rather than pleading guilty,
11 especially because he would face two -- two charges at
12 trial, rather than just one.

13 THE COURT: All right. Anything further, Mr. Aiken?

14 MR. AIKEN: No, Your Honor.

15 THE COURT: All right. Based upon the evidence in
16 this case, I would deny relief. I do not believe that the
17 applicant has met the burden required. There is certainly
18 nothing to suggest that I have seen that Mr. Gibbons failed
19 to provide adequate assistance to this defendant.

20 I am particularly moved by the fact that there's
21 nothing in this record to suggest that Judge Early was not
22 fully aware of the statute and the possibility of a
23 suspension of this sentence or granting probation. So I am
24 going to deny relief. Thank you.

25 MS. COLEMAN: Thank you, Your Honor.

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THE COURT: All right.

MR. AIKEN: Thank you, Judge.

THE COURT: Yes, sir.

(Whereupon, the proceeding was concluded at 10:52 a.m.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
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 IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE 27TH
DAY OF AUGUST, 2018.

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





MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JANUARY 30, 2019



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- Sex Offender Registry
- Unidentified Remains
- Vulnerable Adult
- Wanted / Unsolved
- iLAB
-  **Member:**
- Secure Services



SLED CATCH
Citizens Access to Criminal Histories

Results

Name **WALLACE GLOVER**
 DOB **1966** [REDACTED]
 Gender **Male**
 Maiden Name
 SSN
 Transaction **82743519WL**
 Date of Check **August 27, 2018 at 04:35**

ARREST RECORD
S.C. Law Enforcement Division
WWW

The record is based on a search using Last Name, First Initial, Gender, and Date of Birth Only. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

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 ORI-SCLED0000 SID-SC00625239 FBI-***** PUR-E
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PAGE-01 DATE-08/27/2018 TIME-04:35:22
 REQ ORI-SCLED0000 S C LAW ENF DIV
 SID-SC00625239 FBI-
 NAME-GLOVER, WALLACE SEX-M RACE-B
 HEIGHT-508 WEIGHT-160 EYES-BRO HAIR-BRO SKIN- BORN-SC
 FPC-PI05071410DI07091709 HENRY- 5 I 5 U IIO 10
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 DATE RECORD ENTERED--N/A DATE OF LAST UPDATE--04/05/2017

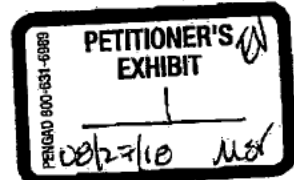
ADDITIONAL IDENTIFIERS	BIRTH DATES	MARKS	SOC SEC	MISC NUM
MOORE, CRAIG	[REDACTED]	1966		
GLOVER, BAY BAY	[REDACTED]	1972		
GLOVER, BEBE	[REDACTED]	1966		

TAT R ARM
TAT CHEST
TAT ARM

CONTRIBUTOR/SUBJECT	DOA/RCVD	CHARGE/DISPOSITION/ETC
GLOVER, WALLACE SC0190200 JOHNSTON PD	11/19/1987	

SC040015G CENTRAL PPP

ARREST CHARGE -CARRYING A PISTOL
 OFFENSE DATE-11/19/1987
 ARREST INFO- PCC
 COURT CHARGE 01-CARRYING A PISTOL
 COURT DISP-CONVICTED;6M CONFINEMENT OR FINE;1Y OR \$1000 SUSPENDED



GLOVER, WALLACE
SC0020000 AIKEN CNTY SO
CASE-883884
WARR-C094719

07/06/1988

ARREST CHARGE -ASSAULT &
BATTERY W/INTENT TO KILL

GLOVER, WALLACE
SC0020100 AIKEN PD
CASE-900646

09/07/1989

ARREST CHARGE -DIST CRACK/COC
AINE W/IN 1/2 MILE FROM
SCHOOL
PHOTOGRAPH AVAILABLE
ARREST CHARGE -CONTRIBUTING
TO DELINQUENCY OF MINOR
COURT CHARGE 01-DISTRIBUTION
OF CRACK COCAINE
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-05/28/1990
COURT CHARGE 02-CONTRIBUTING
TO DELINQUENCY OF MINOR
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-05/29/1990

WARR-C315268

WARR-C315294

MOORE, CRAIG
SC0020100 AIKEN PD
CASE-945530
WARR-D913735

10/14/1993

ARREST CHARGE -POSSESSION OF
CRACK W/I TO DISTRIBUTE
OFFENSE DATE-10/14/1993

WARR-D913734

ARREST CHARGE -POSSESSION OF
CRACK W/I TO DISTRIBUTE
IN PROX
OFFENSE DATE-10/14/1993

CIT-44-53-375
DOC-94GS0200056
WARR-D913734

COURT CHARGE 01-CRACK COCAINE
, POSS W/ INTENT, 1ST OFF
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-06/06/1995

CIT-44-53-375(A) FELONY
DOC-94GS0200056
WARR-D913735

COURT CHARGE 02-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED;5 YR &
\$5000 SUS UPON PROB 5 YR
COURT DATE-06/06/1995

GLOVER, WALLACE
SC0020100 AIKEN PD
CASE-9521975
WARR-E543458

06/26/1995

ARREST CHARGE -ARMED ROBBERY
OFFENSE DATE-06/26/1995
PHOTOGRAPH AVAILABLE

CIT-16-11-330(A) FELONY
DOC-95GS0201281
WARR-E543458

COURT CHARGE 01-ARMED ROBBERY
, ROBBERY ARMED WITH DEADLY
WEAPON
COURT DISP-CONVICTED;20 YR
COURT DATE-02/05/1996

GLOVER, WALLACE
SC0020100 AIKEN PD
CASE-9611252
WARR-E543850

11/29/1995

ARREST CHARGE -FORGERY
OFFENSE DATE-11/09/1995
PHOTOGRAPH AVAILABLE

WARR-29610AC

ARREST CHARGE -GIVING FALSE
INFORMATION
OFFENSE DATE-11/09/1995

WARR-29608AC ARREST CHARGE -NO DRIVERS
LICENSE IN POSSESSION
OFFENSE DATE-11/09/1995

WARR-29609AC ARREST CHARGE -VIOLATION OF
SEAT BELT
OFFENSE DATE-11/09/1995

WARR-29612AC ARREST CHARGE -NO PROOF OF
OWNERSHIP

WARR-29611AC ARREST CHARGE -VIOLATION OF
LIQUOR LAW

WARR-29610AC COURT CHARGE 01-GIVING FALSE
INFORMATION TO POLICE
COURT DISP-CONVICTED;BOND
FORFEITED \$304
COURT DATE-01/19/1996

WARR-29608AU COURT CHARGE 02-MO DRIVER
LICENSE IN POSSESSION
COURT DISP-CONVICTED;BOND
FORFEITED \$38
COURT DATE-01/19/1996

WARR-29609AU COURT CHARGE 03-SEATBELT
VIOLATION
COURT DISP-CONVICTED;BOND
FORFEIT \$15
COURT DATE-01/19/1996

WARR-29612AU COURT CHARGE 04-NO PROOF OF
OWNERSHIP
COURT DISP-CONVICTED;BOND
FORFEIT \$76

WARR-29611AU COURT CHARGE 05-VIOLATION
LIQUOR LAW
COURT DISP-CONVICTED;BOND
FORFEIT \$152
COURT DATE-01/19/1996

DOC-00GS02000000 COURT CHARGE 06-FORGERY
WARR-E543850 COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-07/11/1997

GLOVER, WALLACE
SC0320100 BATESBURG PD
CASE-951278

11/30/1995

ARREST CHARGE -FORGERY
OFFENSE DATE-11/28/1995
PHOTOGRAPH AVAILABLE

GLOVER, WALLACE
SC0020000 AIKEN CNTY SO
CASE-0009600222
WARR-E433421

01/08/1996

WARR-E433423
WARR-E433424
WARR-E433425
WARR-E433426

ARREST CHARGE -FORGERY
ARREST CHARGE -FORGERY
ARREST CHARGE -FORGERY
ARREST CHARGE -FORGERY
ARREST CHARGE -FORGERY

CIT-16-13-10 MISDEMEANOR
DOC-00GS02
WARR-E433421

COURT CHARGE 01-FORGERY
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-06/30/1997

CIT-16-13-10 MISDEMEANOR
DOC-00GS02
WARR-E433423

COURT CHARGE 02-FORGERY
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-06/30/1997

CIT-16-13-10 MISDEMEANOR
DOC-00GS02
WARR-E433424

COURT CHARGE 03-FORGERY
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-06/30/1997

CIT-16-13-10 MISDEMEANOR

DOC-00GS02
WARR-E433426

COURT CHARGE 04-FORGERY
COURT DISP-NON-CONVICTION;
NOLLE PROCESSED
COURT DATE-06/30/1997

CIT-16-13-10 MISDEMEANOR
DOC-00GS02
WARR-E433426

COURT CHARGE 05-FORGERY
COURT DISP-NON-CONVICTION;
NOLLE PROCESSED
COURT DATE-06/30/1997

GLOVER, WALLACE
SC0380100 ORANGEBURG PD
CASE-96113

02/07/1996

ARREST CHARGE -FORGERY UP TO
A \$1000
OFFENSE DATE-02/07/1996
PHOTOGRAPH AVAILABLE

SC040055C R & E CENTER COLA
CASE-231429
CIT-16-11-330(A) FELONY

02/13/1996 CUSTODY STATUS-RECEIVED
START DATE-02/13/1996

COURT CHARGE 01-ARMED ROBBERY
COURT DISP-CONVICED;20 YEARS

GLOVER, WALLACE
SC0020100 AIKEN PD
CASE-0925263
ATN-990000462626
WARR-I091305
CIT-16-3-620(2)-FELONY

02/10/2009

ARREST CHARGE -ASSAULT AND
BATTERY W/INTENT TO KILL
OFFENSE DATE-02/09/2009
PHOTOGRAPH AVAILABLE
ARREST INFO- SC01870318 CONSO
LIDATED

CIT-16-3-620(2)-FELONY
DOC-09GS0201327
WARR-I091305

COURT CHARGE 01-ASSAULT AND
BATTERY W/INTENT TO KILL
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-09/23/2009
ATN-990000462626

CIT-44-53-375(A)-MISDEMEANOR
DOC-09GS0201330
WARR-I091307

COURT CHARGE 02-POSS < 1GRAM
OF METH OR COCAINE BASE
1ST
COURT DISP-CONVICED;223 DY
CTS 223 DY + CC RELEASE
TO US MARSHALL
COURT DATE-09/21/2009

GLOVER, WALLACE
SC0020000 AIKEN CNTY SO
CASE-0212042016
ATN-990000699108
WARR-2016GS0200865
CIT-44-53-375(B) (2)-FELONY

12/04/2016

ARREST CHARGE -DRUGS/MAN, DIST
, ETC OF COCAINE BASE 2ND
OFFENSE DATE-12/04/2016
PALM PRINTS AVAILABLE

WARR-2016A0210700031
CIT-44-53-375(B) (2)-FELONY

ARREST CHARGE -DRUGS/MAN, DIST
, ETC OF COCAINE BASE 2ND
OFFENSE DATE-12/04/2016

WARR-2016A0210700032
CIT-44-53-375(B) (2)-FELONY

ARREST CHARGE -DRUGS/MAN, DIST
, ETC OF COCAINE BASE 2ND
OFFENSE DATE-12/04/2016

WARR-2016GS0200866
CIT-14-5-320 UNCLASSIFIED

ARREST CHARGE -CONTEMPT OF
CIRCUIT COURT
OFFENSE DATE-12/04/2016

CIT-44-53-375(B) (2)-FELONY
DOC-16GS0200865

COURT CHARGE 01-DRUGS/MAN, DIS

WARR-2016A0210700031

T,ETC OF COCAINE BASE 2ND
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-03/22/2017
ATN-990000699108

CIT-44-53-375(B) (3)-FELONY
DOC-16GS0200866
WARR-2016A0210700032

COURT CHARGE 02-DRUGS/MAN,DIS
T,ETC COCAINE BASE 3RD OR
SUB
COURT DISP-CONVICTED;10 yrs
+ cc (\$283.25) CTS
COURT DATE-03/22/2017

SC040185C KIRKLAND RECPT & EV 03/31/2017
CASE-002314
CIT-44-53-375(B) (3)-FELONY

CUSTODY STATUS-RECEIVED
START DATE-03/31/2017
COURT CHARGE 01-DRUGS/MAN,DIS
T,ETC COCAINE BASE 3RD OR
SUB
COURT DISP-CONVICTED;10 yrs
COURT DATE-40/45/0656
ATN-50D100028288

BASED ON SEARCH OF SLED CJIS CCH FILE USING SID/SC00625239
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
USE OF THIS RECORD IS ALLOWED.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** S C CJIS END OF RECORD **

:: Release Date Calculation

These sentence calculation screens are a general guideline to provide information regarding the sentencing of an offender. While we are confident that the information is accurate, we urge you contact the South Carolina Department of Corrections Inmate Records Office at (803) 896-8531. In the event that you have any sentencing questions or need technical assistance.

Please note the following disclaimers:

- While all attempts are made to provide complete and accurate information, SCDC does not warrant the accuracy or reliability of any information on this system and shall not be liable for any losses caused by such reliance on the accuracy or reliability of such information, including, but not limited to incidental and consequential damages. This system is provided "as is" without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose. SCDC maintains all immunities as provided in the South Carolina Tort Claims Act.
- Any person who relies on any information obtained from this system does so at his or her own risk. In addition, nothing contained on this system is an official record of SCDC or its employees.
- The information that is generated from these screens reflects current sentencing statutes as of (effective date). This system will not reflect either prior or future sentencing guidelines.
- The information that is generated from these screens will directly reflect and is only as good as the data that is entered. The screens are not designed to catch technical errors, such as entering sentences other than those called for in mandatory sentencing.
- The release dates calculated reflect an "earliest possible case scenario", meaning that all possible credits that an inmate could earn (good time, earned work credit, etc.) are projected into these dates. Once an offender is committed to our system, these dates could be negatively impacted in several ways, including if the offender loses good time, fails to earn good time, or fails to earn work credits for any reason. Therefore, this system cannot be used to calculate the release date of an inmate who has already been sentenced.
- These screens do not take into account any prior or subsequent convictions that the offender may have or incur. In certain cases, prior or subsequent convictions will have a direct impact on the offender's status, in many cases negatively, issues such as second and third strike statutes and subsequent violent offenses are examples.
- These screens should not be used for any offender sentenced under the Youthful Offender Act.

Date Summary

Earliest Possible Parole Eligibility Date: 11/25/2018
Earliest Possible Release Date: 01/20/2022

Offense #1

Offense #1 Code: 3039

Total Sentence:

10	0	0
----	---	---

Inc. Sentence:

10	0	0
----	---	---

Sentence Date: 03/20/2017

Jail Credit: 60

Offense #2

Consecutive to Offense #1: Yes No

Offense #2 Code:

Total Sentence:

0	0	0
---	---	---

Inc. Sentence:

0	0	0
---	---	---

Sentence Date:

Jail Credit: 0

Offense #3

Consecutive to Offense #2: Yes No

Offense #3 Code:

Total Sentence:

0	0	0
---	---	---

Inc. Sentence:

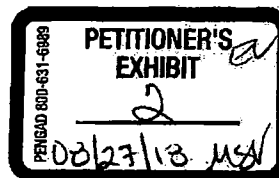
0	0	0
---	---	---

Sentence Date:

Jail Credit: 0

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[Version: 1.3.12 Built: 09/01/2015 10:04:06 AM Time: 12:31:03 PM]

ELECTRONICALLY FILED - 2018 Aug 27 11:27 AM - AIKEN - COMMON PLEAS - CASE#2017CP0202128



STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS)
SECOND JUDICIAL CIRCUIT)

Wallace Glover, #231429,)

2017-CP-02-2128)

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 5, 2017. Respondent submitted its Return and Motion for More Definite Statement on July 6, 2018. An evidentiary hearing was convened on August 27, 2018, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Arthur Aiken, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Public Defender De Grant Gibbons, Esquire ("Plea Counsel"). This Court had before it the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In June 2016, the Aiken County Grand Jury indicted Applicant for distribution of cocaine base (crack cocaine) (2016-GS-02-00866). The charge resulted from an incident

which occurred on February 1, 2016, where Applicant sold 0.13 grams of cocaine base to an Aiken County Sheriff's office confidential informant during an undercover narcotics operation. This was a hand-to-hand transaction which occurred at Applicant's residence in Aiken, South Carolina. The informant was wired with surveillance equipment which produced a video clearly showing Applicant's face and his placing of the narcotics in the informant's hand. Applicant absconded upon being shown the video and was subsequently arrested through a bench warrant.

Applicant was represented by Public Defender De Grant Gibbons, Esquire. Assistant Solicitor Elizabeth B. Young, of the Second Circuit Solicitor's Office, prosecuted the case. On March 22, 2017, Applicant before the Honorable Doyet A. Early, III to plead guilty to distribution of crack cocaine, third or subsequent offense. Pursuant to negotiations between Applicant and the State, another charge from a prior drug purchase was dismissed in exchange for Applicant's plea. Judge Early accepted his guilty plea to distribution, third offense and sentenced Applicant to ten years in prison.

II. ALLEGATIONS

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

1. Abuse of Discretion
 - a. "The court-sentenced was for third offense, one offense was outdated."
2. Ineffective Assistance of Counsel
 - a. "Counsel failed to ascertain and/or inform the court of prior conviction could not be considered."

Applicant filed an amended application on August 13, 2018, adding the following allegations:

- i. Glover's guilty plea was not made with or based on advice of competent counsel.
- ii. Glover's guilty plea was not intelligently made.
- iii. Trial counsel did not prepare Glover's case for trial, and Glover was left with no choice but to plead guilty.

- iv. Trial counsel did not discuss potential defenses with Glover.
- v. Trial counsel never discussed the advantages and disadvantages or a trial versus the advantages and disadvantages or a plea with Glover so that Glover could make an informed choice of whether to enter a plea or try his case.
- vi. Trial counsel did not investigate Glover's case.
- vii. Trial counsel erroneously advised Glover that his conviction in this case was a third offense when the present conviction was at most a second offense under S.C. Code section 44-53-470.
- viii. Trial counsel erroneously advised Glover that his sentence could not be suspended when S.C. Code section 44-53-375(B)(3) provides for a suspended sentence when all prior offenses are for possession of a controlled substance.
- ix. Trial counsel erroneously advised Glover that his present conviction was non-violent with a 65% minimum service requirement instead of an 85% minimum service requirement.
- x. Trial counsel erroneously advised Glover that he would be eligible for parole on the present conviction.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he pled guilty to an offense with a sentencing ranging from ten to thirty years, and he got a ten year sentence. He stated he had prior drug offenses, and his sentence was enhanced under section 470 of the statute, but the State improperly counted an offense that was outside the ten year period allowed to enhance his statute. He testified he had a 1993 conviction for cocaine, a 2009 conviction for cocaine, and a federal conviction from 1989 for possession of drugs. Applicant testified Plea Counsel should have requested a suspended sentence during the guilty plea, because he should have been entitled to a suspended sentence under section 375 of the statute.¹

¹ Applicant's attorney conceded at the evidentiary hearing that Applicant had the requisite prior offenses to enhance his charge to third or subsequent offense under the statute and did not challenge the charge as a third offense.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified Applicant had been charged with two distribution charges, and he only pled guilty to one offense and the other was dropped. He testified that he was unclear on Applicant's parole eligibility because of his prior conviction of armed robbery, which was a most-serious offense, but he advised Applicant before and during the plea that he could not promise him that SCDC would classify him as parole eligible or not. He testified he gave Applicant the tools he needed to give to SCDC during the guilty plea so that they might determine him parole eligible. He testified Applicant's parole eligibility probably would have been the same regardless of whether he pled guilty or was convicted at trial. Plea Counsel testified Applicant had two prior state drug convictions and at least one federal drug conviction.

Plea Counsel testified he met with Applicant three or four times before the guilty plea and reviewed the video tape of the drug buy with him. He stated the State's video showed a very clear hand-to-hand exchange of the drugs with a confidential informant, and it was one of the strongest videos he had seen before. He testified Applicant had no defense to present at trial. Plea Counsel testified that the State could have tried and convicted Applicant for this offense, and then tried him again on the other drug charge and had him sentenced to life without parole, so Applicant chose to plead guilty to avoid that risk. He testified that he was ready to go to trial, but Applicant chose to plead guilty.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Plea Counsel credibly testified he was fully prepared for trial, but he discussed the risks of trial with Applicant, which included being tried and convicted of two separate drug charges, and facing life without parole, and Applicant chose to plead guilty to avoid that risk. He testified Applicant did have the proper prior convictions to enhance his charge to a third or subsequent offense under the drug statute and there was no reason to challenge. Finally, he testified at the evidentiary hearing, and the record shows a discussion during the guilty plea, that he advised Applicant that he may not be parole eligible

and could have to serve eighty-five percent of his sentence, but he gave him all the tools he needed to give to SCDC to become parole eligible. Tr. 7, line 7-16. This Court finds Applicant knew he could have to serve eighty-five percent of his sentence when he chose to plead guilty, and he has failed to prove that he would have gone to trial had he known this. Furthermore, there is nothing in the record to suggest the plea judge was not fully aware that Applicant may be eligible for a suspended sentence, and this Court finds Plea Counsel is not ineffective for failing to request a suspended sentence. Notably, Applicant's prior record includes a conviction for armed robbery, so he would not be entitled to a suspended sentence under the statute regardless of whether Plea Counsel requested it or not.

This Court finds Plea Counsel's representation and advice was reasonable under the circumstances and nothing he did was outside the scope of reasonable professional norms. Plea Counsel fully represented his client and advised him based on his best interests and what Applicant told him he wanted, which was to plead guilty. Accordingly, Applicant has failed to prove that Plea Counsel was deficient or that he would have gone to trial but for these deficiencies, and post-conviction relief is denied.

INVOLUNTARY GUILTY PLEA

This Court finds Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly 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). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427

S.E.2d 171, 174 (1993)). 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, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that Applicant's testimony was entered freely and voluntarily. This Court further finds that the record reflects that Applicant was thoroughly advised of the waiver of his constitutional rights by both trial counsel and the plea judge. The record reflects Applicant at his plea proceeding told the Court that he wished to plead guilty and was aware of the rights he was waiving by pleading. Tr. 8-10. The record also reflects that Applicant told the Court that he had not been promised or threatened by anyone to get him to plead guilty. Tr. 10. This Court finds that Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. Accordingly, these allegations are denied and dismissed with prejudice.

[conclusion and signature page to follow]

VI. CONCLUSION

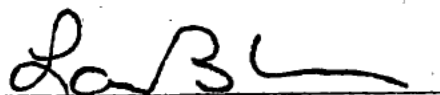
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1 day of Oct, 2018.



LARRY B. HYMAN, JR.
Presiding Judge
Second Judicial Circuit

Columbia, South Carolina

WITNESSES

Aiken County Sheriff

Dep. John Harvey

Law Enforcement Case #: 16-006490

DOCKET NO. 2016GS0200866

The State of South Carolina
County of Aiken

COURT OF GENERAL SESSIONS

JUNE TERM 2016

ARREST WARRANT NUMBER

2016A0210700032

FILED

June 2 2016

[Signature]
SHERIFF
[Signature]
Deputy Sheriff

THE STATE
vs.

WALLACE GLOVER
A.K.A. "BAE BAE"
A.K.A. "BAY BAY"

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: June 2, 2016 *Gerald Ussery*

VERDICT

Foreperson of Petit Jury
Date:

CDR #: 3039

Indictment for

DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE)

§ 44-53-0375(B)(3)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK
COCAINE)

§ 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 WALLACE GLOVER, A.K.A. "BAY BAY"; "BAE BAE", 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.



J. STROM THURMOND, SOLICITOR

ELECTRONICALLY FILED - 2017 Sep 05 9:14 AM - AIKEN - COMMON PLEAS - CASE#2017GP0202428