

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenwood County

Thomas A. Russo, Circuit Court Judge

RECEIVED

APR 26 2013

S.C. Supreme Court

MICHAEL E. MINOR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213306

APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
GUILTY PLEA HEARING TRANSCRIPT (FEBRUARY 27, 2008)	1
APPLICATION FOR POST-CONVICTION RELIEF	13
POST-CONVICTION RELIEF HEARING TRANSCRIPT (APRIL 2, 2009)	20
ORDER OF DISMISSAL	74
APPLICATION FOR POST-CONVICTION RELIEF	82
RETURN AND PARTIAL MOTION TO DISMISS.....	96
APPLICANT'S TRIAL BRIEF	105
SUPREME COURT LETTER TO MICHAEL MINOR (DECEMBER 30, 2010).....	111
SWORN AFFIDAVIT OF BONNIE MINOR	112
HEARING TRANSCRIPT (MARCH 12, 2012)	113
PLAINTIFF'S EXHIBIT #1	183
PLAINTIFF'S EXHIBIT #2.....	184
ORDER GRANTING BELATED APPEAL PURSUANT TO <u>AUSTIN V. STATE</u>	185

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENWOOD) 8TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD

-VS-) 07-GS-24-416

MICHAEL MINOR,)

DEFENDANT.)

FEBRUARY 27, 2008

GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III, JUDGE

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

ELIZABETH WHITE, ASSISTANT SOLICITOR

ATTORNEY FOR THE STATE

JANNA NELSON, ASSISTANT PUBLIC DEFENDER

ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

I N D E X

PAGE

GUILTY PLEA HEARING

---3

CERTIFICATE OF REPORTER

--11

NO EXHIBITS WERE INTRODUCED

1 Wednesday, February 27, 2008

2 THE COURT: You are Michael Minor?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You're represented by Ms. Nelson?

5 THE DEFENDANT: Sir?

6 THE COURT: Is this your attorney?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Satisfied with her services?

9 THE DEFENDANT: Yes, sir, real satisfied.

10 THE COURT: I have in front of me a true-billed
11 indictment indicting you for trafficking in crack cocaine or
12 crank or ice.

13 It's alleged that here in Greenwood County on or
14 about the 18th day of October 2006 you willfully and
15 unlawfully trafficked in methamphetamine in that you either
16 sold, manufactured, brought into the State or had in your
17 possession 10 grams -- at least 10 grams but less than 28
18 grams of methamphetamine, which is a controlled substance
19 under the laws of this State, and your possession of that
20 substance was in violation of the laws of this State. This
21 carries from 5 to 30 years, and is a felony.

22 This is your 2nd offense, according to the
23 information I have.

24 You understand all that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: How do you plead to this charge?

2 THE DEFENDANT: Guilty.

3 THE COURT: Has anyone made any promises or threats
4 to cause you today to enter your plea of guilt?

5 THE DEFENDANT: No. They just told me they're going
6 to put me in jail.

7 THE COURT: Beg your pardon?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has anybody -- or were you today under
10 the influence of anything that would cause you to be
11 intoxicated?

12 THE DEFENDANT: No, sir, but I'd like to have been.
13 But, no, sir.

14 THE COURT: Are you entering your plea today freely
15 and voluntarily?

16 THE DEFENDANT: Yes. Yes, sir.

17 THE COURT: You, Mr. Minor, have a right to a trial
18 by jury on this charge, and you are presumed innocent of this
19 charge until such time as the State is able to prove to a jury
20 your guilt beyond a reasonable doubt.

21 As to the charge, you have the right to remain
22 silent, the right to confront the witnesses against you, and
23 you have the right to have your witnesses made to come to
24 court to testify for you.

25 Do you understand you have these rights?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about them?

3 THE DEFENDANT: No, sir.

4 THE COURT: I advise you that when you enter a plea
5 of guilt you give up these rights and you also give up any
6 defense that you might have to the charge. Do you understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Minor, at the end of this plea if
10 you believe there's been any error in my handling of it you
11 have 10 days to file an appeal. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You're also on probation. You haven't
14 been served with anything yet, I don't believe.

15 THE PROBATION AGENT: He has, Your Honor.

16 THE COURT: Oh, you have. You've been served with a
17 citation?

18 THE PROBATION AGENT: A warrant.

19 THE COURT: A warrant. Okay. I do have it now.

20 You were served with a warrant on December 1st, 2006. It
21 alleged you violated the sentence of Judge Saunders that was
22 imposed on the 10th day of March of '06 for possession of meth
23 and unlawfully carrying of a pistol.

24 He sentenced you at that time to 3 years suspended
25 with 3 years probation on the meth charge, and on the pistol 1

1 year suspended with 1 year probation; is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That warrant alleged that you had
4 violated probation by having methamphetamine and marijuana in
5 your residence and a firearm, and your pleading guilty to
6 having those on October 18, 2006 --

7 THE DEFENDANT: Yes, sir, with extenuating
8 circumstances. Them guns were for sale, and hunting season
9 had just come up. They had been at a friend of mine's house.
10 I had bought them, but they hadn't been in my house except for
11 that week. Somebody was supposed to pick them up that Friday.

12 THE COURT: All right. Well, I find these are
13 substantial violations of your probationary sentence.

14 Now, let me hear the facts and his prior record, if
15 he's got any other than I've already mentioned.

16 MS. WHITE: Yes, sir. This occurred on October
17 18th, 2006 in Greenwood County. Agents with the vice, drugs
18 and organized crime unit with the Greenwood County Sheriff's
19 Office executed a search warrant at Mr. Minor's residence
20 where he resided with wife, Bonnie Minor, who was also
21 charged.

22 When they were executing that search warrant they
23 located approximately 13 grams analyzed weight of
24 methamphetamine throughout Mr. Minor and Ms. Minor's bedroom.
25 Some of it was on nightstands, some was in Ms. Minor's purse,

1 just all throughout the residence on shelves for a total
2 weight of about 13 grams.

3 Ms. Minor gave a statement basically indicating that
4 she and Mr. Minor were, in effect, running a meth ring, that
5 she was the business side of things and Mr. Minor was the
6 brains, in effect, of the organization.

7 His prior criminal history -- this is actually a 3rd
8 offense that's being reduced to a 2nd offense. He also has a
9 DUI from 1991, open container from '91. From 1998, a CPU,
10 possession of controlled substance, and PWID either meth or
11 crack. He received a 30-month sentence. And then the case
12 that he's on probation for, which is from 2006, the possession
13 of meth.

14 THE COURT: You agree with those facts, Mr. Minor?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Minor, I accept your pleas. I find
17 they are freely, voluntarily -- your plea. I find it is
18 freely, voluntarily, knowingly and intelligently entered,
19 entered with advice of competent counsel with whom you are
20 satisfied. I find that the facts support your plea and you
21 signed a plea of guilt. I also find that the violations of
22 your probation are substantial violations.

23 All right. I'll be glad to hear from your attorney
24 then you.

25 MS. NELSON: Thank you, Your Honor. Judge,

1 Mr. Minor, he's 58 years old. He was 56 at the time that this
2 offense occurred. I realize that he does have a prior
3 criminal record that Ms. White just informed the Court of.
4 However, I would just like to point out that for a person of
5 58 we all see a lot of folks every day who have a lot more on
6 their records than Mr. Minor does.

7 I realize this is a serious offense, Your Honor, but
8 he's standing before you taking responsibility for what he's
9 done, admitting the part that he had in the crime.

10 And, Your Honor, you got a huge range of sentencing
11 options and I'd just ask you to take into consideration
12 Mr. Minor's age, the fact that he does have children and
13 family who care about him.

14 And I'm asking you to give him a chance to pay his
15 debt to society that he acknowledges he needs to pay but still
16 give him a chance to have a light at the end of the tunnel and
17 some hope of being released from prison and, in effect, ask
18 the Court not to give Mr. Minor a life sentence in this case
19 or what would be tantamount to a life sentence.

20 He also has some health problems. He's been
21 disabled about 5 years due to heart problems. He underwent a
22 triple bypass about 5 years ago and just this past November
23 had neck surgery because he was having -- he had some
24 herniated discs in several vertebrae in his neck and he is
25 still under the care of his neurologist, Dr. Killburn.

1 So I'd ask the Court to take those health issues
2 into consideration as well and just implore the Court for any
3 compassion or leniency that you might have for Mr. Minor.

4 THE COURT: All right. Mr. Minor, I'll hear you. I
5 neglected to tell you that this is a violent offense, which
6 means there are certain programs within the Department of
7 Correction that you would not be eligible to participate in
8 that some other inmates would be able to participate in, and
9 also do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, I'll be glad to hear. Does this
12 lady want to say anything? If so, she can tell me who she is.
13 If not --

14 MS. NELSON: I'm sorry, Your Honor. May I add one
15 more thing? As to the probation case, we would just ask that
16 any revocation that you impose run concurrently with the
17 sentence that you impose for this charge and ask that
18 Mr. Minor be given credit for 15 days he served in jail when
19 he was arrested on this charge. I'm sorry I neglected to
20 mention that.

21 THE COURT: All right.

22 MS. NELSON: Ms. Minor doesn't wish to address the
23 Court, Your Honor. She just wanted to be here to support her
24 husband.

25 THE COURT: Mr. Minor, anything you want to say?

1 Do you want to say anything, Mr. Minor?

2 THE DEFENDANT: No, I'm fine.

3 THE COURT: Okay. All right. I'm going to revoke
4 the probationary sentence. I'll run that concurrent with the
5 sentence I'm imposing today, and that is for 15 years, and
6 giving you credit for the 15 days you've served. Thank you.

7 MR. NELSON: Thank you, Your Honor.

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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 8th 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 case
in Circuit Court on the 27th day of February 2008.

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

August 24, 2008


SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

ATTEST A TRUE COPY
Ingram Moon
 STATE OF SOUTH CAROLINA
 COUNTY OF _____
 INGRAM MOON
 CCCP AND GS.
 GREENWOOD COUNTY.
 S. C.

08-CP-24 - 823

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

Plaintiff(s)

vs.

Defendant(s)

(Please Print)

Submitted By: Michael E. Moore #255855

SC Bar #:

Telephone #:

Address: M-CL E4-175

Fax #:

386 Redemption Way

Other:

McCormick SC 29899

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/ File Med Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
-
- | | | | |
|--|--|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☒ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Sexual Predator (510) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Mandamus (520) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Habeas Corpus (530) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| ☐ Other (599) | ☐ Transcript Judgment (740) | ☐ Forfeiture (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Other (899) | ☐ SCDOT (950) |
| | ☐ Other (799) | | ☐ Worker's Comp (960) |
| | | | ☐ Zoning Board (970) |
| | | | ☐ Administrative Law Judge (980) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
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|--|---|
| Special/Complex/Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) |
| ☐ Other (699) | |

Submitting Party Signature: Michael E. MooreDate: 7/24/08

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11; and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

FORM 5

08-CP-24 -823

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of GREENWOODMICHAEL E. MINOR

Full name and prison number (if any) of Applicant

#255855

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
JUL 28 AM 11INSTRUCTIONS - 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 McCormick Corr. Inst. 386 Redemption way McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Court of General Sessions Greenwood, S.C.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Indictment # 07-GS-24-416 Trafficking Meth
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) FEBRUARY 27, 2008 - 15 YEARS
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty ☒
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. _____
 ii. N/A
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. _____
 ii. N/A
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. N/A
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. N/A
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) My public defender stated there WAS NO REASON OR GROUNDS TO APPEAL
 (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) I Recieved ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Applicant will Amend at a later date
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. N/A
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

N/A

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

- i. _____
- ii. _____
- iii. _____

N/A

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

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

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

(a) the name and address of each attorney who represented you:

- i. JANA A. Nelson Suite 208 PARK PLAZA
600 Monument St. Box P-133 Greenwood, S.C. 29641

ii. _____

iii. _____

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

- i. Arraignment and Plea And Sentencing

ii. _____

iii. _____

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

REVERSAL AND REMAND OR VACATE

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

NO

STATE OF SOUTH CAROLINA)

County of)

GREENWOOD

VERIFICATION

I, MICHAEL E. MAJOR, 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.

Michael E. Major
25655

SWORN to and subscribed before me this 24
day of July, 2008.

Jennifer C. Frankles (L.S.)
Notary Public

My Commission Expires: 01-31-2010

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

I, Michael E. Minor, 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.

Michael E. Minor
Applicant 255855

SWORN or affirmed to and subscribed before me this
24 day of July, 2008.

Jennifer C. Franklin
Notary Public

My Commission Expires: 01/31/2010

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2008-CP-24-1382

COUNTY OF GREENWOOD

MICHAEL EUGENE MINOR,

-vs-

STATE OF SOUTH CAROLINA,

Defendant.

April 2, 2009

B E F O R E:

HONORABLE THOMAS A. RUSSO

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

JOHN D. COMPTON, III., Esquire
Attorney for the Petitioner

ASHLEY ANNE McMAHAN, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

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I-N-D-E-X

WITNESS: PAGE:

MICHAEL MINOR

Direct Examination by Mr. Compton	3
Cross Examination by Ms. McMahan	23

JANNA NELSON

Direct Examination by Ms. McMahan	27
Cross Examination by Mr. Compton	33
Redirect Examination by Ms. McMahan	47

- - - - -

P-R-O-C-E-E-D-I-N-G-S

(Convened at 12:10 p.m.).

MS. McMAHAN: Your Honor, this is Michael Minor, case number 2008-CP-24-1382. He pled guilty on February 27th, 2008, before the Honorable John Hayes. He was indicted March, 2007, yes, March, 2007 for trafficking crack cocaine third offense. He pled to trafficking crack second offense 10 to 28 and received 15 years.

At this time I will turn it over to Mr. Compton.

THE COURT: Mr. Compton.

1 MR. COMPTON: Thank you, Your Honor.

2 May it please the Court, I call Mr. Minor to
3 the stand.

4 THE COURT: Mr. Minor, if you would please
5 come around to be sworn, sir.

6 MICHAEL EUGENE MINOR,
7 after being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. COMPTON:

10 Q Mr. Minor, would you please state your full
11 name for the record.

12 A Michael Eugene Minor.

13 Q Did you hear the Attorney General mention the
14 charge that you were, that you pled guilty to?

15 A Yes.

16 Q And that you received 15 years for that. Is
17 that correct?

18 A Yes, sir.

19 Q Do you recall how you came to be charged with
20 that offense?

21 A Well, they come in with a warrant in my
22 house, the place I was renting, and they found
23 various different things, guns and stuff, some
24 methamphetamine stuff there in the house and in my
25 wife's pocketbook or whatever.

1 Q If you will, bear with me just a moment. I
2 would like you to lean a little forward in your
3 chair and speak a little more directly into that
4 microphone, okay? I'm having a hard time
5 understanding you.

6 Now, did you say the police had a warrant?

7 A Yes, sir.

8 Q And they came to your residence with a
9 warrant?

10 A Yes, sir.

11 Q And what happened?

12 A They came in, found the guns and stuff, which
13 violated probation, for the gun.

14 Q So they took you in for violating probation?

15 A No, sir, they didn't take me in at that point
16 in time. They didn't take me in until December the
17 1st.

18 Q Okay. And when they took you in is that when
19 they served you with a warrant on the
20 methamphetamine?

21 A Yes, sir.

22 Q All right. You applied, let's see, you had
23 what, a \$100,000 bond, is that correct?

24 A Yes, sir, I did.

25 Q And did you stay in jail?

1 A No, sir, I didn't stay in jail. I got out on
2 December the 15th, I believe it was. I was out
3 until I come back to court.

4 Q But you couldn't afford an attorney?

5 A No, sir.

6 Q So you asked for the Public Defender?

7 A Yes, sir.

8 Q And the Public Defender is here today, is
9 that correct?

10 A Yes, sir.

11 Q Do you see her in the courtroom?

12 A Yes, sir.

13 Q That's her there?

14 A Yes.

15 Q Miss Nelson?

16 A Yes, sir.

17 Q All right. Did you apply for the Public
18 Defender in February of 2007?

19 A I think, I was thinking somewhere along there
20 when I went to court.

21 Q Bear with me just a moment, please. When you
22 went to your bond hearing you were advised your
23 first term of court was in February, February 23rd
24 of '07?

25 A Yes, sir.

1 Q And so that is when you applied?

2 A Yes, sir.

3 Q All right.

4 MR. COMPTON: If I may approach the witness,

5 Your Honor?

6 Q Is this your application?

7 A I would think, yes, sir.

8 Q That's your signature at the bottom?

9 A Yes.

10 Q So that was the first term of court that you

11 appeared?

12 A Yes, sir.

13 Q What do you remember happening during that

14 term of court?

15 A Nothing. They called out the names on the

16 docket and stuff where we, they called out the

17 names and stuff where they could say when we would

18 have to be in court or what not.

19 Q You're talking about roll call?

20 A Yes, sir.

21 Q All right. After they called your name what

22 happened?

23 A They asked if I had an attorney or not and I

24 told them no, sir.

25 Q Okay. Is that when you applied for the

1 Public Defender?

2 A Yes, sir, that is when I applied.

3 Q And after you applied to have the Public
4 Defender, then what happened?

5 A They went ahead and told me to do the
6 application and stuff and I had to come back the
7 next time, you know, when they called roll call.

8 Q Did you meet anybody during that term of
9 court?

10 A No, sir.

11 Q Okay. When was your next term of court?

12 A I'm not really sure. I can't keep up with
13 the dates but I'm thinking, I'm thinking May or
14 June of the same year, I believe.

15 Q And when did you end up pleading guilty?

16 A February of the next year.

17 Q All right. After the June term what was the
18 next term of court?

19 A That I had to appear? They didn't give me no
20 date the next time I had to appear.

21 Q I'm sorry, I didn't understand you.

22 A I said they did not give me a date for the
23 next term I had to, that they would get back with
24 me when I had to appear in court.

25 Q Who told you that?

1 A The girl in the Public Defender's office.

2 Q All right.

3 A Which I don't know what her name was but it

4 all changed around between then and the time I went

5 to court.

6 Q In the June term of court, or May, whichever

7 it was, did you have roll call again?

8 A Yes, sir. We had roll call in room 102 in

9 the courthouse, not in the General Sessions

10 courtroom.

11 Q But you went through the same process?

12 A Yes, sir, more or less, yes, sir.

13 Q And what happened during that roll call?

14 A That is where I met the girl that was

15 supposed to take my case as the Public Defender.

16 Q You met with the Public Defender?

17 A I met with her long enough for her to tell me

18 that she would be working on my case.

19 Q Okay. And who was that?

20 A I don't know her name.

21 Q But it's not Miss Nelson?

22 A No, sir.

23 Q All right. When did you ultimately meet Miss

24 Nelson?

25 A I met Miss Nelson on February the 25th for

1 the first time.

2 Q Of what year, sir?

3 A Of '08.

4 Q When you met the lady from the Public
5 Defender's office in May or June of '07 what do you
6 remember happening from that meeting?

7 A That she would get back with me when I needed
8 to come back to court, if I needed to come back to
9 court she would get back with me.

10 Q Did you talk to her about anything?

11 A I don't recall the conversation. That was
12 about the extent of it.

13 Q Did anyone get your name, address, phone
14 number, anything?

15 A They did then but there was two or three of
16 them and I sat there for something like about an
17 hour and 45 minutes or two hours in that process,
18 they had a trial and stuff going on, that is why we
19 were doing it in 102.

20 Q I'm sorry sir, I'm having a hard time
21 understanding.

22 A They had a trial going on and that is the
23 reason all this was being done in room 102 in the
24 courthouse.

25 Q I appreciate that but you kind of rushed

1 through your answer when you were talking about the
2 process of gathering information from you. If you
3 would, please slow down and tell us exactly what
4 you remember about that.

5 A She got my name, my address, phone number and
6 stuff and told me she would get back with me when
7 she had reviewed the case and whatever they had.

8 Q Okay. Where were you living then?

9 A I was living at -- I was still living on
10 Road,

11 Q Okay. Did you move?

12 A I moved in February, I moved to
13 Road. I moved about a mile down the ride, the
14 other side of the road.

15 Q What about your phone number?

16 A The phone number stayed the same.

17 Q Okay. Now, between June, May or June of '07,
18 and February of 2008 what contact did you have with
19 the Public Defender's office?

20 A None that amounted to nothing, none at all.
21 In other words, the way I found out that I needed
22 to come to court was through my wife. They had
23 called her, her lawyer had called her to come to
24 court and then I got, I was told that I needed to
25 come to the courthouse, which was the 25th of

1 February.

2 Q Of what year?

3 A The same year, '08.

4 Q Of '08? How did she find out, if you know?

5 A Her lawyer got her to come because he told
6 her that she had to be in court, they was going to
7 try her that day, on the 25th.

8 Q She was charged with similar charges?

9 A Charged with the same charges or whatever,
10 the meth charges, yes, sir, violating probation,
11 too.

12 Q She had private counsel?

13 A Yes, she did.

14 Q Who was her counsel?

15 A Mr. Geoly.

16 Q Steve Geoly from Greenwood?

17 A Yes, sir.

18 Q Did you understand what you were charged
19 with?

20 A Partly. I can't say that I completely
21 understood the whole thing.

22 Q If you would, please explain what you,
23 explain the charges that you had, to your
24 understanding.

25 A Well, I understood I had the charges and

1 stuff --

2 Q Slow down and let's speak clearly into the
3 microphone, please.

4 A I wasn't aware of some of the things, the
5 extent of some of the things that was going to take
6 place in front of the judge and whatever until I
7 got before the judge.

8 Q You were or were not?

9 A I was not, was not.

10 Q What were you charged with?

11 A Charged with trafficking.

12 Q What offense?

13 A I'm thinking they charged me on the second.

14 Q Okay. Did you have any understanding of what
15 kind of penalty you were looking at?

16 A They said fifteen years if I pleaded guilty,
17 fifteen years.

18 Q I'm not asking you about what you ultimately
19 discovered from talking with Miss Nelson, I'm
20 talking about before you went to the February of
21 '08 term of court, what do you recall, if anything,
22 about your understanding of the charges in front of
23 you?

24 A Not no whole lot.

25 Q Had you had drug charges before?

1 A Yes, sir, I had.

2 Q Did you understand that there was anything
3 different between trafficking or possession or
4 things of that sort?

5 A Not to my knowledge, nothing.

6 Q Had anyone talked to you about the different
7 kind of penalties that you might face?

8 A Something about the third strike or whatever.

9 Q That there was a difference between a third
10 and a second?

11 A Yes, sir.

12 Q Someone had talked to you about that before
13 the February term of court?

14 A I had heard about it. I don't remember
15 whether the lawyer talked about it or what, I'm not
16 really shore.

17 Q Okay. But your prior testimony was that you
18 had not had any contact with the Public Defender?

19 A Before the 25th, before the 25th of February.

20 Q All right. What do you think your rights as
21 a criminal defendants are if you're charged with a
22 crime? Do you have any tools at your disposal to
23 find out what you're charged with or what the State
24 may have to prove against you?

25 A No, sir, I don't. I have only got a seventh

1 grade education, so that is where I'm at, you know,
2 I'm just dumb on other than what I know.

3 Q Have you ever heard the word Brady motion,
4 have you ever heard that, what that is?

5 A Only since I have been in prison, I have read
6 some documents and stuff and found out.

7 Q You heard about a Brady motion after you went
8 to jail?

9 A Yes, sir, I did.

10 Q What about a Rule 5 motion?

11 A I heard about that after I went to jail.

12 Q What do you think those things are?

13 A I have read but as far as keeping it in my
14 head, I can't keep it in my head, I'm sorry.

15 Q If I told you that that, those are tools
16 where you can dig into the State's file and find
17 out what evidence they have would that sound like
18 what you remember?

19 A I think so, yes, sir.

20 Q Did anyone ever talk to you about that,
21 before you pled guilty?

22 A I would, I was in a state of shock, really,
23 from not knowing nothing up until the Monday before
24 I was sentenced on Wednesday, which Monday was the
25 25th of February.

1 Q Okay.

2 A I might go head and put this in there. I
3 tried to get an extension for me to move stuff that
4 I had, my personal belongings, such as mobile home
5 and this and that and the other.

6 Q All right. Let's slow down again and speak
7 clearly because I'm still having trouble
8 understanding what you're saying.

9 A I tried to get an extension.

10 Q You mean --

11 A For the next month.

12 Q Wait until I finish. It will all come out.

13 A I apologize. I tried to get the extension to
14 move the stuff, I had stuff in four different
15 places.

16 Q In your what?

17 A I had stuff, different things in four
18 different places. I had a boat and motor, I had a
19 motor home, I had a trailer, my house furniture and
20 all that stuff. I had two trailers and stuff that
21 belonged to me, all my stuff was in different
22 places. I wanted to consolidate that stuff and get
23 this stuff in one place because I knew I was facing
24 some jail time.

25 Q And when --

1 A I asked for an extension and didn't get it.

2 Q Have you ever heard anyone say the word
3 continuance before?

4 A Yes, sir, I have heard that.

5 Q Is that what you mean by an extension, that
6 you wanted your lawyer to try to get the case moved
7 from one term of court --

8 A Yes, I tried to do that.

9 Q Did you think you needed more time to work
10 with her, is that part of the reason you asked for
11 it?

12 A That was part of it but the other part was
13 moving my materials to where they would be
14 protected by somebody else.

15 Q In your petition you say that you didn't have
16 enough time to talk about your case with your
17 lawyer before you pled guilty. Do you remember
18 writing that down?

19 A Yes, sir.

20 Q Would you explain to the Court, when you
21 showed up to court on Monday in February of '08,
22 tell us about what you remember about working with
23 Miss Nelson on your case.

24 A I came in, I came in the courthouse at my
25 wife's request, she had to come and pick me up and

1 told me they wanted to see me at the courthouse,
2 they was going to try me that week, too, or the
3 next day, if not that day, they were going to try
4 her on the 25th to start with. In turn, I had
5 talked to Miss Nelson that day between 15 and 30
6 minutes at the most. Then my wife was working back
7 and forth to see whether they was going to try her
8 the next morning or whether they wasn't. As far as
9 the details and stuff, they are a little foggy in
10 my head right now but I told her I needed more
11 time, if they was going to try me the next day I
12 needed time to move my stuff.

13 Well, instead of them trying, trying my wife
14 the next day, or trying me the next day, they told
15 my wife it would be moved to Wednesday and they
16 give me until Wednesday to get my stuff moved, told
17 me they was going to try me Wednesday. They also
18 told me that they would try my wife in front of me
19 instead of me first.

20 Q Who told you that?

21 A Miss Nelson told me they would try my wife
22 first and then they would try me, but it didn't
23 happen that way. They tried me first and then
24 tried --

25 Q They actually called your case for trial?

1 A Yes. Well, they called me up, called me up.
2 Q What's the difference between a plea and a
3 trial?
4 A You admit your guilt.
5 Q In what, which one?
6 A I don't know.
7 Q Do you know what a jury trial is?
8 A Yes.
9 Q How is that different from a plea?
10 A Well, a jury trial, your peers convict you or
11 find you guilty or not guilty.
12 Q What do you think can happen at a trial like
13 that, what rights do you think you have?
14 A Well, I have the right to appeal and all
15 that, too, I think. I'm not sure. I mean, I'm at
16 a stalemate in my head right now.
17 Q Let's go back to your 30 minute or 15 minute
18 conversation with Miss Nelson. Was that on Monday?
19 A Yes, sir.
20 Q What do you remember her talking to you about
21 at that time?
22 A Talked to me about whether I wanted to plead
23 guilty, if I pleaded guilty there would be a 15
24 year sentence and if I took a jury trial there
25 would be 30 years versus the 15 years.

1 Q If you were convicted?

2 A Yes, sir.

3 Q Did she go over what the State had or said
4 that they had against you?

5 A Some of the stuff I think she did but I'm not
6 sure, right now I don't know, some of it she did
7 and some of it she didn't. I was in a state of
8 shock, I hadn't talked to nobody prior to that
9 morning, my wife had to come get me and tell me
10 that I needed to be in court, too.

11 Q So, nothing happened on Tuesday?

12 A No, sir. They put everything off until
13 Wednesday.

14 Q And then --

15 A The only thing happened on Tuesday, I talked
16 to Miss Nelson on my private phone twice, she
17 called me twice.

18 Q What did you talk about with her on the
19 phone?

20 A Talked about going to a jury trial.

21 Q What did she say to you about that?

22 A She told me she couldn't guarantee me that I
23 would win the case or what not and I told her I
24 couldn't see going through and losing a case for 30
25 years versus 15 at my age and my health.

1 Q Why do you think you were being charged with,
2 why do you think you were facing 15 versus 30
3 years, what basis was there for that?

4 A That is what she told me, that I could plead
5 to 15 years, if I lose in a jury trial it would be
6 30.

7 Q But did she explain -- you were charged with
8 trafficking in drugs, is that correct,
9 methamphetamine?

10 A Yes, sir.

11 Q Did you ever go over with her why you were
12 charged with trafficking as opposed to possession?

13 A I don't recall but I don't know what all we
14 talked about there, to tell you the truth.

15 Q What's the difference between, I mean --

16 A Possession doesn't carry as long a term as
17 trafficking does, as far as I know. I don't know.

18 Q Who else was charged? Was there anyone else
19 charged with you besides your wife?

20 A Yes, sir. There was, I think my daughter,
21 another girl and my son was charged with possession
22 of marijuana, I think. There was four other people
23 charged.

24 Q Do you remember what quantity of drugs they
25 said that they found?

1 A Around 13 grams, 13 grams but less than 28.

2 Q Okay. Did you ever talk about any of that
3 with Miss Nelson?

4 A No, sir, not to my knowledge, other than I
5 never thought that there was a limit there on the
6 ten grams being different, a different charge.

7 Q So, you knew there was a cutoff at ten grams?

8 A I didn't know at that point in time.

9 Q When did you find out?

10 A Actually I didn't actually find that out
11 until after I was in jail, really, to tell you the
12 truth.

13 Q Well --

14 A I never had no paperwork at all, none from
15 Greenwood, none from nowhere.

16 Q Who was the Solicitor trying the case?

17 A Pierce or whatever his name.

18 Q Did he say they were going to call you to
19 trial on Wednesday if you didn't plead?

20 A Yes, sir.

21 Q Is that why you thought you had to plead?

22 A Yes, sir.

23 Q What do you think you would have done
24 differently if you had more time?

25 A I could have moved my stuff, for one thing,

1 but I would have had more knowledge of what was
2 going on in the case. I wasn't aware statements
3 was given, as far as I know, was given by my wife.
4 Q What kind of statement?
5 A A statement that we was running a meth ring
6 or whatever.
7 Q Excuse me?
8 A That we were running a meth ring, she was
9 doing the work for it and I was the brain, and I'm
10 not too much of the brain, I will put it that way.
11 Q All right. But you never got to see her
12 statement?
13 A No, sir, I didn't see her statement.
14 Q Do you think --
15 A Until after, until seven months after I was
16 incarcerated.
17 Q So, basically you're asking the Court to send
18 this back down to Circuit Court or send it back to
19 Greenwood General Sessions Court so you could have
20 a new trial? Is that what you're asking for?
21 A A new trial or some kind of relief from the
22 situation.
23 Q That is why you think that you didn't have
24 enough time or information working with Miss Nelson
25 to make an informed decision?

1 A I wasn't aware of all the details of what
2 options I did have and didn't have.

3 Q Do you think it is appropriate relief to go
4 back and start over, look at all the evidence, is
5 that right?

6 A Well, you can't go back and start over
7 because I'm 14 months into this, that is part of
8 it, the situation, but I'm looking for some kind of
9 relief, I don't think I'm going to live to be 71
10 years old.

11 MR. COMPTON: Answer any questions that the
12 Assistant Attorney General may have.

13 CROSS EXAMINATION

14 BY MS. McMAHAN:

15 Q Mr. Minor, do you want to go back and start
16 over from the beginning, plead again or have a
17 trial?

18 A In my opinion I don't think I can win a
19 trial, not once all this is already out.

20 Q I'm not asking you if you could win one, I'm
21 asking what you want. If you win this today do you
22 want to go back and start over from the beginning?

23 A No, I wouldn't like to go all the way back
24 and start over from the beginning, I don't know
25 what my options are.

1 THE COURT: I apologize, but let me, Mr.
2 Minor, let me tell you what this Court can do,
3 okay?

4 THE WITNESS: Yes, sir.

5 THE COURT: So you will understand. When
6 someone files a post conviction relief application
7 such as you have done there is only two things that
8 I can do. If I disagree with you then I can deny
9 your application. But if I agree with you, I can't
10 change your sentence, I can't reduce your sentence,
11 I can't do anything, all I can do is put you back
12 where you were before you entered this plea, which
13 means if, in other words, you would go back and you
14 would be exposed to whatever, whatever charges you
15 had before. You were charged with trafficking in
16 methamphetamine. Was this a reduced charge,
17 reduced from a third offense to a second?

18 MS. McMAHAN: Technically a trafficking
19 third, it was reduced to a second offense, so he
20 would be facing a mandatory minimum of 25.

21 THE COURT: All right. So, all I can do, if
22 I agree with you and I grant your wish, all I can
23 do is put you back where you were before you pled
24 but if I do that these charges go back to what they
25 were originally. In other words, trafficking in

1 methamphetamine third offense and the State is not
2 obligated to deal with you, they could charge you
3 with that offense, they could go forward on that
4 offense and if you were convicted of that offense
5 it carries a mandatory minimum of 25 years.

6 Is that correct, up to 30?

7 MS. McMAHAN: Yes, sir.

8 THE COURT: That's 25 to 30 years if you're
9 convicted of that charge. I can't send you back
10 and say okay, you can plead again to second, all I
11 can do is put you back where you were before you
12 did any of this.

13 Do you understand that?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Now, understanding
16 that, do you still want to go forward with your
17 application?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. I'm sorry, Miss
20 McMahan, go ahead.

21 BY MS. McMAHAN:

22 Q Do you remember your guilty plea? Let me
23 back up. If you win today do you want the
24 requested relief that the Court can give you?

25 A Yes, ma'am.

1 Q Do you remember your guilty plea?

2 A Yes, ma'am, I think so.

3 Q Do you remember the day you went to court and
4 pled guilty in front of Judge Hayes?

5 A Yes, ma'am.

6 Q Do you remember telling Judge Hayes that you
7 were satisfied with Miss Nelson's representation?

8 A Yes, sir.

9 Q Do you also remember telling Judge Hayes that
10 you were pleading freely and voluntarily?

11 A Yes, sir -- yes, ma'am.

12 Q And that no one had threatened you or forced
13 you to plead guilty?

14 A Yes, ma'am. But the thing was if I didn't
15 take the 15 years I would be sentenced to 30 if I
16 lose, was found guilty in a trial.

17 Q Do you also remember agreeing with the
18 Solicitor's facts when they read them out to the
19 Court?

20 A I think so.

21 MS. McMAHAN: Nothing further, Your Honor.

22 THE COURT: Anything further, Mr. Compton?

23 MR. COMPTON: No, Your Honor, thank you.

24 THE COURT: All right. Thank you, Mr. Minor,
25 you may step down, sir.

1 (Witness excused).

2 MR. COMPTON: Those are all the witnesses we
3 have.

4 THE COURT: Thank you, Mr. Compton.
5 Miss McMahan?

6 MS. McMAHAN: Your Honor, the State would
7 call Miss Nelson.

8 THE COURT: Miss Nelson, would you come
9 around and be sworn, please.

10 JANNA NELSON,
11 after being first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. McMAHAN:

14 Q Would you state your full name for the
15 record?

16 A Janna Nelson.

17 Q You work for the Public Defender's office, is
18 that correct?

19 A I do.

20 Q And you represented Mr. Minor?

21 A Yes.

22 Q And how many times did you meet with him
23 before he pled?

24 A I met with him on that Monday, February 25th,
25 and then when he came back to plead on Wednesday,

1 the 27th.

2 Q At anytime during your representation were
3 you trying to obtain a negotiated plea with the
4 Solicitor?

5 A Yes. What happened was I was notified on
6 February 15th that they would be calling the case
7 for trial. I had gotten the discovery about five
8 days before that happened and I started trying to
9 contact Mr. Minor. At the point when I got the
10 discovery the offer was for him to plead straight
11 up to a trafficking second and the charge was
12 technically a trafficking third even though his
13 warrant said it was a second but it was technically
14 a third because he had two prior drug offenses.

15 I started trying to contact him. I did not
16 have a good telephone number. When I called the
17 number I had in our file and was on his bond
18 paperwork it belonged to somebody else. I didn't
19 take note of the person's name I talked to, it was
20 a woman, and I asked her if she was any relation to
21 Michael Minor, if she knew him or anybody in his
22 family, and she gave me the name of some person
23 that she knew I think in Laurens but it wasn't, it
24 wasn't Michael or anybody that I knew that was
25 related to him.

1 The letter I sent to him that contained
2 notice of his trial date as well as the plea offer
3 was returned to me. I have the return letter in my
4 file. So, I didn't have any way to contact him and
5 when Bonnie, his wife, came to court on Monday with
6 Steve Geoly I asked Steve if I could approach her
7 and ask her if she knew how to get in touch with
8 Michael and at that point she called him and told
9 him to get to the courthouse and that was when I
10 was able to meet with him.

11 And after, I think you asked me if I tried to
12 get a negotiated plea, after I spoke with Michael
13 we, the Solicitor and I, Miss White, went in and
14 conferenced the case with the judge, gave him the
15 facts and asked him what he would be inclined to
16 sentence Mr. Minor to and that was when he
17 indicated to me he would do 15 and was not going to
18 go under that. At that point, I don't know if I
19 called Michael, I don't know if that conference was
20 Monday or Tuesday, but I know I called Michael
21 after the conference to let him know what the judge
22 had said so that we were looking at 15 if he were
23 to plead and what his exposure was if he went to
24 trial and was convicted.

25 On that either Tuesday or Wednesday I spoke

1 with Miss White, the Assistant Solicitor, and urged
2 her to consider a negotiated plea of ten years
3 which was, I believe that was the minimum he could
4 get on a trafficking second but I'm not sure, but I
5 asked her to consent to a negotiated sentence of
6 ten years, considering Michael's age and his
7 health, and I really felt like she was personally
8 inclined to go along with that, I think she was
9 really thinking strongly about that but when she
10 met with law enforcement they were not on board
11 with it and so she ended up coming back to me and
12 saying, "No, I'm not going to agree, it is still a
13 straight up plea."

14 So, sorry for the long answer to your
15 question but --

16 Q No problem?

17 A -- that was what I did to try to get a
18 negotiated plea for him.

19 Q Did you ask for a continuance?

20 A I did.

21 Q And that was denied?

22 A Yes. I explained to the judge I had only
23 been able to meet with Mr. Minor on that Monday,
24 that, you know, I had not had good contact
25 information for him prior to that and honestly I

1 felt like I had a really good motion for
2 continuance but he was pretty unsympathetic.

3 Q And did you explain to him his constitutional
4 rights?

5 A Yes. I generally explain right to trial,
6 right to confront witnesses, right to remain
7 silent, right to an appeal after trial, of any
8 legal issues, we discussed that when he signed the
9 plea sheet.

10 Q Do you have a copy of the plea sheet?

11 A I think it was in the paperwork that I got
12 from your office.

13 Q Okay.

14 A We don't normally have them in our file but I
15 seem to recall.

16 Q I apologize, sometimes I get them, sometimes
17 I don't.

18 THE COURT: I have it.

19 A It is in that paperwork.

20 Q Never mind.

21 MR. COMPTON: Could I see it?

22 MS. McMAHAN: It should be included in the
23 General Sessions file.

24 MR. COMPTON: I would like to see what she's
25 referring to, please.

1 THE WITNESS: The sentencing sheet.

2 MR. COMPTON: Thank you.

3 BY MS. McMAHAN:

4 Q Is there a plea sheet you fill out with them?

5 A This is what I meant by plea sheet, the
6 sentencing sheet.

7 Q Sorry. It's been a long week.

8 And did you explain to him the possible
9 sentences he was facing --

10 A Yes, ma'am.

11 Q -- on a third and and a second?

12 A Yes.

13 Q Did you force him to plead guilty?

14 A No. I didn't feel like we would win at trial
15 but we did discuss the possibility of using the
16 defense that the drugs were all Bonnie's and not
17 his. Considering the fact he was in poor health at
18 the time and was in bed a lot I thought that was a
19 reasonable defense but the problem was that Bonnie
20 was going to testify against him.

21 Q When exactly did you pick up the case from
22 the Public Defender's office?

23 A I started there in July of 2007, mid July,
24 and at that point the case was on my, was assigned
25 to me, along with about 300 other ones.

1 Q And from July until you were notified of
2 trial he had never tried to contact you guys?

3 A I don't have any, there is nothing in my file
4 or on our computer system that shows that Mr. Minor
5 had tried to contact us. He had been put on the
6 roll call list a couple times but I never had
7 received discovery and so I kept emailing the
8 Solicitor's office requesting the discovery in the
9 case.

10 MS. McMAHAN: Nothing further, Your Honor.

11 THE COURT: Cross examination?

12 MR. COMPTON: Thank you, Your Honor.

13 May it please the Court?

14 CROSS EXAMINATION

15 BY MR. COMPTON:

16 Q Miss Nelson, if you will bear with me, let me
17 go through a few housekeeping things with you about
18 your procedures in your office.

19 A Sure.

20 Q Would you describe, please -- well, let me
21 ask you this. Do you have a procedure for, in your
22 office, where you routinely contact defendants
23 assigned to your office?

24 A No.

25 Q So there is no set operating procedure of

1 routine follow-up phone calls to check on any of
2 your people?

3 A There is no set procedure for that. We
4 probably should have one but there is not a set
5 procedure.

6 Q When you do make phone calls do you have a
7 phone call log sheet or any kind of recordkeeping
8 regarding your contact with your clients?

9 A There is, the computer system that we use, it
10 is called Defender Data, there is a place in that
11 system where you can make notes about whatever it
12 is you do on the file. We don't have a policy that
13 requires us to keep a log of our calls but a lot of
14 times that is where I note my phone conversations
15 with people.

16 Q Let me make sure I understand. You have the
17 capability to log your calls but you don't always
18 do it?

19 A That's true.

20 Q But if you did do that it would be in your
21 file?

22 A There is no question that I didn't try to
23 contact Mr. Minor until I knew that the case was
24 going to be called for trial.

25 Q And the file --

1 A Well, actuall when I got the discovery is
2 when I first started trying to call.

3 Q Sure. But you weren't the first lawyer
4 assigned on this file?

5 A That's correct.

6 Q And there is nothing in the file that the
7 other lawyer had made any effort to go through the
8 file with Mr. Minor prior to your involvement?

9 A No, there is not. There wouldn't have been
10 anything in the file to go through other than the
11 arrest warrant which he would have had.

12 Q You would have had that and you could have
13 gotten his background information or a history or
14 treatment of what he recalls happening regarding
15 the facts of the case?

16 A Sure,, that could have been done. There is a
17 note from that second court appearance, it was
18 actually in May, I believe, of '07, according to
19 the note.

20 Q Uh-huh (Affirmative).

21 A Where Mr. Minor appeared for roll call and
22 was checked in, we have a procedure where everybody
23 signs in, and was told he would be contacted when
24 we got discovery on the case.

25 Q You wanted to know whether all the ducks are

1 in a row that week that you're in trial but that
2 doesn't mean you necessarily have, you said you had
3 300 cases, so you don't necessarily have the time
4 to run through your whole list of assigned cases
5 every roll call and follow up with every defendant,
6 is that correct?

7 A That's correct.

8 Q It is just not physically possible?

9 A It might be if you, if you worked, you know,
10 numerous hours a day every day it might be.

11 Q How many people can you see in a day and have
12 a conversation that you can actually make cogent
13 notes of and document in the file?

14 A I don't know how many you can see. Generally
15 we see, if we have a full day of appointments,
16 that's about eight people, four in the morning,
17 four in the afternoon is about as full as we ever
18 get it.

19 Q Your file documents that Mr. Minor asked for
20 the Public Defender on I think February the 23rd of
21 2007. Isn't that correct?

22 A If you will give me a second, let me see if
23 I've got the application.

24 Q Please take your time.

25 A This one says February 23rd, '07.

1 Q So, the first real conversation that took
2 place or was ever conducted, according to your
3 file, was a year later, on the Monday of the term
4 of General Sessions that Mr. Minor pled guilty in?

5 A All I can speak for is myself but that was
6 the first, that was the first conversation I had
7 with him because I didn't know how to get him
8 before then.

9 Q Okay. What I'm asking you is a little bit
10 different. Does your file document any other
11 conversation prior to that?

12 A The one in May of '07 but --

13 Q Just the check-in?

14 A As I said, that was a check-in and he would
15 be contacted as soon as we got discovery on the
16 case.

17 Q But there is no other indication in the file
18 that any substantive discussion about the facts of
19 the case went on between any representative of the
20 Public Defender's office and Mr. Minor prior to the
21 February, '08 term of court?

22 A That's true.

23 Q I believe, if I'm not mistaken, that the
24 Public Defender sent its routine Brady and Rule 5
25 motion to the Solicitor a year prior to that term

1 of court, I think the February 23rd term of court.

2 Is that correct?

3 A You probably are right. We generally send
4 them out as soon as the file is opened. It looks
5 like -- our cover letter is dated January 22nd of
6 '07.

7 Q So it predates the indictment and it predates
8 even his request for the Public Defender, according
9 to the documents in the file?

10 A According to that it does. That's strange.
11 The discovery letter is dated January 22nd, it was
12 served on the Solicitor's office January 26, '07.

13 Q A month before he even requested the Public
14 Defender?

15 A Yes, sir. It looks like that was probably
16 done because the office got a letter from Mr. Minor
17 that is dated December 12th of '06.

18 Q I see.

19 A And it was, it just looks like Mr. Grose's
20 handwriting on the bottom of this letter to open
21 the file.

22 Q Okay. And that is pretty responsive. But
23 there is no speedy trial motion in the file?

24 A No, sir.

25 Q Even though it took a year, I mean, it was

1 over a year from the time the discovery was filed
2 and served, I think it is 30 days to serve it,
3 isn't there a 30 day requirement to answer?

4 A They were very late with providing discovery.

5 THE COURT: He was out on bond, wasn't he?

6 A Yes, sir. My general thought on that, when I
7 have people out on the street, unless they are
8 calling me saying, "I want my case resolved," I
9 feel like the more time that passes generally is
10 better for folks and so, no, I did send emails
11 saying, "I don't have discovery, will you send it
12 to me?" No, I did not file a speedy trial motion,
13 and it doesn't appear anybody else did, either.

14 Q I was simply going to go through the bullet
15 points of the kind of things that one could do as a
16 defense counsel to urge the prosecution to provide
17 information.

18 A Sure.

19 Q Was there a motion to compel filed?

20 A No.

21 Q Other than emails and just cooperation
22 between the Public Defender's office and the
23 Solicitor's office, that was it, just please give
24 it, but no other more urgent procedure was
25 followed?

- 1 A No.
- 2 Q You did get responses to the discovery?
- 3 A To the discovery request?
- 4 Q Correct. Did you get responses to your
5 discovery request?
- 6 A Yes.
- 7 Q Was there a chemical analysis included in
8 that?
- 9 A Yes. I got that on February 15th.
- 10 Q And that was conducted by SLED?
- 11 A Yes.
- 12 Q Between February 15th and February 27th did
13 you go over that chemical analysis with Mr. Minor?
- 14 A I don't know if I actually showed him the
15 piece of paper but I have notes where I took down
16 the amount that was alleged in the incident report
17 versus the amount that was actually reported by
18 SLED because there was a discrepancy.
- 19 Q What was the discrepancy?
- 20 A What was reported in the incident report was
21 17.5 grams.
- 22 Q Right.
- 23 A And what was actually, all of it added up
24 together was -- I'm sorry, give me just one second.
- 25 Q Take your time.

- 1 A 13.4, according to the SLED report.
- 2 Q That's interesting, isn't it?
- 3 A Yes.
- 4 Q Because four grams were found in the purse of
- 5 one of the co-defendants, isn't that correct?
- 6 A .4, according to the incident report, were
- 7 found in Campbell's purse.
- 8 Q Was it four or .4?
- 9 A My notes say .4. Let me look at the report.
- 10 Q I think it was four.
- 11 A 0.4 grams was located inside Campbell's
- 12 purse, is what the incident report reads.
- 13 Q Okay. Did you see the SLED report on that
- 14 discovery, I mean on that analysis, on the part
- 15 seized from her?
- 16 A I'm not certain if that .4 is part of what
- 17 was analyzed.
- 18 Q Well, if it was a mistake made in the
- 19 incident report and SLED actually got four grams as
- 20 opposed to .4 grams that would be noted in the
- 21 analysis sheet when they tested the materials.
- 22 Isn't that correct?
- 23 A Assuming they submitted it for analysis, yes,
- 24 that's correct.
- 25 Q Well, let me ask you this. Isn't it true

1 that in every drug case that you have ever been
2 involved in when there is a suspicion that some
3 material is drugs it's sent to SLED for analysis?

4 A Yes. I don't have any reason to think that
5 .4 wasn't included on the SLED report.

6 Q As part of your discovery do you ask for
7 exculpatory information?

8 A That's included in our motion.

9 Q Do you also ask for inculpatory information?

10 A Well, we ask for all the discovery that we're
11 entitled to and obviously a lot of times that is
12 inculpatory.

13 Q Well, who is the lady that was charged with
14 having the .4 grams?

15 A Doretha Campbell.

16 Q Did you get anything from the Solicitor
17 regarding any drugs found on the person of Doretha
18 Campbell?

19 A Will you give me a minute to look at the
20 return and try to compare it to the SLED report to
21 see --

22 Q Sure.

23 A I don't know of anything we would have gotten
24 other than the SLED report as far as the drugs
25 found on Miss Campbell. I'm not sure what you're

1 asking.

2 Q The point I'm driving at is if in fact it
3 came back at .4 that would be inculpatory?

4 A Correct

5 Q But if it came back at four grams and not .4
6 grams that could potentially have been exculpatory
7 evidence, couldn't it?

8 A If the SLED report said four grams was found
9 in Miss Campbell's purse?

10 Q Right. The total amount seized was 13 point
11 something. Correct?

12 A Yes.

13 Q All right. So if she had four and that
14 wasn't in Mr. Minor's actual or constructive
15 possession that could have brought him outside the
16 scope of ten grams the statute requires, couldn't
17 it?

18 A Right.

19 Q That would be important information to know,
20 wouldn't it?

21 A Yes, sir.

22 Q So what I want to know is do you have it?

23 A I have the SLED report.

24 Q What does it say?

25 A Do you want me to read it to you or

1 paraphrase?

2 Q Just paraphrase. When you get to the salient
3 bit --

4 A In item 1.1 there was .32 grams of
5 methamphetamine. Item 1.2, .05 grams of
6 methamphetamine. Item 1.3 .08. Item 1.4, 1.16
7 grams. And item 1.5 11.79 grams.

8 Q Okay. But those grams are not identified as
9 to which particular subject they were obtained
10 from?

11 A No, sir.

12 Q So, there is really, isn't one gram of
13 methamphetamine fungible with another gram of
14 methamphetamine?

15 A I don't know.

16 Q I mean, as long as it is chemically identical
17 in composition?

18 A I suppose so.

19 Q You wouldn't be able to tell from that report
20 who had what, would you?

21 A Not from the report itself but from the chain
22 of custody form that identifies what was in, what
23 was in that Best Pack.

24 Q What do you think accounts for the
25 discrepancy between the 17 grams stated in the

1 incident report and the 13 grams, more or less,
2 that SLED had? What happened to the other four
3 grams?

4 A I'm not an expert on that but I see, I see a
5 lot of times that the seized weight is often higher
6 than the SLED weight.

7 Q Did you have any particular concerns about
8 the math and whether or not that was sufficient to
9 argue for reasonable doubt at a jury trial? Did
10 you discuss that with Mr. Minor?

11 A I don't remember it if I discussed it with
12 Mr. Minor. I know I discussed it with Mr. Grose,
13 my boss, when we were talking about the case and
14 possible defenses but I don't know that I
15 specifically told Michael that that would be
16 something I could argue.

17 Q Would you have had enough time to flesh out
18 that defense with Mr. Minor during that week of
19 court prior to going to trial on a Wednesday?

20 A Yes, I think so.

21 Q Did you interview any of the other
22 co-defendants?

23 A No, I did not. Well, I did speak with
24 Bonnie, excuse me, I did briefly speak with Bonnie.

25 Q If you had your druthers, I believe you did

1 ask for a continuance. What were the grounds for
2 your motion?

3 A That I had not been able to speak to Michael
4 until that Monday, that he had not had an adequate
5 opportunity to consider the State's offer as
6 compared to what could happen at trial.

7 Q So --

8 A That he --

9 Q I'm sorry, I beg your pardon.

10 A And that he was just requesting that the
11 Court give him a little more time to put his
12 affairs in order before he had to make a firm
13 decision.

14 Q So your testimony now is that you had enough
15 time to prepare for trial but your motion then said
16 you needed more?

17 A I said that Mr. Minor needed more time to
18 consider his options. I think that is different
19 from me being prepared for trial.

20 Q Okay.

21 MR. COMPTON: I have nothing further, Judge,
22 thank you.

23 MS. McMAHAN: The Court's indulgence, Your
24 Honor.

25 REDIRECT EXAMINATION

1 BY MS. McMAHAN:

2 Q Do you often get a chance to speak to
3 co-defendants if they are represented?

4 A No, not often. I mean, you know, I can ask
5 their attorney, if it's something that looks like
6 it could end up in a trial situation I can ask
7 their attorney if I can speak with them.

8 Q Generally you don't get to talk to the
9 co-defendants?

10 A Generally no.

11 Q Are you an expert at chemical analysis?

12 A No.

13 Q And did you explain to Mr. Minor when he pled
14 guilty he was waiving his right to challenge the
15 sufficiency of the evidence, in other words, to
16 raise a defense?

17 A Yes. I told him he was giving up his right
18 to a defense, to put up a defense.

19 Q And was it Mr. Minor's decision to plead
20 guilty?

21 A Yes, it was. Obviously I would have liked to
22 have had a little more time to actually get up and
23 do it but given that, that our defense essentially
24 was blaming everything on Bonnie, he really didn't
25 want to do that and he didn't want to run the risk

1 of possibly getting 25 to 30 at trial.

2 Q And, I'm sorry to beat a dead horse, you
3 didn't force him to plead guilty?

4 A No, ma'am. I felt like he was pushed but I
5 felt like that pushing was coming from the State's
6 side.

7 Q And you were prepared to go forward with a
8 trial that week?

9 A Yes.

10 MS. McMAHAN: Nothing further, Your Honor.

11 THE COURT: Anything further?

12 MR. COMPTON: No, thank you.

13 THE COURT: You may step down.

14 (Witness excused).

15 MS. McMAHAN: Nothing further from the State,
16 Your Honor.

17 THE COURT: Yes, sir.

18 MR. COMPTON: May it please the Court, not
19 that this is particularly germane, but my wife used
20 to be a Public Defender and I appreciate the
21 pressures that they are under and I in particular
22 appreciate Miss Nelson being here today and her
23 candor in her testimony. I do think there is a
24 systemic, I don't think it is a personal thing, I
25 think there is a systemic issue with the attention

1 that Mr. Minor received from the Public Defender's
2 office collectively, and when you, when you change
3 horses sometimes in the middle of the stream you're
4 going to get wet and I think that is kind of what
5 happened here, that Mr. Minor was being represented
6 until about halfway through the year before he was
7 called to trial, the State was not very forthcoming
8 in presenting discovery information, but when you
9 look at the amount of time to make an informed
10 decision about whether or not to plead and the fact
11 that there wasn't great details discussed in the
12 evidence and whether or not reasonable doubt could
13 be created at trial based on some of the math
14 issues, I just don't think Mr. Minor was given
15 everything that he needed to really have an
16 informed shot at why he was pleading guilty on
17 these particular charges, in this particular
18 instance, so we would ask the Court remand this for
19 further proceedings.

20 MS. McMAHAN: Your Honor, it wasn't for want
21 of trying by Mr. Minor's trial counsel, she did ask
22 for continuance, she attempted to try to contact
23 him when she received discovery, and the judge
24 disagreed with it and ultimately he decided to
25 plead guilty.

1 THE COURT: The thing that I note in here
2 that I find is interesting is the -- well, I say I
3 find it interesting. I guess what I should say is
4 I don't find it very surprising. I spent several
5 years as a Public Defender myself and unfortunately
6 a lot of this was caused and created by Mr. Minor
7 himself. He apparently put false information on
8 his bond paperwork. The Public Defender had no way
9 to find him. The only information they get when
10 someone applies is the paperwork, the paperwork
11 contains the contact information and they contact
12 the individuals. I have seen it countless times
13 the information on the paperwork is bogus and you
14 try to reach these people and you can't reach them.
15 Miss Nelson indicated that she tried on several
16 occasions to reach Mr. Minor but the information
17 she had was bad information. Ideally, yes, if this
18 were not a real world we would hire investigators
19 and send them out and track them down.
20 Unfortunately that is not where it is. The
21 defendants as well as lawyers all carry
22 responsibility in the criminal justice system. Mr.
23 Minor was charged with a very serious criminal
24 offense and there is no evidence in this record
25 that he made any effort to contact Miss Nelson's

1 office, none, and no one asked him, "Did you try to
2 contact the Public Defender," so there is nothing
3 in this record to indicate whether he even
4 attempted to. I'm not saying he didn't try, I'm
5 saying there is nothing in the record to indicate
6 that he even made an effort to contact the Public
7 Defender on some very serious charges he was
8 facing.

9 So I'm going to, what Miss Nelson did, in
10 looking at the application, what Mr. Minor alleges
11 was ineffective, I don't see it. There is some
12 question about the drug report and all the things
13 she could have done going through these matters but
14 there is also nothing in the record to indicate
15 that Mr. Minor ever asked for a trial. As a matter
16 of fact the evidence seems to indicate that this
17 was a plea from the beginning, it was just a matter
18 of trying to negotiate as lenient a plea as they
19 could do.

20 In looking over the colloquy between the
21 judge, Judge Hayes and Mr. Minor during the course
22 of his plea there is nothing in here to indicate
23 that the plea was anything other than a free and
24 voluntary plea. He indicated to Judge Hayes at the
25 time that no one was threatening him or coerced him

1 or forced him in this case, outside as we're all
2 aware the State tries to put pressure on people and
3 not allow the cases to drag out. The judge
4 specifically asked him if he was entering a plea
5 freely and voluntarily and he indicated that he
6 was. The judge went over with him what his
7 exposure was under the law and that it was a second
8 offense, that he was pleading to a second offense
9 and he answered that he understood that. And I say
10 this not critically, but I say it admirably, Mr.
11 Minor on the stand in asking what difference this
12 would have made in deciding to plead guilty or not
13 to plead guilty, his answer was simply that he
14 would have had more time to get his affairs in
15 order and not that it would have changed anything
16 with regard to his actual plea.

17 Obviously he wanted less time, less time
18 given but, in other words, there is nothing to
19 indicate that Miss Nelson did anything other than
20 what she should have done, provided with the
21 information, attempting to get the continuance, and
22 in light of that being denied they were faced with
23 either going forward with a trial or with a plea
24 and Mr. Minor's response is simply that the only
25 difference is that he would have liked more time to

1 get his affairs in order. There is no indication
2 that there would have been any difference in his
3 decision to plead guilty.

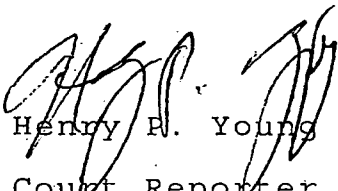
4 I find that there has been no showing of an
5 ineffective assistance of counsel in this matter
6 and I respectfully deny the request for the relief
7 sought in the application.

8 (Hearing concluded at 1:22 p.m.).
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4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Greenwood County,
11 South Carolina, on the 2nd day of April, 2009.

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

14 November 10, 2011
15
16

17
18 
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 8TH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	Case No.: 2008-CP- ~~46-1382~~ 24-0023
Michael E. Minor, #255855,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED COMMON PLEAS
 8TH JUDICIAL CIRCUIT
 GREENWOOD, S.C.
 2009 JUL 15 PM 12

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 28, 2008. The Respondent made its Return on or about September 26, 2008. An evidentiary hearing into the matter was convened on April 2, 2009, at the Newberry County Courthouse. John D. Compton, III, Esquire, represented the Applicant. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Janna A. Nelson, Esquire. This Court also had before it a copy of the transcript of the Applicant's guilty plea, the records of the Greenwood County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. Applicant was indicted at the March 2007, term of the Greenwood County Grand Jury for Trafficking in Crack Cocaine, Ice, or Crank (2007-GS-24-0416). Janna A. Nelson.

Esquire, represented the Applicant. On February 27, 2008, Applicant pled guilty to Trafficking in Metamphetamine, 10-28g – 2nd Offense. The Honorable John C. Hayes, III sentenced him to fifteen (15) years. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel.

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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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,

104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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 plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Spend Enough Time With the Applicant

Applicant claims that counsel did not spend enough time with him prior to his case being called for trial. Applicant did not have contact with the first public defender that was working on his case in sometime in early 2007. Almost a year later the

Applicant moved down the road. Applicant stated that he had no contact with the public defender that was reassigned his case until he was told that his case was being called to court in February 2008.

Counsel testified that she had been unable to locate the Applicant prior to the case being called for trial. Counsel's letter to the Applicant regarding the trial date and the offer from the Solicitor was returned. Counsel attempted to contact the Applicant with the number he had given her office, but the number belonged to someone else, and this person gave counsel the name of someone else related to the Applicant. Counsel stated that she was only able to locate him after talking to the Applicant's wife had come to court (on her charges) and told counsel how to locate the Applicant. Counsel did ask for a continuance because she had only met with the Applicant once, but the Court denied her request.

The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty, aside from his other allegations of ineffective assistance of counsel.

This Court finds that Applicant has failed to show that counsel was ineffective

for her lack of time spent in consultation with him. Applicant created his own problem by putting false information on his bond form and for his failure to make any effort to contact counsel about the status of his case. No one forced the Applicant to plead guilty. Applicant only stated that he wanted more time to get his affairs in order and wouldn't have changed his decision to plead guilty. Counsel moved for a continuance and it was denied. Applicant also failed to show anything that counsel would have discovered had she been able to meet with the Applicant more times. Applicant has failed to meet his burden of proof. Accordingly, this allegation is denied.

Failure to Review Discovery

Applicant also alleged that counsel was ineffective for not reviewing the Discovery materials with him. Counsel testified that she received the Discovery materials five days before the case was called to trial. Counsel could not have gone over the Discovery any earlier since there would have been nothing to review. Counsel stated that she had reviewed the State's case with the Applicant and that she entered into plea negotiations on the Applicant's behalf. Applicant has failed to meet his burden regarding this claim and presented nothing to indicate that counsel had not reviewed the Discovery materials with him. Therefore, this allegation is also denied.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, was

thoroughly competent in their representation, and that trial counsel's conduct does not fall below the objective standard of reasonableness. Further, this Court also finds that the record in this case fully demonstrates that the Applicant understood the nature of his plea, and that his plea was made freely and voluntarily.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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.

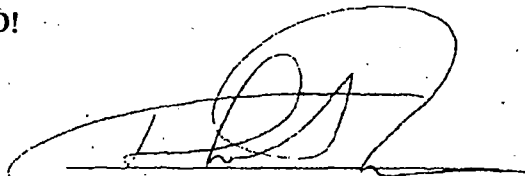
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant

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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!



Thomas A. Russo
Presiding Circuit Court Judge

4/28, 2009

Florence, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD) IN THE COURT OF COMMON PLEAS
MICHAEL EUGENE MINOR) FILED)
#255855) 8TH JUDGE)
GREENWOOD, SC) CIVIL ACTION COVERSHEET
Plaintiff(s))
2010 NOV 23 PM 3 42 -CP-
vs.)
THE STATE OF SOUTH CAROLINA)
Defendant(s))

10CP2401547

(Please Print)
Submitted By: MICHAEL E. MINOR #255855
Address: MCSORMICK C.F.
386 REDEMPTION WAY
MCSORMICK S.C. 29855

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

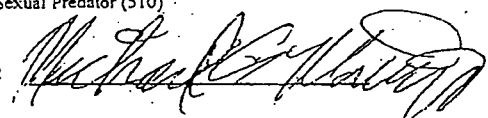
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

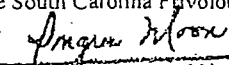
- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:  Date: 11-8-10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

ATTEST A TRUE COPY

INGRAM MOON
CLERK AND GS
GREENWOOD COUNTY

FORM 5

STATE OF SOUTH CAROLINA
 County of GREENWOOD IN THE COURT OF COMMON PLEAS

MICHAEL E. MINOR # 25585 PM 3 42 **10CF2-61547**
 Full name and prison number (if any) of Applicant

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 MCCORMICK C.I., 386 REDEMPTION WAY
MCCORMICK S.C. 29899
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS
GREENWOOD 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) INDICT: #07-65-24-46
 (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) FEB 27, 2008 -15 YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I WAS TOLD THAT I HAD NO GROUNDS FOR APPEAL
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in STATEMENT custody unlawfully: BRADY VIOLATION - NEWLY DISCOVERED EVIDENCE SEE EX
- (a) INEFFECTIVE ASSISTANCE OF PCR COUNSEL - INVOLUNTARY
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL GUILTY PLEA
- (c) LACK OF SUBJECT MATTER JURISDICTION
11. State concisely and in the same order the facts which support each of the grounds set out in (10): COUNSEL FAILED TO RAISE ALL AVAILABLE ISSUES ON APPLICATION
- (a) COUNSEL FAILED TO TIMELY APPEAL/DESERIAL OF PCR
- (b) COUNSEL FAILED TO FILE SS(E) UNDER BRIDSON V. STATE
- (c) 493 S.E.2d, PRUITT V. STATE 423 S.E.2d 127, MCCRACKEN V. STATE 408 S.E.2d 241
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? 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. PCR
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. GREENWOOD COUNTY COURT OF COMMON PLEAS
- ii. GREENWOOD S.C.
- iii. _____
- iv. _____

SEE
ATTACHMENT.
D. STATEMENT
BY WIFE
CO-DEFENDANT.

(c) the disposition thereof:

- i. DENIED
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 4-28-2009
- ii. _____
- iii. _____
- iv. _____

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

- i. 2008-CP-24-823
- 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?

YES

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

(a) which grounds have been presented:

- i. INEFFECTIVE ASSISTANCE OF COUNSEL
- ii. _____
- iii. _____

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

- i. PCR
- 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: LACK OF

(a) SUBJECT MATTER JURISDICTION

(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? NO

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO

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

NO

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. JOHN D. COMPTON III

GREENWOOD S.C.

PCR - HEARING

ii. _____

iii. JANNA A. NELSON

PUBLIC DEFENDER - GUILTY PLEA

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

i. GUILTY PLEA

ii. PCR HEARING

iii. _____

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

REINSTATE PCR TO RAISE ALL AVAILABLE ISSUES UNDER 71.7
AND RULE 52(A) AND 57(E). AND TO ALLOW A BELATED APPEAL
UNDER AUSTIN V. STATE,

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

NO

STATE OF SOUTH CAROLINA)

County of MCCORMICK)

VERIFICATION

I, MICHAEL MINOR, 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.

Michael E. Minor
255855

SWORN to and subscribed before me this 16
 day of November, 2010.

J. C. Franklin (L.S.)
 Notary Public

My Commission Expires: 12.16.2019

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

I, MICHAEL MINOR, 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.

x Michael S. Minor
Applicant

SWORN or affirmed to and subscribed before me this

16 day of November, 2012.

J. C. Franklin
Notary Public

My Commission Expires: 12.16.2019

255855

ISSUES

APPLICANT NOW FILES THIS SUCCESSIVE PCR ALLEGING THE FOLLOWING CLAIMS.

1. PCR COUNSEL FAILED TO RAISE ALL AVAILABLE ISSUE IN HIS PCR APPLICATION: NEWLY DISCOVERED EVIDENCE.
- 1) LACK OF SUBJECT MATTER JURISDICTION
- 2) INVOLUNTARY GUILTY PLEA - COURT FAILED TO EXPLAIN THE ELEMENTS OF THE OFFENSE IN TRAFFICKING OF METHAMPHETAMINE OF "POSSESSION" AND THAT TRIAL COUNSEL FAILED TO EXPLAIN THE "REQUISITE MENS REA" OF THIS CHARGE WHEN DEFENDANT CLAIMED IT WAS NOT IN HIS POSSESSION OR CONTROL AND IT BELONGED TO HIS WIFE PERSONALLY.
3. COUNSEL FAILED TO EXPLAIN THE DEFENSE OF MISPRISON OF A FELONY OR CRIMINAL CONSPIRACY WHICH IS A LESSER INCLUDED OFFENSE THAT COULD BE INFERED BY A JURY.
4. PCR COUNSEL FAILED TO FILE A SRES ALLEGING THESE CLAIMS TO SEEK RECONSIDERATION TO RAISE ALL AVAILABLE ISSUES.
5. PCR COUNSEL FAILED TO FILE A NOTICE OF INTENT TO APPEAL REQUIRED UNDER AUSTIN V. STATE, 305 S.C. 453 (1991) RULE 71.1 (G) S.C.R.C.P.

ARGUMENT - LACK OF SUBJECT MATTER JURISDICTION
THIS ISSUE WAS NOT RAISED IN HIS ORIGINAL PCR BASED ON PCR COUNSEL'S FAILURE TO ADDRESS IT. SEE EXHIBIT - 1.

APPLICANT CLAIMS SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANYTIME. SEE BROWN V. STATE, MURDAUGH V. STATE. APPLICANT CLAIMS THAT THE INDICTMENT WAS NOT STAMPED "TRUE BILLED" BY THE GRAND JURY. SEE ORIGINAL INDICTMENT. AS IN THIS CASE NO EVIDENCE HAS BEEN PRESENTED AS IN BUTTRICK, 457 S.E.2d 616, 619 (CT. APP. 1995) THAT THE STATE PRESENTED TESTIMONY FROM THE GRAND JURIES DOCKET COORDINATOR

THAT THE GRAND JURY CONSIDERED AND ACTED ON ALL INDICTMENTS PRESENTED. AS SHOWN IN THIS CASE THERE IS NO "TRUE BILL" STAMPED ON THIS INDICTMENT SHOWING THE COURT WAS PROPERLY VESTED WITH SUBJECT MATTER JURISDICTION. APPLICANT SEEKS AN EVIDENTIARY HEARING TO DETERMINE THIS. APPLICANT DID NOT WAIVE PRESENTMENT TO THE GRAND JURY. SEE ANDERSON V. STATE, 527 S.E.2d 400.

PCR COUNSEL FAILED TO RAISE ALL AVAILABLE ISSUES
COUNSEL FAILED TO FILE A 55(E) MOTION TO ADDRESS ALL ISSUES NOT RAISED IN HIS PCR IN ACCORDANCE TO BYRSON V. STATE, 493 S.E.2d 500, PRUITT V. STATE, 423 S.E.2d 127 (1992), AND MCGRAY V. STATE, 408 S.E.2d 241 (1991). S.C. CODE OF LAWS 17-27-80 (1991). A NEW HEARING IS REQUIRED TO SECURE THE RULING WHICH SHOULD HAVE BEEN MADE INITIALLY. COUNSEL PREPARING PROPOSED ORDERS SHOULD BE METICULOUS IN DOING SO. OPPOSING COUNSEL SHOULD CALL ANY OMISSIONS TO THE ATTENTION OF THE PCR JUDGE PRIOR TO ISSUANCE OF THE ORDER, AND THE PCR JUDGE SHOULD CAREFULLY REVIEW THE ORDER PRIOR TO SIGNING IT. EVEN AFTER AN ORDER IS FILED COUNSEL HAS AN OBLIGATION TO REVIEW THE ORDER AND FILE A 55(E) S.C.R. CIV. P. MOTION TO ALTER OR AMEND. FAILING TO ADDRESS THE MERITS OF ISSUES. HERE COUNSEL FAILED TO ALTER OR AMEND HIS APPLICATION PROPERLY.

COUNSEL FAILED TO FILE NOTICE OF APPEAL

APPLICANT SEEKS A EVIDENTIARY HEARING PURSUANT TO AUSTIN V. STATE, 409 S.E.2d 395 (1991) THAT PCR COUNSEL FAILED TO TIMELY FILE HIS NOTICE OF INTENT TO APPEAL HIS PCR DENIAL.

AN AUSTIN APPEAL IS USED WHEN AN APPLICANT IS PREVENTED FROM SEEKING APPROPRIATE REVIEW OF A DENIAL OF HIS OR HER PCR APPLICATION, SUCH AS WHEN AN ATTORNEY FAILS TO SEEK

TIMELY REVIEW. SEE AICE, 409 S.E.2d AT 392, HOPE V. STATE, 492 S.E.2d 76 N.1 (1997). PERMITTING AN AUSTIN APPEAL WHERE ORIGINAL PCR COUNSEL FAILS TO APPEAL FROM THE FIRST DENIAL OF PCR. IN AUSTIN, THE DEFENDANT NEVER RECEIVED A FULL PROCEDURAL "BITE AT THE APPLE" BECAUSE HE WAS PREVENTED FROM SEEKING ANY REVIEW OF THE DENIAL OF HIS PCR APPLICATION. AICE 409 S.E.2d 395. APPLICANT SEEKS AND AUSTIN APPEAL AND A EVIDENTIARY HEARING TO SHOW HE DID NOT KNOWLEDGE AND VOLUNTARILY WAIVE HIS RIGHT TO APPEAL.

BRADY VIOLATION - RULE 5 NEWLY DISCOVERED EVIDENCE
 APPLICANT CONTENDS THAT HE HAS NEWLY DISCOVERED EVIDENCE THE STATE WITHHELD FROM HIM AT THE TIME OF HIS PLEA THAT WAS EXCULPATORY IN NATURE. THE STATE CLAIMED IT HAD A STATEMENT WRITTEN BY HIS WIFE BONNIE MINOR STATING MICHAEL MINOR HELPED HER BUY AND SELL DRUGS. THIS WAS THE STATES MAIN EVIDENCE THAT WAS TOLD TO HIM. UPON RECEIVING HIS SENTENCE AND AFTER PCR APPLICANTS WIFE WROTE A STATEMENT COMPLETELY SHOWING MR. MICHAEL MINORS INNOCENCE IN THE CHARGED CRIME. IF THIS COULD HAVE BEEN DISCOVERED EARLIER APPLICANT WOULD HAVE NOT PLEAD GUILTY BUT DEMANDED TRIAL. THE STATE WITHHELD THIS EXCULPATORY INFORMATION. ENCLOSED I) THE SWORN AFFIDAVIT. APPLICANT REQUESTS A FULL EVIDENTIARY HEARING ON THESE 2 ISSUES. SEE EXHIBIT - 2 -

RESPECTFULLY SUBMITTED,

MICHAEL E. MINOR 255855
 MICHAEL MINOR #255855
 ME CORMICK C.F. F-1-B
 386 REDEMPTION WAY
 ME CORMICK SC. 29859

NOV. 8, 2010
 DATE:

EXHIBIT 2

1 year suspended with 1 year probation; is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That warrant alleged that you had
4 violated probation by having methamphetamine and marijuana in
5 your residence and a firearm, and your pleading guilty to
6 having those on October 18, 2006 --

7 THE DEFENDANT: Yes, sir, with extenuating
8 circumstances. Them guns were for sale, and hunting season
9 had just come up. They had been at a friend of mine's house.
10 I had bought them, but they hadn't been in my house except for
11 that week. Somebody was supposed to pick them up that Friday.

12 THE COURT: All right. Well, I find these are
13 substantial violations of your probationary sentence.

14 Now, let me hear the facts and his prior record, if
15 he's got any other than I've already mentioned.

16 MS. WHITE: Yes, sir. This occurred on October
17 18th, 2006 in Greenwood County. Agents with the vice, drugs
18 and organized crime unit with the Greenwood County Sheriff's
19 Office executed a search warrant at Mr. Minor's residence
20 where he resided with wife, Bonnie Minor, who was also
21 charged.

22 When they were executing that search warrant they
23 located approximately 13 grams analyzed weight of
24 methamphetamine throughout Mr. Minor and Ms. Minor's bedroom.
25 Some of it was on nightstands, some was in Ms. Minor's purse,

EXHIBIT 2

7

1 just all throughout the residence on shelves for a total
2 weight of about 13 grams.

3 Ms. Minor gave a statement basically indicating that
4 she and Mr. Minor were, in effect, running a meth ring, that
5 she was the business side of things and Mr. Minor was the
6 brains, in effect, of the organization.

7 His prior criminal history -- this is actually a 3rd
8 offense that's being reduced to a 2nd offense. He also has a
9 DUI from 1991, open container from '91. From 1998, a CPU,
10 possession of controlled substance, and PWID either meth or
11 crack. He received a 30-month sentence. And then the case
12 that he's on probation for, which is from 2006, the possession
13 of meth.

14 THE COURT: You agree with those facts, Mr. Minor?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Minor, I accept your pleas. I find
17 they are freely, voluntarily -- your plea. I find it is
18 freely, voluntarily, knowingly and intelligently entered,
19 entered with advice of competent counsel with whom you are
20 satisfied. I find that the facts support your plea and you
21 signed a plea of guilt. I also find that the violations of
22 your probation are substantial violations.

23 All right. I'll be glad to hear from your attorney
24 then you.

25 MS. NELSON: Thank you, Your Honor. Judge,

State of south Carolina
county of Greenwood
Sworn Affidavit of Bonnie Minor

10-22-10

This is a sworn affidavit by Bonnie minor the wife of Micheal Minor and I declare under the penalty of perjury that the foregoing facts are true and correct and based on my personal knowledge.

That prior to me pleading guilty to my charges about the drugs in my possession I told Dale Kittles that I was the one buying and selling the drugs and that I did all the runs and buys and that my husband Micheal Minor had no participation in these drug transactions. The detective kept telling me to stop covering for my husband and that they knew my husband was the big man.

I Bonnie Minor specifically told them that I was the one buying and selling. My husband Micheal Minor was sick in the bed and he only did the drugs for his personal use.

The statements that were told to my husband that I wrote the statements incriminating him are false and perjury and at no time did I tell law enforcement my husband was the mastermind of a drug operation. That I will and can testify to these facts in a court of law.

Sworn and Subscribed Before Me
This 1 Day of November, 2010

Linda G. Galchier
Notary Public South Carolina
My Commission Expires

4-3-13

Bonnie Minor
Bonnie Minor
Apt #6
222 Cambridge Ave
Greenwood S.C. 29646

EXHIBIT-3

GREENWOOD COUNTY CLERK OF COURT
ROOM 714 COUNTY COURTHOUSE
GREENWOOD S.C. 29646

11-8-10
DATE:

CLERK,

WILL YOU PLEASE FILE THE NEW PCR APPLICATION AND SEND
ME A STAMPED (CLERKED) COPY ONCE IT'S FILED WITH MY
CASE NO; AND A COPY OF MY EXHIBIT ENCLOSED.

Sincerely

MICHAEL MEWER #255855

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2010-CP-24-1547

Michael E. Minor, #255855,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN AND PARTIAL
MOTION TO DISMISS

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 29, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenwood County Clerk of Court. The Applicant was indicted at the March 2007 term of the Greenwood County Grand Jury for Trafficking in Methamphetamine, 10 to 28 grams, 3rd offense (2007-GS-24-0416). Janna A. Nelson, Esquire, represented the Applicant on this charge. On February 27, 2008, the Applicant appeared before the Honorable John C. Hayes, III, and pled guilty to the lesser offense of Trafficking in Methamphetamine, 10 to 28 grams, 2nd offense. The Applicant received a sentence of fifteen (15) years imprisonment. The Applicant did not appeal his conviction or sentence.

The Applicant filed his first PCR application on July 28, 2008 (2008-CP-46-1382). The Applicant raised the following issues in his first application for post-conviction relief:

1. Ineffective assistance of counsel

An evidentiary hearing into the matter was convened on April 2, 2009. The Applicant was

represented by John D. Compton, III, Esquire. At the evidentiary hearing, the Applicant alleged counsel failed to spend enough time with him prior to his case being called to trial, and counsel failed to review the discovery with him. The Honorable Thomas A. Russo denied and dismissed the application with prejudice by Order dated April 28, 2009. The Applicant did not appeal the denial of his PCR application.

II.

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

1. "Brady violation – newly discovered evidence"
 - a) "The State claimed it had a statement written by his wife Bonnie Minor stating Michael Minor helped her buy and sell drugs. This was the State's main evidence that was told to him. Upon receiving his sentence and after PCR Applicant's wife wrote a statement completely showing Mr. Michael Minor's innocence in the charged crime."
2. "Ineffective assistance of PCR counsel"
 - a) "Counsel failed to raise all available issues on Application"
 - b) "Counsel failed to timely appeal denial of PCR"
 - c) "Counsel failed to file 59(e) . . ."
3. "Ineffective assistance of counsel"
4. "Involuntary guilty plea"
5. "Lack of subject matter jurisdiction"
 - a) "Indictment was not stamped 'true billed' by the grand jury"

Attached herewith and incorporated herein by reference are the records of the Greenwood County Clerk of Court regarding the subject convictions; the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and records from the Applicant's

prior application for post-conviction relief. The Respondent reserves the right to amend this Return and Partial Motion to Dismiss upon receipt of any relevant materials.

III.

Respondent first submits all of the issues raised, with the exception of the issues regarding the right to an Austin appeal and the subject matter jurisdiction of the trial court, should be summarily dismissed because they are successive to the Applicant's prior PCR application. The Uniform Post Conviction Procedure Act provides:

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

S.C. Code Ann. § 17-27-90 (1976). Successive applications are disfavored and the burden is on the applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Respondent submits the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him.¹ Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Therefore, Respondent requests that this Court summarily dismiss this application as successive.

IV.

The Respondent submits that this PCR Application should be summarily dismissed for

¹ The Applicant's "newly-discovered evidence" claim is addressed in detail below.

failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (1976). S.C. Code Ann. §17-27-45(a) reads as follows:

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

Furthermore, claims of newly discovered evidence must be filed “within one year after the date of the actual discovery of the facts by the applicant or after the date when the facts could have been ascertained.” S.C. Code Ann. § 17-27-45(c). The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on February 27, 2008, and the Applicant did not file an appeal. The Applicant was therefore required to file his application by February 27, 2009. This Application was filed on November 29, 2010, approximately two years and nine months after the statutory filing period expired.

To the extent the Applicant alleges he should be allowed to proceed beyond the one year statute of limitations on a claim of newly discovered evidence, Respondent submits this claim is wholly without merit and frivolous. The evidence the Applicant contends is “newly discovered” comes in the form of an affidavit from his wife, Bonnie Minor, that is attached to his application and dated November 22, 2010. The affidavit is an attempt to refute the facts as stated by the solicitor at the Applicant’s plea hearing. At that hearing, the solicitor stated that a search warrant was executed at the Minors’ residence, drugs were found, and Mrs. Minor gave a statement indicating that she and the Applicant run a meth ring, she runs the business side of things, and the Applicant is “the brains, in effect, of the organization.” (Tr. pp. 6-7). Mrs. Minor’s new statement asserts any prior statement in which she allegedly implicated the Applicant is false.

She further states she told police she was the only one involved in the drug transactions, and she never told the police the Applicant was involved.

The Respondent asserts that Mrs. Minor's affidavit, and the Applicant's reliance on it, are completely lacking in credibility. "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct.App.2007). "Therefore, statements made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874. After the solicitor recited the above facts at the plea hearing, the Applicant told the judge he agreed with those facts. (Tr. p. 7). Furthermore, the Applicant stated at the hearing that he wanted to plead guilty and waive his jury trial rights, including his right to confront the witnesses against him, call witnesses on his own behalf, and assert any defenses to the charge. (Tr. pp. 4-5). Lastly, and most notably, the Applicant's wife was present at the plea hearing. (Tr. p. 9). However, when the judge gave Mr. and Mrs. Minor the opportunity to say anything, both declined. (Tr. pp. 9-10). Respondent submits that if the facts the solicitor recited were not true, then the Applicant should not have pled guilty, should not have agreed to the facts, and should not have waived his right to challenge the evidence against him. In addition, the Applicant or Mrs. Minor should have said something when given the opportunity at the hearing; they apparently declined to do so until approximately two years and nine months later.

Respondent further submits, assuming any part of Mrs. Minor's affidavit is true, that the Applicant still failed to this claim within a year of the time he discovered, or could have discovered, this evidence in accordance with S.C. Code § 17-27-45(c). Again, the Applicant and his wife were present at the plea hearing on February 27, 2008, when the allegedly false factual summary was recited by the solicitor. Respondent submits the Applicant and his wife knew well

before the date of the hearing whether only one, both, or neither of them were guilty of trafficking drugs. However, this application was filed approximately two years and nine months after the date of the plea hearing. Further, the Applicant failed to bring this newly discovered evidence claim in his first PCR application. Even if the Applicant alleges the order dismissing his prior application failed to this issue, or his prior PCR attorney failed to present issue entirely, this application was still filed approximately one year and seven months after his prior application was denied and dismissed on April 28, 2009. Therefore, Respondent submits this allegation should be summarily dismissed as untimely filed within the statute of limitations set forth under either S.C. Code § 17-27-45(a) or (c). Further, this claim should be summarily dismissed as successive because this claim clearly could have been brought in the Applicant's first PCR application.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

As to the allegation the trial court lacked subject matter jurisdiction to accept the Applicant's plea because the indictment was not true billed, Respondent submits this allegation is conclusively refuted by the record and thus entirely without merit. The Applicant's indictment for trafficking (2007-GS-24-0416) indicates it was signed by the foreman of the grand jury and

true billed on March 30, 2007. (See Exhibit 1). A certified true copy has been attached to this Return. Therefore, Respondent submits this allegation should be summarily dismissed as conclusively refuted by the record.

VI.

Respondent further submits the allegations regarding ineffective assistance of prior PCR counsel, with the exception of the Austin appeal issue, should be summarily dismissed for failure to state a ground for relief. There is no constitution right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990 (1987). Further, the Sixth Amendment right to effective assistance of counsel does not extend to state PCR actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991). Accordingly, Respondent submits that these allegations be summarily dismissed.

VII.

The Applicant further contends prior PCR counsel was ineffective for failing to appeal the denial of his first PCR application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Respondent requests an evidentiary hearing solely "on the issue of whether in fact the [applicant] requested and was denied an opportunity to seek appellate review."

VIII.

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

IX.

WHEREFORE, having made its Return and Partial Motion to Dismiss, the State requests that an evidentiary hearing be held solely on the issue of whether the Applicant was denied the right to appeal the denial of his first PCR application. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis there is no genuine issue of material fact which would necessitate an evidentiary hearing, and those allegations should be dismissed as a matter of law.

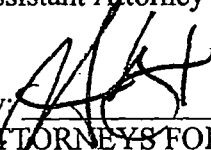
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HARRISON D. BRANT
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 26, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS

2010-CP-24-1547

MICHAEL E. MINOR,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

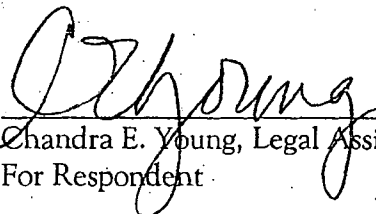
STATE OF SOUTH CAROLINA,

Respondent.

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

Allen Creighton, Esquire
PO Box 1306
Greenwood, SC 29648

DATED this 26th day of July, 2011.


Chandra E. Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	
Michael E. Minor, #255855,	)	C/A No.: 2010-CP-24-1547
	)	
Applicant,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

APPLICANT'S TRIAL BRIEF

The Applicant hereby submits this *Trial Brief* for the Court's consideration in this matter.

I. Statement of Facts of the Case.

A. This case was filed on November 29, 2010, by the Applicant, acting *pro se*. Undersigned counsel was appointed to represent the Applicant by the Honorable Frank R. Addy, Jr., on January 31, 2011.

B. Applicant's application states that he is seeking relief from the sentence imposed by Judge John C. Hayes, III, on February 27, 2008, for Trafficking in Methamphetamine (10-28 grams – Second Offense). Judge Hayes sentenced Applicant to fifteen (15) years imprisonment. Applicant did not pursue a direct appeal.

C. The Applicant was represented by Janna Nelson, Esquire, Assistant Public Defender for Greenwood County.

D. Applicant filed a PCR application on September 26, 2008 (C/A No.: 2008-CP-24-0823). John D. Compton, III, Esquire, was appointed as PCR counsel. An evidentiary hearing was held on April 2, 2009, before the Honorable Judge Thomas A. Russo. Prior to the hearing, Applicant's attorney advised him to withdraw the application, stating that there was "no way you're going to win". PCR counsel did not present all of

the allegations contained in the Application. After the hearing, Mr. Compton did not speak to Applicant. An *Order of Dismissal* was issued by Judge Russo on April 28, 2009. Applicant then wrote Mr. Compton three (3) letters demanding an appeal of the decision but received no response. Mr. Compton did not communicate with Applicant about the status of an appeal. Applicant finally wrote to the South Carolina Supreme Court asking about the appeal but was informed by letter dated December 30, 2010, that no appeal had been filed on his behalf (copy of Letter of Brenda F. Shealy, Chief Deputy Clerk, attached).

II. Legal Issue

A. Whether a PCR applicant can appeal a denial of his application after the statute of limitations has expired if the applicant requested and was denied an opportunity to seek appellate review.

B. Whether the Applicant may proceed under §17-27-45(C), *Code of Laws of South Carolina, 1976* (as amended), because there are material facts not previously presented and heard that require vacation of his conviction and sentence.

III. Legal Authority

A. Applicant argues he should be permitted to appeal the dismissal of his first PCR application pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Under *Austin*, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal. *Id*; see also *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992).

The South Carolina Supreme Court has allowed successive PCR applications where the applicant has been denied complete access to the appellate process. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." *Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). This "bite"

includes an applicant's right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal. See *Aice*, 305 S.C. at 448, 409 S.E.2d at 392.

An *Austin* appeal is used when an applicant is prevented from seeking appellate review of a denial of his or her PCR application, such as when an attorney fails to seek timely review. See *Aice*, 305 S.C. at 448, 409 S.E.2d at 392; *Hope v. State*, 328 S.C. 78, 492 S.E.2d 76 n. 1 (1997) (permitting an *Austin* appeal where original PCR counsel failed to appeal from the first denial of PCR). In *Austin*, the defendant never received a full procedural "bite at the apple" because he was prevented from seeking *any* review of the denial of his PCR application. *Aice*, 305 S.C. at 452, 409 S.E.2d at 395. A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. See *King*, 308 S.C. at 348, 417 S.E.2d at 868. If the PCR court finds an applicant was denied his right to appeal, the Applicant can then petition for certiorari to the S.C. Supreme Court for a review of whether the Applicant was prejudiced by the failure to obtain appellate review. *Id.*; see *King*, 308 S.C. at 349, 417 S.E.2d at 868.

An applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. See *Austin*, 305 S.C. at 454, 409 S.E.2d at 396; Rule 71.1(g), SCRPC. The one-year statute of limitations for PCR applications is not applicable to appeals filed pursuant to *Austin v. State*. Such appeals are considered "belated appeals" and are used to rectify unjust procedural defects, such as when an attorney does not file a timely appeal. See, e.g., *Hope v. State*, 328 S.C. 78, 492 S.E.2d 76 n. 1 (1997) (permitting a belated appeal pursuant to *Austin* in 1992 from a denial of a PCR application in 1989).

When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. *Al-Shabazz v. State*, 338 S.C. 354,

363, 527 S.E.2d 742, 747 (2000). To waive an appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal. *Davis v. State*, 288 S.C. 290, 352 S.E.2d 60 (1986); *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). Applicant herein alleges that he requested an appeal from his PCR denial but his lawyer failed to timely file the appeal. Viewed in the light most favorable to Applicant, the evidence suggests that he did not voluntarily waive his appeal.

B. Applicant also submits that there is evidence of material facts not previously presented and heard that require the vacation of his conviction and sentence. Applicant received a copy of a sworn affidavit dated October 22, 2010, and notarized on November 1, 2010, which contain exculpatory testimony relevant to his defense (copy attached). Applicant filed this action on November 29, 2010, less than one (1) month later. Under §17-27-45(C), *Code of Laws of South Carolina, 1976* (as amended), Applicant may bring his application "within one year after the date of actual discovery of the facts by the applicant..." Applicant entered a guilty plea after being advised that his wife had given a statement that Applicant was "the brains" of a meth ring (*Plea Transcript*, pg. 7, lines 3-6). This information is now directly disputed by sworn affidavit. This misinformation resulted in ineffective assistance of Applicant's plea counsel.

C. For Applicant to be granted relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Brown v. State*, 340 S.C. 590, 533 S.E.2d 308 (2000). This does not only apply to trials - this same standard applies to a guilty plea. *Alexander v. State*, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

When a guilty plea has been entered, the applicant must prove counsel's representation was below the standard of reasonableness and but for counsel's unprofessional errors, there is a reasonable probability the applicant would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-

59 (1985); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991). The advice Applicant received from his plea counsel failed to meet the standards for attorneys. Tollett v. Henderson, 411 U.S. 258, 98 S.Ct. 1602, 36 L.Ed 2d 235 (1973). t

Applicant did not appeal the plea. Now, the Applicant is challenging the voluntariness of his guilty pleas and this PCR evidentiary hearing is the only forum to raise this issue. State v. Barton, 325 S.C. 522, 530 n. 6, 481 S.E.2d 439, 443 n. 6 (Ct. App. 1997) (any challenge to the knowing and voluntary nature of appellant's plea could be raised only in a petition for post-conviction relief); In the Interest of Antonio H., 324 S.C. 120, 122, 477 S.E.2d 713, 714 (1996) (where sole issue before appellate court was competency to enter plea and issue was not raised at the time of the plea, issue was procedurally barred; proper avenue to challenge a guilty plea which was not objected to at the time of its entry was through post-conviction relief); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (absent timely objection at a plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of post-conviction relief).

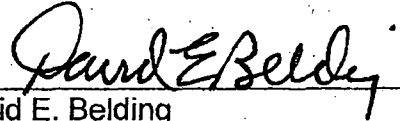
Applicant asserts that he did not validly waive his constitutional right to a trial by jury. When a PCR applicant alleges that he was denied the right to exercise one of his constitutional rights, the sole inquiry is whether he was informed of that right, and if so, whether he validly waived it. If there is no knowing and intelligent waiver, then the remedy is a new trial. See, e.g., Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990) (no valid waiver of right to counsel, new trial ordered); Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990) (same).

The second step in the analysis—whether Applicant was prejudiced by the deficient representation. Strickland v. Washington, 466 U.S. at 687. As this was a guilty plea, Applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Here, the evidence shows that Applicant *did* go to trial initially and only agreed to plead guilty upon ineffective recommendations of his attorney as to the sentence he would receive.

Therefore, Applicant's attorney did not demonstrate "reasonableness under professional norms" that satisfies the requirements of the Sixth Amendment. *Cherry v. State*, 300 S.C. 115, 386 S.E. 2d 624 (1989).

PRAYER FOR RELIEF

Based on the foregoing, Applicant prays that the Court vacate his sentence as violative of the Sixth Amendment and remand this case to the Greenwood County Court of General Sessions.



David E. Belding
Post Office Box 11964
Columbia, SC 29211-1964
Phone: 803-665-3161
Fax: 866-220-6352
Email: dar820@sc.rr.com
ATTORNEY FOR APPLICANT

March 12, 2012



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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

December 30, 2010

Mr. Michael Minor #255855
McCormick Correctional Inst.
386 Redemption Way
McCormick, SC 29899

Re: Minor v. State
2008-CP-24-00823

Dear Mr. Minor:

This will acknowledge receipt of your letter of December 29, 2010. We have checked the records in this office and the records at the Court of Appeals and do not find where any appeal has been filed in the above entitled matter.

Very truly yours,

Chief Deputy Clerk

/bs

State of south Carolina
county of Greenwood
Sworn Affidavit of Bonnie Minor

10-22-10

This is a sworn affidavit by Bonnie minor the wife of Micheal Minor and I declare under the penalty of perjury that the foregoing facts are true and correct and based on my personal knowledge.

That prior to me pleading guilty to my charges about the drugs in my possession I told Dale Kittles that I was the one buying and selling the drugs and that I did all the runs and buys and that my husband Micheal Minor had no participation in these drug transactions. The detective kept telling me to stop covering for my husband and that they knew my husband was the big man.

I Bonnie Minor specifically told them that I was the one buying and selling. My husband Micheal Minor was sick in the bed and he only did the drugs for his personal use.

The statements that were told to my husband that I wrote the statements incriminating him are false and perjury and at no time did I tell law enforcement my husband was the mastermind of a drug operation. That I will and can testify to these facts in a court of law.

Sworn and Subscribed Before Me
This / November , 2010

Linda C. Bolchini
Notary Public South Carolina
My Commission Expires

4-3-13

Bonnie Minor
Bonnie Minor
Apt #6
222 Cambridge Ave
Greenwood S.C. 29646

In the Court of Common Pleas
Eighth Judicial Circuit
2008-CP-24-0823

Michael Minor,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

March 12, 2012
Greenwood, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

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

David E. Belding, Esquire
Attorney for the Applicant

J. Rutledge Johnson, Esquire
David Spencer, Esquire
Attorneys for the Respondent

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

I N D E X

John D. Compton,

Direct Examination by Mr. Johnson 10

Cross-Examination by Mr. Belding 17

Redirect Examination by Mr. Johnson 25

Michael Minor,

Direct Examination by Mr. Belding 35

Cross-Examination by Mr. Johnson 44

Redirect Examination by Mr. Belding 49

Examination by the Court 50

Bonnie Minor,

Direct Examination by Mr. Belding 51

Cross-Examination by Mr. Johnson 56

Examination by the Court 61

Ruling by the Court 63

Certificate Page 70

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>Ev.</u>
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P-1	Correspondence		38
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P-2	Affidavit of Bonnie Minor		42
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TRANSCRIPT OF RECORD

(WHEREUPON, the proceeding was commenced at 10:15 a.m.)

MR. JOHNSON: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. JOHNSON: This is *Michael Minor v. State of South Carolina*. It's 2010-CP-24-1547. Mr. Minor was true-bill indicted the March 2007 term of the Greenwood County Grand Jury for trafficking in methamphetamine, 10 to 28 grams, third offense. He pled guilty on February 27th, 2008, to a lesser-included of the second offense before the Honorable John C. Hayes, III. His sentence was 15 years. There was no direct appeal filed.

He has filed a prior PCR on July the 28th, 2008, alleging ineffective assistance of counsel. There was an evidentiary hearing held on April 2nd, 2009, in which he alleged that counsel didn't spend enough time with him prior to his case being called for trial and that his counsel failed to review discovery with him. By order dated April 28th of 2008, the Honorable Thomas A. Russo denied and dismissed the application. Applicant did not file an appeal of this denial of the application.

On November 29th, 2010, he filed another PCR and it is the state's position that we will want to -- move to dismiss all issues except for the *Austin v. State* issue,

1 which would be the belated PCR appeal. He is represented
2 here today by Mr. David Belding.

3 THE COURT: All right. Just so that I'm clear, then:
4 The only issue that we're dealing with is the motion to
5 dismiss today? Is that what we're concerned with or ---

6 MR. BELDING: Yes, Your Honor.

7 THE COURT: All right. All right, Mr. Belding. Happy
8 to hear from you, sir.

9 MR. BELDING: Appreciate it, Your Honor. I've handed
10 up a trial brief which essentially outlines our position.
11 Simply put, there was no -- there -- there's two real
12 grounds for this -- for us going forward: One is, of
13 course, and *Austin* issue, which I start outlining on page
14 2. And I -- the question is whether or not this Court can
15 allow a belated *Austin* appeal because of the fact that no
16 appeal was filed from the dismissal of this PCR application
17 by Judge Russo, despite the fact that the applicant asked
18 that there be an appeal.

19 The other issue is -- I think it's possible he may be
20 able to proceed under Code Section 17-27-45(c), because
21 there are material facts that were not previously
22 presented; and that within one year of his finding these
23 belated material facts, he, in fact, filed his PCR
24 application originally. He actually got -- and I've
25 attached it to the back of this brief -- two -- two items

1 that we would put into evidence. This is courtesy copies
2 for you. The first -- the next-to-the-last page is a copy
3 of a letter from the -- the chief deputy clerk of the
4 Supreme Court, noticed -- notifying Mr. Minor that despite
5 a search, that there has not been an appeal filed in his
6 PCR case.

7 And the last one is a sworn affidavit from a
8 codefendant -- actually, Mr. Minor's wife -- that was dated
9 October 22nd, 2010, and notarized on November 1st, 2010,
10 that is exculpatory in nature. And he filed this PCR on
11 November the 29th of 2010, less than a month later. So we
12 would also take the position that he may be entitled to
13 seek a new PCR on the grounds of after-discovered material
14 evidence under the code section I cited: 17-27-45(c).

15 The *Austin* issue, to go back to the first one, is
16 essentially there's two basic cases -- a number of them,
17 but the big ones, of course, are *Austin v. State* and,
18 recently, *Odom v. State* that talk about PCR applicants
19 getting a -- one bite at the apple. But it's pretty clear
20 that they get a full bite, and that includes appellate
21 review. The applicant has a right to appellate counsel's
22 assistance in -- in reviewing the matters that were before
23 the Court. And the applicant, Mr. Minor, was not allowed;
24 he was not afforded that opportunity because no appeal was
25 filed.

1 I would proffer to the Court that Mr. Minor tells me
2 he sent three letters to his PCR attorney, asking there be
3 an appeal and asking what the status was. He finally wrote
4 directly to the Court. And the chief deputy clerk of the
5 Supreme Court wrote back and said there is no appeal
6 pending. And that is when he found out that he had not had
7 an appeal of Judge Russo's order in this case.

8 I have cited the -- the authority that we rely on in
9 this case. We think that clearly, we're -- we -- we think
10 it would be appropriate for the Court to grant him at least
11 a belated *Austin* appeal so that he could pursue this matter
12 under the auspices of *Austin* and the *Odom* case and the
13 other cases that are cited in the brief, which all tend to
14 -- to say the same thing: that, you know, he gets a full
15 bite at the apple and he was not afforded that in this
16 case. Because of that, we would move to have either a
17 belated *Austin* appeal; or, if -- if the Court -- I -- I'm a
18 little -- I can't quite tell from some of the case law. It
19 sounds like you get a belated appeal. But I also read some
20 language that sounded like the Court could vacate the order
21 and send it back for a new PCR, which we would, of course,
22 be happy with either.

23 So that's the ground for our motion to have this case
24 go forward under *Austin* and its progeny, Your Honor.

25 THE COURT: Just so that I'm clear: The affidavit

1 that you've submitted is from your client's wife?

2 MR. BELDING: (Nods head up and down.)

3 THE COURT: All right.

4 MR. BELDING: That's correct, Your Honor.

5 THE COURT: And he did not know about this until ---

6 MR. BELDING: You know -- now, let -- I'll -- let me
7 proffer what I understand from. Now we're going back to
8 the plea, okay? This is a -- it was interesting situation
9 because she was charged as well, and -- and he -- you know,
10 he's -- they were -- they were separated. And he is
11 informed by his plea counsel that they are bringing these
12 charges against her as well and that they have a statement
13 from her that he was the brains of the organization. And I
14 pointed out in the -- in our trial brief, the exact page in
15 the trial transcript where -- it's page 7, lines 3 to 6,
16 where the state, in giving the factual basis for the plea,
17 says that they have a statement from his wife saying he was
18 the brains of this meth ring.

19 In 2010 she files an -- sworn affidavit, saying that
20 she never told anybody that. And it was a material fact
21 because it -- it really led his plea counsel to believe
22 that he had no choice but to plead guilty and take the best
23 deal that the state would offer him. And that's what she
24 so advised him.

25 THE COURT: Well, certainly, this information would've

1 been discoverable at the time of the initial PCR, had he
2 gone forward.

3 MR. BELDING: And that might be one of the issues that
4 we would like to have up on appeal, assuming we can get a
5 belated Austin appeal on that -- on that PCR.

6 THE COURT: All right. Does the state object to an --
7 to a belated appeal on this?

8 MR. JOHNSON: Yes, we do, Your Honor.

9 THE COURT: All right. Let me hear from y'all.

10 MR. JOHNSON: All right. Do you want me to go ahead
11 and call a witness?

12 THE COURT: However you want to proceed.

13 MR. JOHNSON: Okay. (To the bailiff) Mr. Compton?
14 Dee Compton?

15 THE COURT: Well, he ---

16 MR. JOHNSON: And also ---

17 THE COURT: --- was here.

18 MR. JOHNSON: --- Your Honor, we would also like to
19 move to dismiss the newly discovered evidence. Clearly and
20 actually, if you look at page 9 of the transcript, line 22,
21 applicant's wife was in the courtroom that day and declined
22 to address the Court. This is not newly discovered
23 evidence. Even if it was, assuming arguendo, it should've
24 been brought up at the first PCR. And this is excessive in
25 this application. We move to dismiss that claim.

DIRECT EXAMINATION BY MR. JOHNSON - JOHN D. COMPTON 10

1 THE COURT: All right. Okay. Come on up, Dee.

2 THE WITNESS: Can I get my computer, Judge?

3 THE COURT: Yes, please.

4 JOHN D. COMPTON, having been first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. JOHNSON:

8 Q Good morning, Mr. Compton.

9 A Morning.

10 Q Were you involved in a PCR case with Mr. Michael
11 Minor?

12 A Yes.

13 Q And can you tell me how you became involved?

14 A I was appointed.

15 Q And do you remember when you were appointed?

16 A No.

17 Q And upon representing him, did you represent him at an
18 evidentiary hearing?

19 A Yes.

20 Q And what issues were brought forth in that hearing?

21 A Give me just a moment.

22 Q All right. Let me ask you, while you're doing that:
23 How long have you been practicing law?

24 A I was -- I was admitted to practice in South Carolina
25 in January of 1990. I was admitted in Georgia in June of

1 1990.

2 Q And do you do criminal work? civil work?

3 A I have done criminal work, although it's been -- it
4 has not been the predominant part of my practice for some
5 time. I ---

6 Q And have you handled PCRs before?

7 A Of course.

8 Q So you're familiar with the process?

9 A Yes.

10 Q Okay. So do you remember what claims were brought
11 forward on Mr. Minor's behalf?

12 A I have it right here, if I can -- if you give me just
13 a moment.

14 THE WITNESS: (To the Court) I beg -- I beg your
15 pardon.

16 THE COURT: Quite all right.

17 A All right. Mr. Minor filed a petition for
18 postconviction relief, according to my file. That was
19 filed in -- on July the 28th of 2008. And in that petition
20 Mr. Minor noted that he had been indicted for trafficking
21 in methamphetamine; that he was currently incarcerated at
22 that time in McCormick; that he was sentenced in this Court
23 -- the Court -- well, the Court of General Sessions in this
24 county. He got 15 years. He stated that -- well, it's
25 interesting. He -- he stated basically that he -- he

1 didn't get an appeal from that case; specifically, quote,
2 My public defender stated there was no reason or grounds to
3 appeal, closed quote.

4 And for that he -- he said that he was given
5 ineffective assistance of counsel. He said he would amend
6 the facts at a later date. I do not know -- well, let's
7 see. He did note that he was represented by Ms. Nelson,
8 who is present in the courtroom. She is with the Greenwood
9 Public Defender's Office and that she represented him
10 through arraignment and plea and sentencing and that he was
11 seeking a reversal or remand or vacation of his sentence
12 and a new trial. Mr. Minor did say that he was going to
13 amend his plea -- his -- his facts. I don't know if he did
14 that formally by filing anything else. But what he did do
15 was he mailed me -- after I got a copy of the record from
16 the state, which encompassed the -- the plea that was given
17 on the record, I got the indictments or the -- the
18 indictment -- the -- yeah -- the two indictments -- the
19 three -- three indictments; the criminal history; the
20 affidavit for indigency; the Rule 5 and *Brady* motion that
21 Ms. Nelson filed.

22 Q Let me stop you right there, if you don't mind.

23 A All right.

24 Q At this evidentiary hearing that you represented Mr.
25 Minor, what claims were brought forward during the actual

1 ---

2 A Well ---

3 Q --- hearing?

4 A --- I'm getting to that.

5 Q Okay.

6 A I got your return. And I'm just going through
7 chronological order the whole file. All right. I let Mr.
8 Minor know on October the 10th, which is right after I got
9 appointed, it looks like -- not too long after, anyway --
10 that I had been appointed. And then, in response to that
11 letter, I received another letter, dated November the 5th,
12 where Mr. Minor raised some new grounds. And all of these
13 grounds that I'm going to recite -- there -- there was this
14 letter. And then, there was another letter that he sent,
15 supplementing the first letter. And in both of letters,
16 there were additional grounds.

17 So all of those were raised, as I recall, in the
18 evidentiary hearing. And Ms. -- Ms. Janna Nelson is here,
19 and I think she'll tell you about the kinds of questions,
20 if you choose to call her, of the kind of case that I
21 presented. But we -- we -- we vetted all of these issues,
22 to my recollection, in the evidentiary hearing.

23 The first one in the November the 5th letter, which I
24 received on November the 10th, was: "My attorney did not
25 meet with me to discuss the case before going to court."

1 And he describes that: "We met on Monday for ten minutes;
2 and on the following Wednesday, we met at the courthouse
3 for approximately fifteen minutes. Then I went right in
4 front of the judge. There was not enough time spent on
5 this case." He also alleged lack of investigation and
6 preparation.

7 The second thing he alleged was that he was never
8 afforded a copy of his *Brady* material, nor was it discussed
9 with him, and that he was entitled to that under the rule
10 -- Rule 5 of the South Carolina Rules of Criminal
11 Procedure. He says for -- under his third point: "I was
12 not advised of any lesser-included offenses, which would be
13 instructed if I went to trial." And he -- he cited
14 *Kerrigan v. State* there.

15 And then, No. 4: His attorney failed to challenge the
16 sentencing of this charge, saying that he was sentenced to
17 a third offense, but the sentence sheet states "second
18 offense, lesser-included offense." And -- and I think that
19 the record would show, with the -- with the plea record
20 would show that there was some discussion at -- at the --
21 the -- the plea hearing about this being agreed to a
22 second-year sentence but he -- but it -- it was actually --
23 I think law enforcement testified, if I recall correctly,
24 that it was actually his third offense, but he was being
25 pled up on a second. And some of those indictments are

1 marked as lesser-included. So I don't know whether that
2 was discussed or not, but it's in the record that they were
3 -- there were some lesser-included things involved in the
4 case.

5 So then on November the 12th, I sent Mr. Minor a copy
6 of his hearing -- transcript of his hearing per his
7 request, because he had asked for that. Then on January
8 the 12th of 2009, which I -- I received a letter from him
9 on January the 12th of 2009, which he wrote on January the
10 6th of 2009. And he -- he again wanted to raise some
11 issues in that letter.

12 And in this letter he -- he says -- he amplifies his
13 concerns about the *Brady* material. And he says that "Ms.
14 Nelson was ineffective for not presenting a copy of my
15 motion of discovery of *Brady* material," which I took to
16 mean that she didn't file one. But I had already had one
17 in the -- I already had her file copy in the file.

18 He said that he was never made aware of anything that
19 the state intended to use against him and wasn't aware or
20 had any knowledge of any such thing as *Brady* material under
21 after he was convicted.

22 So he -- he went -- he -- he brought up more --
23 without going through every statement, he brought up more
24 facts that he alleges he discovered after his conviction
25 that he asserted would have changed his decision to plead

1 guilty if he had known beforehand. And so we talked about
2 that at the evidentiary hearing.

3 Too, on page 2 he talks about -- no. This whole
4 letter basically talks about discovery. I'm sorry. I -- I
5 got confused because he numbered the pages 1 and 2. I
6 thought they were two different points. But when I look at
7 it again in refreshing my memory, it's actually just one
8 thing. He -- he -- that whole letter dealt with the issue
9 of the discovery.

10 Q But you raised those at the evidentiary hearing?

11 A Of course.

12 Q Okay. But let me ask you: Do you remember the
13 outcome of this hearing?

14 A Judge Russo ruled against Mr. Minor from the bench.
15 And at that time I explained to Mr. Minor at counsel table
16 that he did have the right to appeal. But I also told him
17 I didn't think there were any grounds for appeal. And he
18 did not ask me for an appeal.

19 Q So he didn't ask you in the courtroom that day. Did
20 he ever ask you afterwards within the ---

21 A No.

22 Q --- 30-day time frame?

23 A Well, the first thing I heard from him was over a year
24 later, when he finally asked me for one. It was in August
25 of the next calendar year after the hearing that he finally

1 wrote to me.

2 Q And by that time, of course, it's untimely?

3 A Certainly. And -- yeah.

4 Q So you explained the right to appeal, so he was
5 advised that he could appeal this decision ---

6 A Well, I ---

7 Q --- and that ---

8 A --- advised him at the hearing ---

9 Q And ---

10 A --- right after the ruling from the bench.

11 Q And that he had 30 days to communicate with you if he
12 wanted to file an appeal?

13 A I don't know if I put it in those terms, but yes.

14 Q Okay. Did you ever give him the time frame in which
15 ---

16 A Yeah. I told him he had 30 days to appeal.

17 Q Okay. But then, you never heard from him until a year
18 later?

19 A Correct.

20 MR. JOHNSON: No further questions at this time, Your
21 Honor.

22 THE COURT: All right. All right. Mr. Belding?

23 MR. BELDING: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. BELDING:

1 Q Mr. Compton, you -- you -- you mentioned some of the
2 areas of practice you've been involved in over the last 22
3 years. Is appellate work something that you've been
4 involved in much?

5 A In my first year of practice, I brought -- well, my
6 first three years of practice, I brought two appeals: one
7 that was heard in the Supreme Court, one that was heard in
8 front of the Court of Appeals. Since then, I have not
9 filed any ---

10 Q Okay.

11 A --- except for maybe one or two PCR appeals that did
12 go up to appellate defense.

13 Q Okay.

14 A But not -- it hasn't been very often, though.

15 Q So -- so you do know how to file a PCR appeal?

16 A Yes.

17 Q And it's -- it's not very complicated. It's basically
18 a notice of appeal and a proof of delivery and you mail a
19 copy to the AG's office, right?

20 A That is correct.

21 Q Okay. Mr. Minor ---

22 A And I also -- I also mail a copy to appellate defense
23 in this -- in this situation.

24 Q Give them a copy of the file. That's right.

25 A Correct.

1 Q So let me ask you this: Do you recollect whether or
2 not you had a conversation with Mr. Minor prior to the
3 start of his PCR evidentiary hearing?

4 A Yes.

5 Q Where you -- did you tell him that you didn't think he
6 had any grounds for his PCR application?

7 A Yes.

8 Q What did you base that on?

9 A My review of the record.

10 Q Okay.

11 A And the fact that he pled guilty.

12 Q Did -- is it your understanding that if you plead
13 guilty, you probably don't have any grounds to file an
14 application?

15 A Well, that's a general rubric, but it's not
16 definitive. I mean, there may be ways around it. And I
17 think you discussed one of them before I took the stand.

18 Q Okay. For the record, would you mind relating what
19 that would be?

20 A I don't have that crystallized in the front of my
21 mind, but I ---

22 Q Okay. I understand. All right. But there may be
23 times when someone has pled guilty and still received
24 ineffective assistance of counsel. I mean, you'll -- you
25 agree to that?

1 A Yes.

2 Q Okay. So there may be times when someone pleads
3 guilty in a PCR hearing and is entitled to -- to give
4 postconviction relief because their lawyer did not
5 adequately represent them for Sixth Amendment reasons?

6 A I don't think this was one of those times, based on my
7 review of the record and the fact that there was a *Brady*
8 filed in this case.

9 Q Was the -- was the decision to not file an appeal
10 yours or Mr. Minor's?

11 A I was never instructed to file an appeal.

12 Q So you just don't do it routinely?

13 A No.

14 Q Okay. Why not?

15 A I don't file anything unless I believe there are
16 grounds to support it. I think Rule 11 says unless you
17 think there are good grounds to support it, you don't file
18 pleadings.

19 Q But in the PCR appeals that you did before that you
20 turned over to appellate defense, do you know whether or
21 not they filed a brief?

22 A I don't.

23 Q Okay. So you think that you have enough experience to
24 know what all the appellate issues might be in a PCR
25 appeal?

1 A No, I don't.

2 Q Okay. And that's something, in fact, appellate
3 defense is experienced at, isn't it, Mr. Compton?

4 A Yes.

5 Q Okay.

6 A I would have to study -- if -- if I were retained
7 counsel and I was asked to file an appeal or -- well, if I
8 were retained counsel and I was asked to file an appeal but
9 I still didn't think there were grounds, I would explain
10 that specifically to why I wouldn't think there were
11 grounds. I was never asked that. I was never asked to
12 appeal. I would file the appeal myself.

13 And in that circumstance, I don't think that appellate
14 defense would be required to take that case, because I was
15 -- if I had agreed to take the case as a retained attorney,
16 okay? But I -- I don't do this work, so I wouldn't take
17 that case, okay?

18 Q I understand.

19 A All right. So I have had two instances, I think, if
20 my memory serves, where my clients have insisted that
21 appeals be file after being appointed to a PCR, in which
22 case I did file the notice of appeal and sent it to
23 appellate defense. I did not know whether or not there
24 were grounds to support the appeal, but just out of an
25 abundance of caution and being -- and -- and my client's

1 insistence, I filed a notice.

2 But it is not my usual practice to file any pleadings
3 with any court under any circumstances unless I believe
4 there are grounds to support it. So no. I'm not up to
5 date on all of those grounds. If I needed to be, I could
6 study up and -- and know that. But I'm no expert in
7 appellate defense on PCR appeals.

8 Q So even in Mr. Minor's case, it's possible there might
9 have been appellate issue that appellate defense, who does
10 this all the time, could have raised that he didn't get a
11 chance to raise because no appeal was filed, correct?

12 A My gut-level reaction to that, based on my experience
13 and my recollection of -- of practice over 22 years, is
14 that it's not very likely.

15 Q Well -- and -- and I'm not trying to pick at you, but
16 I want to understand what you're saying. We all know that
17 very few PCRs get granted relief, up through the Supreme
18 Court.

19 A Correct.

20 Q A very small percentage get reversed and sent back for
21 new trials.

22 A That is correct.

23 Q Okay. But that doesn't mean that people don't have a
24 right to appellate review, and you've already said you
25 don't know all the appellate issues that you might able to

1 raise in this kind of case. So why wouldn't you have just
2 filed an -- I mean, all you got to do is file a notice of
3 appeal and a proof of delivery and send a copy to people.

4 A Well, I was not asked to file an appeal.

5 Q Okay. In the other two cases you talked about, the
6 other two PCRs where you did file an appeal, even though
7 you didn't think there were grounds, you did it because
8 they insisted, correct?

9 A Yeah. They absolutely insisted. Yes.

10 Q Okay. Why wasn't that a Rule 11 violation?

11 A Well, as you say, I didn't know.

12 Q Okay.

13 A Okay? I just assumed that appellate defense would
14 follow the process and they would file -- they would follow
15 up or dismiss it if they deemed appropriate.

16 Q The conversation you had with Mr. Minor after the
17 evidentiary hearing in front of Judge Russo ---

18 A Uh-huh.

19 Q --- it was not time to file an appeal on that date,
20 was it?

21 A No. There has not -- there had not been an order
22 signed at ---

23 Q Right.

24 A --- that time. You have 30 days from the date of the
25 entry of the order.

1 Q Okay.

2 A And I explained that to him.

3 Q All right. His -- that's -- that's his understanding
4 too. So he didn't have to tell you right there, "I want
5 you to go ahead and appeal this," correct?

6 A Correct. He didn't tell me for over a year.

7 Q Did you send him a copy of Judge Russo's order?

8 A I did not.

9 Q How was he supposed to communicate to you the -- the
10 wish to appeal when you didn't send him a copy of the
11 order?

12 A Well, he was advised at the hearing. He could've told
13 me then; he didn't do it, number one. Number two, he was
14 certainly proactive enough to let me know about his case by
15 letter whenever he felt like it, which he never did until
16 over a year later.

17 Q And do you think it's possible that he was waiting to
18 receive a copy of the order to know when his 30 days
19 started running?

20 A I don't know what he thought.

21 Q Okay. Thank you.

22 MR. BELDING: No further questions, Your Honor.

23 THE COURT: All right. Anything ---

24 MR. JOHNSON: Just briefly ---

25 THE COURT: --- else?

REDIRECT EXAMINATION BY MR. JOHNSON - JOHN D. COMPTON 25

1 MR. JOHNSON: --- Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q Mr. Compton, is it easy to know what your client's
5 thinking ---

6 A I'm not ---

7 Q --- as far as -- you know, if ---

8 A No, it's -- it's not ---

9 Q If -- if ---

10 A --- unless ---

11 Q --- he ---

12 A --- they're telling you.

13 Q If he wants an appeal from his PCR but doesn't tell
14 you, how are you supposed to know?

15 A It's impossible to know.

16 Q And when you got the order of dismissal, did you send
17 Mr. Minor anything letting him know?

18 A No, I didn't.

19 Q And is this -- the conversation after the hearing, was
20 that the last communication you had with him?

21 A No. He sent me a letter almost a year after -- or a
22 little over a year after the Court ruled from the bench
23 that he was denied his PCR.

24 Q So he -- ruled from the bench. So he had notice that
25 his case was going to be dismissed?

1 A Yeah. And what we talked about after the hearing was
2 that he had the right to appeal; that I didn't think he
3 particularly think he had grounds for one; but if that he
4 insisted, he could file one. And he didn't express any
5 interest in it. He never said, "I want you to file one."
6 He -- he just walked -- you know, he -- he didn't really
7 say anything. He just walked back with the -- the
8 corrections officer back to the holding area.

9 Q This letter that he sent you after a year, what'd the
10 -- what'd that -- what was that about?

11 A I'm not going to discuss it. It's ---

12 Q Okay.

13 A --- it's not -- it's not part of these proceedings,
14 and it's privileged.

15 Q Okay. Did he have anything about a PCR appeal in that
16 letter?

17 A Yes.

18 Q Okay. But that wasn't till after a year after the
19 hearing ---

20 A Correct.

21 Q --- where it was denied from the bench?

22 A That is correct.

23 MR. JOHNSON: Okay. Thank you, Your Honor.

24 MR. BELDING: No recross, Your Honor.

25 THE COURT: All right. Thank you. You can step down.

1 No objection to excusing this witness from the ---

2 MR. BELDING: No, Your Honor.

3 THE COURT: --- from the plaintiff?

4 MR. BELDING: Thank you.

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

6 THE COURT: You have another witness?

7 MR. JOHNSON: No, Your Honor. That's it.

8 THE COURT: Mr. Belding?

9 MR. BELDING: I don't know if there's such a thing as
10 moving for a directed verdict in a hearing. But -- and I'm
11 happy to call Mr. Minor, just to give his testimony. But I
12 thought it was pretty clear.

13 Mr. Compton's obviously a -- a nice man, but he didn't
14 send a copy -- the testimony was at the hearing, after
15 Judge Russo said he was going to deny it, he said, "Once we
16 get a copy of the order, we'll have 30 days to appeal. I
17 don't think you got grounds, but, you know, there you go."
18 And then he walks off.

19 And then he never sent him a copy of the order. And a
20 year later he's getting a letter, saying, you know: "So
21 whatever happened with all this?"

22 I think it's clear from Mr. Compton's own testimony
23 that my client didn't know when the time started running,
24 and he never communicated it to him. So he clearly didn't
25 have his right to appeal actuated in this case because Mr.

1 Compton didn't to it. I will be happy to call Mr. Minor if
2 you think that's necessary, but I -- I think Mr. Compton
3 made my argument for me.

4 THE COURT: What do you have to say to that, Mr.
5 Johnson?

6 MR. JOHNSON: Your Honor, the state's position that he
7 had notice that he was getting denied and even though --
8 even though, by Mr. Compton's testimony, he did not receive
9 an order, he knew that he had 30 days from the denial of
10 his PCR to file. And he did not write Mr. Compton anything
11 until a year after the PCR hearing. The state's position
12 is that it's just way too long of a time and he willingly
13 gave up his right to a PCR appeal.

14 MR. BELDING: Your Honor, if I might respond briefly:
15 I -- I ---

16 THE COURT: Please.

17 MR. BELDING: --- don't -- I think that in these
18 cases, the Sixth Amendment right to counsel means that
19 we're supposed to communicate these things to our clients.
20 I also have just experienced a couple of cases with the
21 attorney general's office -- (to Mr. Johnson) no offense,
22 okay? -- out of Lexington where a assistant attorney
23 general left the attorney general's office suddenly and I
24 didn't get an order of dismissal for 14 or 15 months.

25 So if I don't find those kind of things unusual, I

1 don't think we can impute to Mr. Minor, who has no legal
2 training, that that's a long time to wait for an order of
3 dismissal. I think it was incumbent upon the lawyer to let
4 him know that the order of dismissal had come through and
5 that the time had started running, since that's what he
6 told him after the hearing: that that's when that decision
7 would have to be made.

8 THE COURT: If I may, let me ask you this: The -- and
9 your -- your motion -- or your trial brief doesn't really
10 answer this question. Was this a full evidentiary hearing
11 or ---

12 MR. BELDING: It ---

13 THE COURT: --- did he ---

14 MR. BELDING: I ---

15 THE COURT: --- withdraw it?

16 MR. BELDING: No. I ---

17 THE COURT: Because it ---

18 MR. BELDING: --- I ---

19 THE COURT: --- it seems to ---

20 MR. BELDING: --- it -- it ---

21 THE COURT: --- say -- indicate that he withdrew it.

22 MR. BELDING: No. I -- I think he went all the way
23 through.

24 THE COURT: Okay. So the applicant's ---

25 MR. BELDING: I -- I ---

1 THE COURT: --- attorney ---

2 MR. BELDING: --- have a ---

3 THE COURT: --- page 1 ---

4 MR. BELDING: --- copy of the -- there would've been
5 no reason for Judge Reeso (phonetic) -- Russo to rule if
6 that had been withdrawn, is the way I look at it. But I'm
7 looking at the transcript, and I think it -- the -- Judge
8 Russo is ruling from the bench.

9 THE COURT: All right. Second question: What would
10 be your grounds for appeal, if I were to grant you a
11 belated appeal on this ---

12 MR. BELDING: Well ---

13 THE COURT: --- if I ---

14 MR. BELDING: --- and ---

15 THE COURT: --- might ask? I mean, what -- where --
16 where is -- I mean ---

17 MR. BELDING: I understand what you're saying.

18 THE COURT: Yeah.

19 MR. BELDING: I don't -- didn't mean to cut you off.
20 I apologize, Your Honor.

21 THE COURT: No. That's quite all right.

22 MR. BELDING: I'm not an appellate attorney either.
23 And I turn these things over to appellate defense all the
24 time. I routinely file a notice of appeal because it's the
25 simplest thing in the world to do. And they come up with

1 all kinds of grounds that I never thought of. I just hope
2 I preserve all the issues in the record so they'll have
3 something to appeal from.

4 I think there were some issues about -- I mean, we're
5 -- when you talk about ineffectiveness of counsel, then you
6 have issues like the amount of time that the attorney --
7 the trial or plea counsel spent with the -- with the
8 defendant; whether they went through the discovery
9 properly. I've seen PCR cases where even though the
10 discovery came in properly, if the attorney doesn't share
11 that with the client or misleads them about what's in the
12 discovery, there may be issues for appeal.

13 And in this case Mr. Minor has told me that he had an
14 issue with what was stated in the plea as the factual basis
15 for the plea by the state: that the state had a statement
16 from Ms. Minor, his wife-codefendant, who she now says she
17 never gave them. So there may have been issues, Judge, to
18 give him a complete bite at the apple from.

19 THE COURT: All right. Did you want to offer your
20 client or any testimony from your client or anything else
21 that anyone wants to offer at this point?

22 MR. BELDING: I know you can't tell me how to try my
23 case. But I also heard in law school that if -- if we've
24 won, I don't need to waste the Court's time. I -- and I
25 can't -- would you like me to call Mr. Minor? He is here

1 today.

2 THE COURT: Let's handle it this way: Attorney
3 General, would you agree that a -- a lawyer has an
4 obligation -- once he's provided with a copy of the order,
5 does he have an obligation to forward that order to his
6 client?

7 MR. JOHNSON: The state's position is that he doesn't
8 have the obligation to give the order, but just at least
9 notice of the order, as stated in Judge Russo's order.

10 THE COURT: May I see that order?

11 MR. JOHNSON: Yes, sir. May I approach?

12 THE COURT: Please.

13 MR. JOHNSON: Is that not in your package?

14 THE COURT: Maybe -- maybe it is. Okay.

15 MR. JOHNSON: Yeah.

16 THE COURT: Sorry.

17 MR. JOHNSON: That's all right.

18 THE COURT: Yeah.

19 MR. JOHNSON: Thank you.

20 THE COURT: Thanks. Procedurally, Mr. Belding, I'm
21 trying to figure out the best way to deal with all of this
22 together. The -- you seem to also want to reopen the whole
23 PCR issue to deal -- to address this after-discovered
24 evidence under 17-27-50 -- whatever it is. Are you seeking
25 to go forward today on that motion as well?

1 MR. BELDING: Actually, the reason that's (b) is -- is
2 I like (a) better. I -- I think that's my strongest
3 argument. I think -- as I look at these cases, I think
4 that my real remedy is a belated *Austin* appeal.

5 I did find -- because it was in all the materials --
6 the -- the 17-27-45(c), which does talk about
7 postconviction relief. And -- and -- and that was brought
8 up in the context of the *Odom* case. And, in fact, that's
9 something that was -- has been brought up in this matter.
10 I think that the cleanest way to do it would be a belated
11 *Austin* appeal.

12 THE COURT: How are you going to address the after-
13 discovered evidence in an *Austin* appeal?

14 MR. BELDING: Well, I don't know that I could. I
15 don't know. We're actually talking about two different
16 animals here.

17 THE COURT: What -- what I'm trying to do is get this
18 resolved once and for all. I don't want him coming back a
19 year from now, saying that: "Okay. Well, Mr. Belding was
20 ineffective for failing to have pushed the after-
21 discovered-evidence issue when I came up with this
22 affidavit." I don't want another PCR, is what I'm saying.

23 MR. BELDING: Understand.

24 THE COURT: And I'm -- I'm leaning towards granting
25 your *Austin* appeal, a belated appeal, for the simple fact

1 that apparently, the -- the order was never sent to your
2 client. I do find -- I -- I do believe that your client
3 was advised of his right to appeal. I believe it probably
4 -- he -- he probably did not desire an appeal at that
5 particular point in time.

6 But perhaps upon receipt of the order, he may have
7 changed his mind. I don't know. And that's really when
8 the clock starts ticking. And apparently, the order was
9 signed on April the 28th of 2009. But ---

10 MR. BELDING: Well ---

11 THE COURT: --- if we're ---

12 MR. BELDING: --- I understand what you're saying.
13 Would you allow me to call Mr. Minor? Essentially, we'll
14 touch on Issue A, but mostly to go into Issue B.

15 THE COURT: Mr. Minor, come on up, please.

16 THE APPLICANT: (Complied.)

17 THE COURT: Does Ms. Nelson need to stick around? Is
18 this the only case she had this morning?

19 MR. JOHNSON: This is the only case that she has.

20 THE COURT: All right.

21 MR. JOHNSON: Unless you're going to go into issue --
22 that issue ---

23 MR. BELDING: No.

24 MR. JOHNSON: --- I think we can agree to release her?

25 MR. BELDING: Yeah.

DIRECT EXAMINATION BY MR. BELDING - MICHAEL MINOR

35

1 MS. NELSON: I'm being excused?

2 THE COURT: Bye.

3 MS. NELSON: Thank you.

4 MR. JOHNSON: Thank you so much.

5 MS. NELSON: Thank you very much.

6 MICHAEL MINOR, having been first duly sworn, testified
7 as follows:

8 MR. BELDING: May it please the Court, Your Honor?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. BELDING:

12 Q Please state your full name for the record.

13 A Michael Eugene Minor.

14 Q Okay. I noticed in the transcripts of both the
15 hearings I read that people had a hard time understanding
16 you. So would you speak up and speak slowly so that
17 everybody can hear you all right, Mr. Minor?

18 A Yeah. I'll try.

19 Q Okay. Thank you. Let me ask briefly: You -- is --
20 is it -- what would you like to tell this judge about the
21 notice you received from Mr. Compton about the denial of
22 your PCR application? Did you ever get anything from him?

23 A I didn't get anything from him ---

24 Q Okay.

25 A --- from him.

1 Q All right.

2 A No.

3 Q And what is your recollection of what you and Mr.
4 Compton talked about at the conclusion of your PCR
5 evidentiary hearing?

6 A I think he said that I didn't have no issues and stuff
7 for appealing; you know, that -- at -- I don't know whether
8 he explained to me that once I got the initial letter from
9 the Court or whatnot, the denial of -- of my application,
10 that at that point I would have 30 days to appeal it.

11 Q Okay.

12 A Now ---

13 Q And do you ---

14 A --- that was my understanding of all of it.

15 Q All right. And do you agree with Mr. Compton that he
16 never sent you a copy of ---

17 A Yeah. He ---

18 Q --- the order?

19 A He never sent me a copy of the order.

20 Q Okay. And did you write to the Supreme Court and ask
21 them what the status of your appeal was?

22 A Yes, sir, I did.

23 Q And -- and let me show you -- ask if you recognize
24 this document.

25 A Yes, sir ---

1 Q Oh, I'm ---

2 A --- I do.

3 Q --- sorry.

4 A Yes, sir, I do.

5 Q You got your ---

6 MR. BELDING: Your Honor, I have a courtesy copy
7 attached to the brief and ---

8 THE COURT: I've read it.

9 MR. BELDING: All right.

10 Q Is this a letter you got from the state Supreme Court?

11 A Yes, sir.

12 MR. BELDING: I'd just like to have this entered as
13 Petitioner's No. 1 ---

14 THE COURT: All right.

15 MR. BELDING: --- Applicant's No. 1? (To Mr. Johnson)
16 Yeah. That's it.

17 MR. JOHNSON: No objection, Your Honor.

18 THE COURT: Without objection.

19 Q And does this letter ---

20 THE COURT: One -- one ---

21 Q --- basically --

22 THE COURT: --- second. One ---

23 Q --- was that ---

24 THE COURT: --- second. One second. Let her finish.

25 Thanks.

1 (Whereupon, Plaintiff's Exhibit 1 was marked and
2 entered into evidence.)

3 MR. BELDING: I got it.

4 Q Mr. Minor, what's now been marked as basically
5 Applicant's Exhibit No. 1, is this the first notice that
6 you remember getting that you did not have an appeal?

7 A As far as I know, yes, sir. I've got a couple letters
8 from them, but I'm not sure if that's the first one.

9 Q Okay. Now, Mr. Minor, your wife -- I'm now shifting
10 to the trial of your case -- the plea of your case, the
11 guilty plea. When you were arrested, there were other
12 people in the house; is that correct?

13 A Yes, sir.

14 Q How -- approximately how many other people?

15 A Well, counting my wife, I think altogether it was five
16 other people in the house.

17 Q Okay. Were all five people arrested?

18 A Yes, sir, all five people was arrested. I was not.

19 Q Were you there at the time?

20 A Yes, sir, I was there the whole time.

21 Q Okay. I -- and I want to make sure I understand.

22 Were there five people in addition to you or including you?

23 A Five people in addition to me.

24 Q Six people in all?

25 A Yes, sir.

1 Q Okay. The other five people were arrested, but you
2 were not at the scene; is that right?

3 A No, sir. I was not arrested. I was brought the time
4 -- at that particular point in time.

5 Q When -- when -- after -- after the incident, when the
6 other one -- people were arrested, how long was it before
7 you were charged with a crime?

8 A I come to the county jail at -- on December the 1st,
9 which was approximately 45 days later. And as far as I
10 know, the reason I was brought to the county jail was
11 because of violation of probation, not -- then -- that was
12 the point that I was given the paper saying that I'm -- I
13 was accused of trafficking methamphetamine.

14 Q Okay. Now, during the criminal case, this
15 trafficking-in-methamphetamine case, who represented you?

16 A Janna Nelson.

17 Q Okay. And it's -- it -- it got pretty fully thrashed
18 out in your first PCR hearing, but ultimately, you agreed
19 to plead guilty to trafficking; isn't that correct?

20 A Yes, sir.

21 Q Why did you agree to plead guilty?

22 A I thought they had a statement -- not aware on me. I
23 mean, I'm -- I didn't know the -- altogether what was going
24 on. I didn't know.---

25 Q Wait a minute. I want to make sure I understand your

1 answer. Would you -- would you repeat that?

2 A I thought they had a statement. I don't remember
3 seeing a statement, though.

4 Q You thought they had a statement from your wife?

5 A Yes, sir.

6 Q Okay.

7 A Or from somebody. I don't know whether it was from my
8 wife or who it was from.

9 Q Okay. And, in fact, in the plea transcript, there is
10 a statement from the solicitor that they had a statement
11 from your wife saying you were the brains of the meth ring;
12 isn't that correct?

13 A Yes, sir.

14 Q Okay. Was that true?

15 A No, sir.

16 Q All right. Were you involved in the manufacturing or
17 sale of methamphetamine?

18 A No, sir.

19 Q Okay. Let me ask you, Mr. Minor, if you recognize
20 this document.

21 A Yes, sir, I do.

22 Q What is that document?

23 MR. BELDING: And by the way, for the Court, this is
24 the letter attached to the brief. This is the letter from
25 -- the sworn statement of Bonnie Minor.

DIRECT EXAMINATION BY MR. BELDING - MICHAEL MINOR 41.

1 A That's just a statement she give ---

2 Q Well, let me ask you ---

3 A --- that she didn't give a statement.

4 Q Okay. And do you know -- is that -- do you recognize
5 -- is that her handwriting -- her signature?

6 A Yes, sir.

7 Q Okay. Were you there when this document was created?

8 A No, sir.

9 Q Where were you?

10 A I was still in prison.

11 Q In prison? Okay.

12 MR. BELDING: Your Honor, I would like to move to have
13 this as -- admitted as Applicant's No. 2.

14 MR. JOHNSON: We object, Your Honor, to this coming in
15 as evidence. This is an affidavit; this is not testimony.
16 He's testifying about, you know, that he was innocent, yet
17 he pled guilty. That's -- this is outside the scope of his
18 motion. And ---

19 MR. BELDING: Okay.

20 MR. JOHNSON: --- I believe this is ---

21 (Whereupon, Mr. Johnson conferred with Mr. Spencer.)

22 MR. JOHNSON: --- and this is hearsay.

23 MR. BELDING: I can actually get this through to
24 another witness if we need to, Your Honor.

25 THE COURT: All right. I'm going to go ahead and

1 allow it into evidence. Just so that the record is clear:
2 I think I know how he could get that in, and I believe I
3 see the witness sitting out there. So we're going to go
4 ahead and admit it. This is not in front of a jury. Go
5 ahead.

6 MR. JOHNSON: I understand, Your Honor.

7 (Whereupon, Plaintiff's Exhibit 2 was marked and
8 entered into evidence.)

9 Q Now, Mr. Minor, again, showing you what's been marked
10 as Petitioner or Applicant's Exhibit 2, do you know how
11 this document got created?

12 A As far as I'm aware, through me talking to my wife or
13 ---

14 Q Well, and ---

15 A --- through ---

16 Q --- I -- and ---

17 A --- a letter ---

18 Q --- I -- I don't need you to go into ---

19 A --- through a ---

20 Q --- anything ---

21 A --- letter -- through her ---

22 Q --- that's hearsay.

23 A --- letter ---

24 Q Okay.

25 A --- and hearsay.

1 Q Is it -- is it your understanding this is really her
2 true and correct statement?

3 A Yes, sir.

4 Q Okay. Did you know at the time you pled guilty that
5 your wife did not say you were the brains of the meth ring?

6 A No, sir, I didn't.

7 Q Were you operating -- did -- is one the reasons you
8 pled guilty because you thought that's what she had told
9 the police?

10 A Yes, sir.

11 Q Did your attorney, Ms. Nelson, ever tell you that --
12 that that statement had or had not been given to the state
13 to use against you?

14 A I don't have complete recollection [sic] -- recognition
15 of it. But I think it was all mentioned. You know, far as
16 remembering every word about it, I don't know.

17 Q Okay. Ultimately, though, it was your understanding
18 on the day you pled guilty in front of Judge Hayes, it --
19 was it your understanding that the state was going to use
20 your wife's testimony against you?

21 A Yes, sir. I was -- I was thinking it -- of that --
22 yeah -- when I signed the plea and all.

23 Q Okay. Would you have signed the plea if the state did
24 not have that evidence?

25 A I think that the state would've had too much evidence

1 against me. And therefore, if they'd have had the evidence
2 against me, they would've locked me up to start with at the
3 house. They -- I wouldn't have been at home for 45 days.
4 Only thing they had against me was there was
5 methamphetamines in the house. They was guns in the house,
6 and that's what violated the probation, was for the guns.

7 Q And ---

8 A And I'd already had a prior hearing for the guns a
9 couple months before that.

10 Q All right. But is it -- is it your testimony today
11 that they didn't really have any evidence against you,
12 except for your wife's possible statement implicating you?

13 A As far as I know. As far as I know.

14 Q All right. Thank you, Mr. Minor.

15 MR. BELDING: No further questions, Your Honor.

16 MR. JOHNSON: May it please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. JOHNSON:

20 Q Mr. Minor, you pled guilty on February 27th, 2008;
21 isn't that correct?

22 A Yes, sir.

23 Q And your wife was present at this hearing, wasn't she?

24 A Yes, sir.

25 Q And she didn't make a statement at that time, did she?

- 1 A No, sir.
- 2 Q But she was there and she heard all the evidence ---
- 3 A She ---
- 4 Q --- that the state presented against you, right?
- 5 A She was standing right behind me. Yes, sir.
- 6 Q And you heard what the state said, that ---
- 7 A Yes, sir.
- 8 Q --- and what they accused you of doing?
- 9 A Yes, sir.
- 10 Q And you said she was just standing right behind you.
- 11 You had an opportunity to tell the judge, "No, no.
- 12 That statement is wrong." But you didn't correct it, did
- 13 you?
- 14 A No, sir, I didn't.
- 15 Q And a ---
- 16 A But I'm not a lawyer neither. I'm going to put it
- 17 that way. I'll go ahead and put that in there. I'm not --
- 18 seventh-grade education don't -- don't put me at -- at no
- 19 status as a lawyer.
- 20 Q But the Court asked you if you wanted to say anything
- 21 and you declined; isn't that correct?
- 22 A Yes, sir.
- 23 Q And then you had your PCR hearing on ---
- 24 A --- April 2nd.
- 25 Q --- April 2nd, 2009; isn't that correct?

1 A Yes, sir.

2 Q And then, the order came out April 28th, 2009; isn't
3 that correct?

4 A I think so. I'm not sure on that.

5 Q Okay. This affidavit's not until October 22nd, 2010;
6 isn't that right?

7 A Yes, sir.

8 Q So not only was it more than a year after your plea --
9 guilty plea, it was a year and a half after your PCR
10 hearing; isn't that correct?

11 A Yes, sir.

12 Q And she could've come anytime with this and said,
13 "Hey, actually, I was the brains behind the operation, not
14 my husband."

15 A Well ---

16 Q Isn't that correct?

17 A --- I suppose so. But she was in jail at the
18 particular time.

19 Q But she didn't do that, did she, not until October
20 22nd, 2010?

21 A Right.

22 Q And you have a couple prior convictions for drugs;
23 isn't ---

24 A Yes, sir.

25 Q --- that correct?

1 And you have a prior conviction for weapons?

2 A Yes, sir.

3 Q And nobody forced you to plead guilty, did they?

4 A No, sir. But I think I got pushed into it by 30 years
5 versus the 15.

6 Q But nobody threatened you to plead guilty, did they?

7 A No, sir.

8 MR. JOHNSON: Court's indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 Q Now, in 1998 you had -- you got possession of a
11 controlled substance; isn't that correct?

12 A Yes, sir.

13 Q Now, was that methamphetamine, or was that crack
14 cocaine?

15 A Methamphetamine.

16 Q So you have a history of -- of meth convictions, don't
17 you?

18 A Not since I been in prison.

19 Q Not what I'm asking.

20 A Well ---

21 Q In your lifetime ---

22 A Yes, sir.

23 Q --- you have ---

24 A Yes, sir.

25 Q --- a history of ---

1 A I understand ---

2 Q --- methamphetamine?

3 A --- that. Yes, sir. All that's in the record.

4 (Whereupon, Mr. Johnson conferred with Mr. Spencer.)

5 MR. JOHNSON: Court's indulgence, Your Honor.

6 THE COURT: Yes, sir.

7 Q Couple more questions, Mr. Minor: The Greenwood
8 County Sheriff's Office executed a search warrant on your
9 home, correct?

10 A Yes, sir.

11 Q And you -- and you were living there with Ms. Bonnie
12 Minor; isn't that right?

13 A Yes, sir. It was a rented home. Yes.

14 Q But you lived there?

15 A Yes, sir.

16 Q Okay. And so I know that crack was found in her
17 purse, right -- or methamphetamine was found in her purse;
18 isn't that correct?

19 A I can't tell you where it all was found. It was
20 different places of the house, I think.

21 Q But that's the state's evidence at your guilty plea;
22 isn't that right?

23 A Yes, sir. I guess so.

24 Q And they're also some that was found on the
25 nightstand, correct, in your bedroom?

REDIRECT EXAMINATION BY MR. BELDING - MICHAEL MINOR

49

1 A Yes, sir.

2 Q And you lived there?

3 A Yes, sir.

4 MR. JOHNSON: No further questions at this time, Your
5 Honor.

6 A But it was not in my possession.

7 MR. BELDING: Brief redirect, Your Honor?

8 THE COURT: Please.

9 MR. BELDING: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. BELDING:

12 Q Mr. Minor, I just want to make sure I -- tell me if I
13 -- tell if I've got this chronology right: that when you
14 pled guilty, it was your understanding that the state had a
15 statement from your wife when you originally pled guilty,
16 correct?

17 A Yes, sir.

18 Q Naming you as the brains?

19 All right. When you did your PCR hearing in 2009 in
20 front of Judge Russo, you did not know that she had made a
21 statement that that was not true; is that correct?

22 A No, sir.

23 Q And this statement that's dated October 22nd, 2010,
24 but notarized November 1st, 2010, that you got a copy of,
25 is that your first notice that she was denying that she had

1 made such a statement?

2 A Yes, sir.

3 Q And that this was after your PCR in front of Judge
4 Russo, correct?

5 A Yes, sir.

6 Q Did you ever -- did you have an opportunity to present
7 this to Judge Russo?

8 A No, sir.

9 MR. BELDING: Thank you, Your Honor.

10 THE COURT: All right. One quick question of Mr.
11 Minor. Hold on one second, sir. All right.

12 THE APPLICANT: All right.

13 THE COURT: You -- is that ---

14 THE APPLICANT: Go ahead.

15 THE COURT: --- your hearing aid or ---

16 MR. BELDING: No, sir. You ---

17 THE COURT: --- is that ---

18 THE APPLICANT: That's the file ---

19 THE COURT: Oh.

20 THE APPLICANT: --- part.

21 THE COURT: Your -- oh. I'll give you a sec.

22 THE APPLICANT: Go ahead.

23 EXAMINATION

24 BY THE COURT:

25 Q All right. Mr. Minor, if you had received an -- a

DIRECT EXAMINATION BY MR. BELDING - BONNIE MINOR 51

1 copy of the order from Judge Russo -- if you had received a
2 copy of that order in prison, what would you have done?

3 A I would've filed an appeal.

4 Q All right. You would've requested an appeal ---

5 A Yes, sir.

6 Q --- upon receipt of the order from Judge Russo?

7 A Yes, sir.

8 THE COURT: All right. Thank you, sir. You can step
9 down.

10 THE APPLICANT: Could you hear?

11 THE COURT: Yes, sir. I'm fine. Thank you.

12 (Whereupon, the applicant exited the witness stand.)

13 THE COURT: Nothing else?

14 MR. BELDING: I'm -- I'm concerned about the
15 authentication of the statement. Could I do that -- two
16 minutes?

17 THE COURT: Sure.

18 MR. BELDING: Your Honor, I'd call Bonnie Minor to the
19 stand.

20 BONNIE MINOR, having been first duly sworn, testified
21 as follows:

22 MR. BELDING: May it please the court -- Court, Your
23 Honor?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

1 BY MR. BELDING:

2 Q Would you please state your full name for the record?

3 A Bonnie Lou Evans Chadwick Minor.

4 Q Okay. If you could speak up just a little bit, okay?

5 A Bonnie Lou Evans Chadwick Minor.

6 Q Okay. How long have you been married to Mr. Michael
7 Minor?

8 A For approximately 11 years.

9 Q Okay. This case that you've been hearing about, were
10 you charged as well in that case?

11 A Yes, sir, I was.

12 Q Okay. Were you convicted or did you plead guilty to
13 any -- any charges?

14 A I pled guilty.

15 Q What did you plead guilty to?

16 A To trafficking methamphetamine.

17 Q Okay. Prior -- do -- I understand that you were at
18 your husband's guilty plea ---

19 A Yes.

20 Q --- is that correct?

21 A (Nodded head up and down.)

22 Q Was that done before you had -- your case had come up?

23 A I do believe he went first.

24 Q Okay. All right. Did you ever make a statement to
25 law enforcement that he was the mastermind or the brains of

1 the drug operation?

2 A No. They insisted that the whole time. And I kept
3 telling them no; that he was not; that he was -- he was the
4 one that just used the drugs. I was the one that bought
5 and sold the drugs. And they kept telling me, "No. We
6 know better than that." It was a constant battle with me
7 and them.

8 Q Let me show you wants been marked as Plaintiff's
9 Exhibit 2 -- Petitioner's/Applicant's Exhibit 2.

10 A Yes, sir.

11 Q Do you recognize that document?

12 A Yes, sir.

13 Q Did you create that document?

14 A Yes, sir, I did.

15 Q Who -- who typed it up?

16 A I ---

17 Q Who did the actual typing?

18 A I did not type it. I handwrote it.

19 Q Okay. Did someone type it up ---

20 A Yeah ---

21 Q --- for you?

22 A --- someone typed it up.

23 Q Did you get a chance to read it before you signed it?

24 A Yes, I did.

25 Q Okay. And did you sign this document in front of a

1 notary public?

2 A Yes, ma'am.

3 Q All right.

4 A I mean, yes, sir. I'm sorry.

5 Q And essentially, what you say in here -- I mean, it --
6 document speaks for itself. But essentially, what you say
7 is you never told anyone that he was the brains or the
8 mastermind of the meth operation ---

9 A No.

10 Q --- correct?

11 A I denied it the whole time.

12 Q Okay. Had you ever discussed that with your husband
13 prior to his pleading guilty?

14 A No.

15 Q Did you know that that was something the state was
16 going to bring up?

17 A No.

18 Q Do you recall whether you -- from the peanut gallery,
19 for lack of a better term, spoke up at the hearing and
20 said, "That's not true"? Did you say anything?

21 A No.

22 Q Okay. Did you try to get Mr. Minor's attention to let
23 him know that that -- that wasn't true?

24 A They never said that they had a statement from me. So
25 I did not know that they were going to try to use something

1 like that.

2 Q Okay.

3 MR. BELDING: And before I forget, Your Honor, I would
4 move that this be, again, admitted as Applicant's Exhibit
5 2; that it's been authenticated by the maker.

6 THE COURT: All right. Any objection to
7 authentication at this point?

8 MR. JOHNSON: It's already in, isn't it?

9 THE COURT: I already ruled it in. I think ---

10 MR. BELDING: Okay.

11 THE COURT: --- he's cleaning up the record a little
12 bit. Any objection to authentication?

13 MR. JOHNSON: No, Your Honor.

14 THE COURT: All right. Very good. In evidence, then.

15 MR. BELDING: Thank you.

16 Q Ms. Minor, do you understand that as -- as I read
17 that, that that is a sworn statement?

18 A Yes, sir.

19 Q Okay. Is that stratement (phonetic) -- statement
20 true? Every word that is written down there, is it true?

21 A Yes, sir.

22 Q Do you need to read it again to make sure?

23 A I can if you want me to, but ---

24 Q Okay.

25 A --- you know, I really don't need to.

1 Q Okay. But, I mean, you know what it says?

2 A Yes, I do. It -- it ---

3 Q All right.

4 A --- said that I told Dale Kittles that I was the one
5 buying and selling the drugs, which I did tell him that,
6 and which he told me, "Well, we know that he was involved
7 in it also." And I told him no; that -- yeah, he used
8 drugs; but he didn't buy and sell.

9 Q Okay. All right. Thank you.

10 MR. BELDING: No further questions, Your Honor.

11 THE COURT: Mr. Johnson?

12 MR. JOHNSON: Just a quick few.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q Ms. Minor, is it -- so let me get this straight: Your
16 testimony here today is that ever since your husband was
17 arrested -- and I take it, you were arrested?

18 A Yes, sir.

19 Q --- you told the police that he was not -- he was not
20 the mastermind; he may have used drugs, but, you know, you
21 were the one running the operation ---

22 A Right.

23 Q --- from the get-go?

24 A Yes.

25 Q Okay. And you were at this guilty plea, weren't you?

1 A Yes.

2 Q And you declined to address the Court?

3 A Yes.

4 Q Even after they -- at -- the solicitor presented the
5 statement that your husband was the mastermind; that they
6 had ---

7 A They never presented that, to my knowledge.

8 Q Did they not state in their recitation of facts that
9 they had a statement from you, saying he was the
10 mastermind?

11 A I honestly don't remember them saying that. Like I
12 said, if they would've said that, I would've spoke up and
13 said something or got the lawyer's attention or something.

14 Q Would it surprise you if they said that?

15 A Yes, it would surprise me.

16 Q May I read you a statement ---

17 A Sure.

18 Q --- on page 7 -- if you'd like a copy -- on page 7
19 lines 3 through 6.

20 A Okay. I understand it. Yes.

21 Q And that says that you gave a statement to law
22 enforcement, indicating that he was the brains behind the
23 operation; isn't that correct? Isn't ---

24 A Yes.

25 Q --- that what ---

1 A That's -- that's what it says.

2 Q That's what ---

3 A Yes.

4 Q --- it says?

5 A That's what it says.

6 Q But you debate that, obviously?

7 A Yes, sir.

8 Q And you were given an opportunity to speak up, but you
9 didn't, right?

10 A I was nervous that day. I do not remember that being
11 said.

12 Q And if I may, this is on page 8 -- excuse me -- page
13 9, line 22. It says: "Ms. Minor does not wish to address
14 the Court, Your Honor. She just wanted to be here to
15 support her husband."

16 A Right.

17 Q So you didn't speak up at all?

18 A No, I didn't.

19 Q So it's not until October 22nd, 2010 -- not only after
20 his guilty plea, but after his PCR hearing -- that you come
21 up with this statement?

22 A Right.

23 Q So you had all that time to bring that statement ---

24 A I was ---

25 Q --- but you ---

- 1 A --- incarcerated ---
- 2 Q --- didn't?
- 3 A --- at that time.
- 4 Q You still could've written a statement, couldn't you?
- 5 A Well, I didn't know I needed to.
- 6 Q So that's almost two years ---
- 7 A Right.
- 8 Q --- where you had knowledge of this information until
- 9 you presented it to the Court?
- 10 A I didn't have knowledge of that information. I -- I
- 11 can honestly look at you know and tell you that I do not
- 12 remember them saying that that day, whether it be nerves or
- 13 -- or the fact that I knew I was being -- going to be
- 14 convicted that day or tried that day. I do not remember
- 15 that being stated.
- 16 Q But you would agree with me that it's over two years
- 17 from the time of his guilty plea to the time you wrote this
- 18 statement?
- 19 A Yes, I'll agree to that.
- 20 MR. JOHNSON: Court's indulgence, Your Honor.
- 21 THE COURT: Yes, sir.
- 22 Q You had knowledge that Mr. Minor was not the brains of
- 23 the operation; isn't that correct?
- 24 A Right.
- 25 Q And that's what you told police?

1 A Right.

2 Q So you had that information in your head long before
3 you made this statement?

4 A Right.

5 MR. JOHNSON: One second, Your Honor.

6 THE COURT: Quite all right.

7 (Whereupon, Mr. Johnson conferred with Mr. Spencer.)

8 Q Just a couple quick questions: So -- and also in the
9 statement, it said that you were the one running this meth
10 ring ---

11 A Yes, sir.

12 Q --- right?

13 A Yes, sir.

14 Q Where was the meth being manufactured inside the home?

15 A It was not being manufactured in the home.

16 Q Oh. So you were just dealing it?

17 A Right.

18 Q Okay. Where was it located inside the home? Was it

19 ---

20 A On my side of the bed in my nightstand and in my
21 pocketbook.

22 Q But in your bedroom?

23 A In my bedroom.

24 Q Where your husband slept as well?

25 A On the other side of the room. Yes.

EXAMINATION BY THE COURT - BONNIE MINOR

61

1 Q But it's the same room where your ---

2 A Same ---

3 Q --- husband ---

4 A --- room ---

5 Q --- slept?

6 A --- yes, sir.

7 Q And he had knowledge of all that -- all the drugs? of
8 your activity?

9 A Of my activity, yes.

10 Q But you still didn't give the statement till after two
11 years after he pled guilty?

12 A That's right.

13 MR. JOHNSON: No further questions, Your Honor.

14 MR. BELDING: No redirect, Your Honor.

15 THE COURT: All right. One quick question.

16 THE WITNESS: Yes, sir.

17 EXAMINATION

18 BY THE COURT:

19 Q At the time of the plea and prior to the plea, you and
20 your husband were still on good terms, I take it, correct?

21 A Yes, sir.

22 THE COURT: All right. Very good. Thank you. Step
23 down.

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

25 THE COURT: Nothing ---

1 MR. BELDING: Nothing ---

2 THE COURT: --- further?

3 MR. BELDING: --- further, Your Honor.

4 THE COURT: All right. Anything from the state?

5 MR. JOHNSON: We would just move to dismiss that
6 claim, based upon their claim of newly discovered evidence.
7 She had this information, you know, well before the guilty
8 plea. And she said she had it all along that he was not
9 the brains of it. This is not newly discovered evidence by
10 definition, Your Honor. And we would just have -- the
11 state would move to dismiss that claim.

12 THE COURT: Okay.

13 MR. BELDING: Your Honor, I think that there was an
14 incapacity involved here. It -- before she made that
15 statement, both of them had been in prison. And I think I
16 understand what Mr., you know, Johnson's saying. But, you
17 know -- and that's where it's -- what he focused on is what
18 the wife should've done.

19 The -- the axe of human error here has fallen on the
20 -- the applicant. He's the one that didn't have the
21 benefit of the knowledge that she had not made that
22 statement. And it wasn't communicated to him by his wife,
23 according to their testimony. And so the fact that she, in
24 a timely manner, didn't jump up and say anything or do
25 anything is actually -- has actually prejudiced his case in

1 that regard.

2 So I would say that, you know, you -- would the Court
3 consider the fact that he had no way of knowing that?

4 MR. JOHNSON: Reply -- short reply, Your Honor?

5 THE COURT: If you want to, sure.

6 MR. JOHNSON: All right. By definition of the *Lanier*
7 *v. Lanier* case, which is 364 S.C. 211, he's got to meet all
8 the five elements of newly discovered evidence: has been
9 discovered since trial and could not have been discovered
10 before the trial. This clearly, by her own testimony, was
11 discoverable before the trial. And it will also -- it
12 won't even change the -- the result if new trial is
13 granted. So the state still moves to dismiss that claim.

14 THE COURT: All right. With respect to the belated-
15 appeal issue, I will grant the belated appeal and allow him
16 to proceed with the appeal of the PCR -- the previous PCR
17 and appealing of -- and the appeal of Judge Russo's order.
18 I -- I do find that PCR counsel was certainly credible. I
19 believe he was advised that he had the right to appeal.

20 It is clear to me, however, that the order was not
21 sent to him. And Mr. Minor has testified that he would've
22 otherwise appealed upon receipt of the order. So insofar
23 as that ground is alleged, I'll let him have a belated
24 appeal. I think he's carried the burden of proof on that.

25 On the second issue, the after-discovered evidence,

1 the affidavit from Mr. Minor's spouse, it's clear to me
2 that that evidence could have been presented or could have
3 been discovered at the time of the plea. And this is
4 certainly not a situation where you, all of a sudden, have
5 somebody popping up and taking responsibility for -- for
6 the crime who's maybe a stranger to the defendant or a
7 stranger to the alleged crime. He was living with her, and
8 they were on good terms.

9 And so if she wanted to make this information aware to
10 the trial judge, she should've done it at the time of the
11 plea. He obviously -- if that was the case, he obviously
12 could've explained to the trial judge what the situation
13 was: explained that she was the mastermind of the whole
14 deal and indicated to him that that's what the situation
15 was. They were living together; they were on good terms.
16 And if that's truly what happened, he would've been in a
17 position to know better than anybody else.

18 So to the extent that this qualifies as after-
19 discovered evidence, I find that it is -- it clearly
20 could've been discovered at the time of the initial trial.
21 So I'm dismissing that ground.

22 MR. BELDING: Your Honor, just to clean this up ---

23 THE COURT: Yes, sir.

24 MR. BELDING: --- seems to me that I should probably
25 prepare you a short order on the first part. But I'm not

1 sure I want to do the second part.

2 THE COURT: I understand.

3 MR. BELDING: Do you -- could we -- would you like it
4 in the same order? We might be able to coordinate to get
5 an A and B part together to send to you. Would that be all
6 right?

7 THE COURT: Right. I think that's probably the best
8 way to go. And you may want to let the appellate office,
9 with your office, know that you could probably consolidate
10 the appeal from this hearing with the other one.

11 MR. JOHNSON: Okay.

12 MR. BELDING: Okay. Thank you ---

13 THE COURT: And ---

14 MR. BELDING: --- Your Honor.

15 THE COURT: --- Mr. Minor, you have 30 days to appeal,
16 sir.

17 MR. BELDING: From the date of the order?

18 THE COURT: Correct. You understand?

19 THE APPLICANT: Yes, sir.

20 THE COURT: All right.

21 (Off the record briefly at 11:26 a.m.)

22 THE COURT: Gentlemen, unless y'all have any real
23 desire to prepare a formal order, I'm more than happy -- I
24 think that the record's pretty clear -- I can Form 4 this
25 and y'all can you use that as the order to appeal from and

1 we can save everybody a lot of paper and headache.

2 MR. BELDING: If you ---

3 THE COURT: Is that ---

4 MR. BELDING: --- if you ---

5 THE COURT: --- acceptable ---

6 MR. BELDING: --- don't mind ---

7 THE COURT: --- to everybody?

8 MR. BELDING: --- doing it, I think that'd be fine.

9 THE COURT: I got a Form 4 right here. That's how
10 we're going to handle it.

11 MR. BELDING: Okay. Appreciate it.

12 MR. SPENCER: I think -- Your Honor, I think probably
13 just as to the second allegation, it would be beneficial to
14 kind of flesh it out. And we can -- we can do a quick
15 proposed order. We can cover the -- and -- and make sure
16 it's agreeable to him. We can cover the belated-appeal
17 issue. And then, of course, he has to appeal either way in
18 order to get his belated review, so ---

19 THE COURT: All right. (To the court reporter) We
20 are still on the record, correct?

21 THE COURT REPORTER: Yes, Your Honor.

22 THE COURT: We are?

23 MR. SPENCER: I believe so.

24 THE COURT: Good. The -- the -- one of the reasons
25 that I was wanting to simply do it by way of a Form 4 is so

1 that I could make a copy of it and provide it to Mr. Minor
2 at this exact moment in time so that there could not, at
3 some later point in time, be a third allegation that he did
4 not receive a copy of the appeal trial court's order. I
5 think the record's pretty clear ---

6 MR. SPENCER: I think ---

7 THE COURT: --- but whatever you want to do.

8 MR. SPENCER: And I think -- I mean, I'm sure he
9 already wants to appeal. So I -- all -- all that has to
10 happen is soon as Mr. Belding receives the order, he can
11 just file the notice of appeal. Mr. -- you know, Mr.
12 Minor, for some reason, changed his mind, he could always
13 withdraw his appeal.

14 MR. BELDING: You know, it's a civil procedure
15 question. In my -- with my Austin appeal, David, I'm
16 appealing what happened before.

17 MR. SPENCER: Right. Well ---

18 MR. BELDING: I can't raise any new issues ---

19 MR. SPENCER: Right.

20 MR. BELDING: --- with that.

21 MR. SPENCER: And -- no, you can't. And so you would
22 -- what you would be doing, if -- if you wanted to pursue
23 both things, is the notice of appeal is just a finding that
24 he didn't freely and voluntarily waive his -- the appeal to
25 his first PCR.

1 MR. BELDING: Right.

2 MR. SPENCER: It would cover both issues. But, you
3 know, you would be able to appeal both issues. You would
4 be petitioning for cert to the Supreme Court to, first of
5 all, allow belated review, because a circuit court judge
6 can't tell the Supreme Court to review a case. It has to
7 be the Supreme's Court decision. And then, you would still
8 be able -- the same way, like any other PCR, you'd be able
9 to try and -- and petition for review on the after-
10 discovered evidence issue.

11 MR. BELDING: Do you think that's two separate orders
12 or think they can put them together?

13 MR. SPENCER: One order.

14 MR. BELDING: Okay.

15 MR. SPENCER: We can do it as one order. We can just
16 jointly -- we can -- we can submit language and you can --
17 you can thresh it out with us and we'll get one good order
18 for the judge to sign ---

19 MR. BELDING: Okay.

20 MR. SPENCER: --- that -- that makes everyone happy.

21 MR. BELDING: I'm all right with that..

22 MR. JOHNSON: Is that all right with you, Judge?

23 THE COURT: Whatever y'all decide.

24 MR. BELDING: We'll just let you know when we're done.

25 MR. SPENCER: I think that'll be the cleanest way,

1 Your Honor.

2 THE COURT: All right.

3 MR. BELDING: Okay.

4 THE COURT: I've already signed the Form 4, so there
5 we go.

6 (WHEREUPON, the proceeding was concluded at 11:29
7 a.m.)

8 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, 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 GREENWOOD COUNTY,
SOUTH CAROLINA, ON THE 12TH DAY OF MARCH, 2012.

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 14, 2013



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1488

December 30, 2010

Mr. Michael Minor #255855
McCormick Correctional Inst.
386 Redemption Way
McCormick, SC 29899

Re: Minor v. State
2008-CP-24-00823

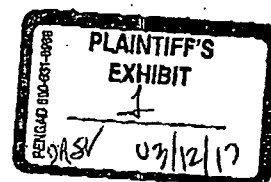
Dear Mr. Minor:

This will acknowledge receipt of your letter of December 29, 2010. We have checked the records in this office and the records at the Court of Appeals and do not find where any appeal has been filed in the above entitled matter.

Very truly yours,

Chief Deputy Clerk

/bs



State of south Carolina
 county of Greenwood
 Sworn Affidavit of Bonnie Minor

10-22-10

This is a sworn affidavit by Bonnie minor the wife of Micheal Minor and I declare under the penalty of perjury that the foregoing facts are true and correct and based on my personal knowledge.

That prior to me pleading guilty to my charges about the drugs in my possession I told Dale Kittles that I was the one buying and selling the drugs and that I did all the runs and buys and that my husband Micheal Minor had no participation in these drug transactions. The detective kept telling me to stop covering for my husband and that they knew my husband was the big man.

I Bonnie Minor specifically told them that I was the one buying and selling. My husband Micheal Minor was sick in the bed and he only did the drugs for his personal use.

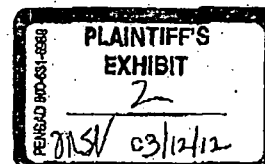
The statements that were told to my husband that I wrote the statements incriminating him are false and perjury and at no time did I tell law enforcement my husband was the mastermind of a drug operation. That I will and can testify to these facts in a court of law.

Sworn and Subscribed Before Me
 This 1 Day of November, 2010

Linda C. Galchier
 Notary Public South Carolina
 My Commission Expires

4-3-13

Bonnie Minor
 Bonnie Minor
 Apt #6
 222 Cambridge Ave
 Greenwood S.C. 29646



STATE OF SOUTH CAROLINA)
 COUNTY OF GREENWOOD)
 GREENWOOD, SC)

2012 MAY 1 AM 5 04)

Michael E. Minor, #255855,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT

RECEIVED

NOV 02 2012

2010-CP-24-1547

S.C. Supreme Court

ORDER GRANTING BELATED
 APPEAL PURSUANT TO
AUSTIN V. STATE

This matter comes before the Court by way of application for post-conviction relief (PCR) filed November 29, 2010. The Respondent made its Return on July 26, 2011, requesting that all allegations except for Applicant's belated PCR appeal claim be summarily dismissed. An evidentiary hearing into the matter was convened on March 12, 2012, at the Greenwood County Courthouse. The Applicant was represented by David Belding, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

This Court had before it the records of the Greenwood County Clerk of Court, the guilty plea transcript, the prior PCR records, and the Applicant's records from the South Carolina Department of Corrections.

Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenwood County Clerk of Court. The Applicant was indicted at the March 2007 term of the Greenwood County Grand Jury for Trafficking in Methamphetamine, 10 to 28 grams, 3rd offense (2007-GS-24-0416). Janna A. Nelson, Esquire,

SW

represented the Applicant on this charge. On February 27, 2008, the Applicant appeared before the Honorable John C. Hayes, III, and pled guilty to the lesser offense of Trafficking in Methamphetamine, 10 to 28 grams, 2nd offense. The Applicant received a sentence of fifteen (15) years imprisonment. The Applicant did not appeal his conviction or sentence.

2008-CP-46-1382

The Applicant filed his first PCR application on July 28, 2008. The Applicant raised the following issues in his first application for post-conviction relief:

1. Ineffective assistance of counsel

An evidentiary hearing into the matter was convened on April 2, 2009. The Applicant was represented by John "Dee" Compton, III, Esquire. At the evidentiary hearing, the Applicant alleged counsel failed to spend enough time with him prior to his case being called to trial, and counsel failed to review the discovery with him. The Honorable Thomas A. Russo denied and dismissed the Applicant's application with prejudice by Order dated April 28, 2009. The Applicant did not appeal the denial of his PCR application.

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

1. "Brady violation – newly discovered evidence"
 - a) "The State claimed it had a statement written by his wife Bonnie Minor stating Michael Minor helped her buy and sell drugs. This was the State's main evidence that was told to him. Upon receiving his sentence and after PCR Applicant's wife wrote a statement completely showing Mr. Michael Minor's innocence in the charged crime."
2. "Ineffective assistance of PCR counsel"
 - a) "Counsel failed to raise all available issues on Application".
 - b) "Counsel failed to timely appeal denial of PCR"
 - c) "Counsel failed to file 59(e) . . ."

3. "Ineffective assistance of counsel"
4. "Involuntary guilty plea"
5. "Lack of subject matter jurisdiction"
 - a) "Indictment was not stamped 'true billed' by the grand jury"

Findings of Fact and Conclusions of Law

In the Applicant's current PCR application, he argues that prior PCR Counsel, Dee Compton, failed to file a timely notice of appeal from Judge Russo's order denying post-conviction relief dated April 28, 2009, and filed May 15, 2009. Mr. Compton admitted at the PCR hearing on March 12, 2012 that he did not serve a copy of the 2008 Order of Dismissal on the Applicant. Accordingly, the Applicant had no notice of the dismissal of his case. I, therefore, find that the Applicant did not knowingly and voluntarily waive his right to appellate review and is therefore entitled to a belated review of the denial of his first PCR application. Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). The Applicant's denial of an appeal can be remedied by a petition for belated review by his current PCR attorney pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) with regard to C.A. No. 2008-CP-24-0823.

The Applicant also alleges he has newly discovered evidence that entitles him a second PCR hearing. I disagree.

A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005).

This "newly discovered evidence" comes in the form of an affidavit from his wife, Bonnie Minor, that was attached to his application and dated November 22, 2010. The affidavit

is an attempt to refute the facts as stated by the solicitor at the Applicant's plea hearing. At that hearing, the solicitor stated that a search warrant was executed at the Minors' residence, drugs were found, and Mrs. Minor gave a statement indicating that she and the Applicant run a meth ring, she runs the business side of things, and the Applicant is "the brains, in effect, of the organization." (Tr. pp. 6-7). Mrs. Minor's new statement asserts any prior statement in which she allegedly implicated the Applicant is false. She further states she told police she was the only one involved in the drug transactions, and she never told the police the Applicant was involved.

Even assuming *arguendo*, any part of Mrs. Minor's affidavit is true, which this Court finds is not credible, the Applicant still failed to present this claim within a year of the time he discovered, or could have discovered, this evidence in accordance with S.C. Code § 17-27-45(c). The Applicant and his wife were present at the plea hearing on February 27, 2008, when the allegedly false factual summary was recited by the solicitor. The Applicant and his wife knew well before the date of the hearing whether only one, both, or neither of them were guilty of trafficking drugs. However, this application was filed approximately two years and nine months after the date of the plea hearing. Further, the Applicant failed to bring this newly discovered evidence claim in his first PCR application.

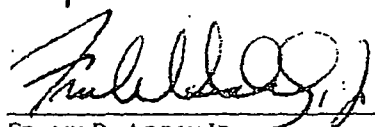
I find this affidavit fails to meet any of the elements of newly discovered evidence under Lanier. Accordingly, this allegation is dismissed.

Other than the grant of a belated appeal, and in light of the fact that this Court has not been made aware of any violations of the Applicant's constitutional rights, this Application for Post-Conviction Relief is dismissed.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED WITH PREJUDICE**. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR,¹ for the appropriate procedure for a belated appeal.
2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16th day of April, 2012.



FRANK R. ADDY, JR.
Presiding Judge
Eighth Judicial Circuit

Sumner, South Carolina.

¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS

2010-CP-24-1547

MICHAEL MINOR,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

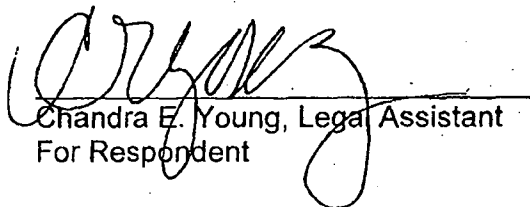
STATE OF SOUTH CAROLINA,

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 Order Granting Belated Appeal Pursuant to Austin v. State in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

David E. Belding, Esquire
PO Box 11964
Columbia, SC 29211

DATED this 30th day of October, 2011.


Chandra E. Young, Legal Assistant
For Respondent