

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

ANTHONY STEVENS BANKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2021-001327

APPENDIX

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RECEIVED

Mar 25 2022

S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED FEBRUARY 13, 2019	1
APPLICATION FOR POST-CONVICTION RELIEF	18
AMENDED APPLICATION	27
RETURN AND MOTION FOR A MORE DEFINITE STATEMENT	29
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 2, 2021	43
APPLICANT’S EXHIBIT NO. 1 (GRIEVANCES DETAIL REPORT)	87
ORDER OF DISMISSAL	91
INDICTMENTS AND SENTENCE SHEETS	103
ARREST WARRANTS	115

I N D E X

WITNESSPAGE

ANNOUNCEMENT OF CASE

By Ms. Hallford

4

PLEA QUALIFICATION

By The Court

4

STATEMENT OF FACTS

By Ms. Hallford

9

FURTHER PLEA QUALIFICATION

By The Court

11

PROBATION VIOLATION

By Ms. Manigan

13

STATEMENT OF DEFENSE

By Mr. Delaney

14

STATEMENT OF DEFENDANT

14

ORDER OF THE COURT

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CERTIFICATE OF COURT REPORTER

17

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
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EXHIBITS

<u>MARKED</u>	<u>ENTERED</u>
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NO EXHIBITS PROFFERED

1 STATE OF SOUTH CAROLINA VS. ANTHONY BANKS

2 MS. HALLFORD: Your Honor, before you is
3 18-GS-42-5781, State versus Anthony Banks, indictment
4 for escape. 18-GS-42-5782, State versus Anthony Banks,
5 trafficking in cocaine; and 18-GS-42-5784, possession
6 with intent to distribute marijuana. Your Honor, this
7 is a negotiated plea, 17 years on the two drug charges
8 and five on the escape concurrent.

9 THE COURT: You are Mr. Banks?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Sir, it is your intent to enter a
12 plea to the charges that were just announced?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: It is your intent to enter a plea to
15 the trafficking 10 to 28 grams second offense, to the
16 escape charge, and also to the possession with intent to
17 distribute marijuana charge?

18 MR. DELANEY: I think, Your Honor, he keeps
19 looking over here at me. Also in exchange of this
20 guilty plea, the State's agreeing do dismiss a CSC
21 charge against him. I think he wants to get that on the
22 record now.

23 MS. HALLFORD: That --

24 MR. DELANEY: But that charge is being dismissed.
25 And that charge relates to a minor -- an alleged victim

1 minor child with the initials E.M., and that case is
2 being dismissed with prejudice today in exchange for
3 this plea.

4 MS. HALLFORD: That is correct, Your Honor.

5 THE COURT: So it is your intent to enter a plea
6 to the charges that she announced?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: How old are you, sir?

9 THE DEFENDANT: Forty-six.

10 THE COURT: How far did you go in school?

11 THE DEFENDANT: College, sir.

12 THE COURT: Did you get a high school diploma?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did you obtain a college degree?

15 THE DEFENDANT: No, sir.

16 THE COURT: How much college did you do?

17 THE DEFENDANT: A year.

18 THE COURT: Where?

19 THE DEFENDANT: Spartanburg Community.

20 THE COURT: Presently are you married, single,
21 divorced, or widowed?

22 THE DEFENDANT: Married.

23 THE COURT: Do you have children?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you -- prior to your arrest, did

1 you have a job outside of the home?

2 THE DEFENDANT: I had, always had my own
3 business, sir.

4 THE COURT: What kind of work?

5 THE DEFENDANT: Well, I was on my way to open up
6 a t-shirt shop, but prior to that I had a detail shop.

7 THE COURT: Ever serve in the military?

8 THE DEFENDANT: No, sir.

9 THE COURT: On these charges, how long a time
10 have you been in jail.

11 MR. DELANEY: 386 days, Judge.

12 THE COURT: 386?

13 MR. DELANEY: Yes, sir.

14 THE COURT: Within the last 24 hours have you
15 consumed any type of substance -- Mr. Banks, if you
16 will, please raise your right hand. (Complies.)

17 Solemnly swear that the testimony you're about to
18 give the Court will be the truth, the whole truth and
19 nothing but the truth so help you God?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Sir, it is your intent to
22 enter a plea to the charges that she announced?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Sir, within the last 24
25 hours, have you consumed any type of substance that's

1 adversely affecting your ability to understand what
2 we're doing today?

3 THE DEFENDANT: No, sir.

4 THE COURT: In the past have you ever received
5 any type of substance abuse treatment?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Was that for drugs, alcohol or both?

8 THE DEFENDANT: Alcohol.

9 THE COURT: Where did you receive that last
10 treatment?

11 THE DEFENDANT: Majority Baptist Church.

12 THE COURT: And about how long ago was that last
13 treatment approximately?

14 THE DEFENDANT: 2016.

15 THE COURT: And was it successful at the time?

16 THE DEFENDANT: I finished the program and I've
17 been straight ever since.

18 THE COURT: Mr. Banks, are you satisfied with the
19 work that your lawyer has done for you?

20 THE DEFENDANT: Somewhat but, you know, I've got
21 to go with the punches.

22 THE COURT: Do you want -- would you like an
23 opportunity to speak with your lawyer?

24 THE DEFENDANT: Yeah, just one question.

25 (Discussion occurred off the record between

1 defendant and counsel.)

2 Yes, sir, I'll plead with what my lawyer has
3 done for me.

4 THE COURT: Do you feel like you've had enough
5 time to talk to him about the charges that are against
6 you, the facts that are behind these charges, and also
7 speak with him about any possible defenses you might
8 have?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. And, sir, has anybody
11 perhaps come to you and threatened you in any way or
12 have they made you any promises in order to get you to
13 make the decision to enter the pleas today?

14 THE DEFENDANT: No, sir.

15 THE COURT: Am I correct to conclude that your
16 decision to enter the plea today that it is a free and
17 voluntary decision on your part?

18 THE DEFENDANT: Plus smart.

19 THE COURT: Plus smart decision on your part?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Sir, I need for you to
22 understand that under the law you are presumed innocent
23 of these charges and you do have a right to have a jury
24 trial on these charges. At any jury trial that would
25 take place, it would be the State that has the burden of

1 proof and the State would have to convince all 12
2 members of a jury that you are in fact guilty beyond a
3 reasonable doubt of these charges. Do you understand
4 that you have a right to that jury trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you wish to have a jury trial on
7 any of these charges?

8 THE DEFENDANT: No, sir.

9 THE COURT: Sir, I need for you to understand
10 that there are other very important constitutional
11 rights that you are entitled to but that you have to
12 give up in order to enter these pleas. You have to give
13 up your right to confront and cross-examine the State's
14 witnesses. You also have to give up your right to
15 present evidence which you or your lawyer might be able
16 to establish a defense, and you have to give up your
17 right of subpoena, as well as your right to remain
18 silent. Do you understand all those rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you wish to give up all those
21 rights?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Banks, please listen to the
24 Solicitor, she's gonna provide us with the facts.

25 MS. HALLFORD: Your Honor, regarding the escape

1 charge, the defendant was on home detention for criminal
2 sexual conduct. On June 19th, 2018, home detention
3 received a text alert that the defendant had entered the
4 victim's zone. And then they got an alert that the home
5 detention monitor had been tampered with. They tried to
6 get in touch with him, they couldn't. They ultimately
7 located the device with a cut strap, but they couldn't
8 find him so a warrant was issued.

9 And on July 11th, 2018, law enforcement went to
10 [REDACTED] Florida Avenue, here in Spartanburg County to serve
11 the outstanding escape warrant on the defendant. He was
12 in the driver's seat of a vehicle when they pulled up to
13 that house. They approached him.

14 While he was sitting in the vehicle, he raised
15 his hands and showed what appeared to be drugs and a
16 scale in his hands. They got him out of the car and
17 determined that he had 2.8 grams of marijuana, 18.2
18 grams of what appeared to be cocaine, and 5.6 grams of
19 what appeared to be crack cocaine. And they also
20 located sandwich bags, a bottle of some kind of powder
21 and police scanner and currency.

22 Your Honor, he was LWOP eligible and Mr. Delaney
23 and I have been through extensive negotiations. And so
24 Mr. Delaney, from my perspective has done an excellent
25 job for Mr. Banks. So I just wanted to put on the

1 record that it wasn't just the dismissal of the CSC, it
2 was also not serving him with life without parole.

3 THE COURT: Do you believe that as she stated the
4 facts that the solicitor's substantially correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And, sir, do you understand that on
7 the -- that these pleas are being presented to me as
8 negotiated plea; therefore, if I accept the pleas, I
9 will be bound by the negotiations and I will have to
10 impose the sentence that was announced by the solicitor?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And, sir, do you understand that the
13 trafficking charge, that that is classified as both a
14 violent and serious offense under the law?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you have been able to talk to
17 your lawyer as to the consequence and ramifications of
18 that offense being classified as both violent and
19 serious?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Understanding the ramifications of
22 those two classifications, as well as the possible
23 sentences I could impose, do you still wish to enter
24 these pleas?

25 MR. DELANEY: Could you repeat that, Judge?

1 THE COURT: Understanding the two classifications
2 of violent and serious, as well as the ramifications of
3 those two classifications, as well as the sentences I
4 could impose, do you still wish to enter these pleas?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And he's presently on probation?

7 MS. MANIGAN: Yes, Your Honor. May it please the
8 Court?

9 THE COURT: Do you understand that by entering
10 the plea, it'll be a violation of your present probation
11 case?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Thank you. And you still wish to
14 enter the plea?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you in fact guilty of this
17 trafficking in cocaine 10 to 28 grams but less than 28
18 grams second offense?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you also guilty of the possession
21 with intent to distribute marijuana charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And are you also guilty of the escape
24 charge?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have all of your answers to my
2 questions today been truthful and honest?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Discovery's been shared with the
5 defense?

6 MS. HALLFORD: Yes, sir, Your Honor.

7 THE COURT: Prior record?

8 MS. HALLFORD: Your Honor, do you want just the
9 last 10 years or the entire record?

10 THE COURT: Ten will be fine.

11 MS. HALLFORD: Okay. Your Honor, he has a
12 probation violation in 2014 for a prior trafficking
13 offense. In 2016 he has a failure to stop for a blue
14 light. That actually occurred in 2016, but he pled to
15 that in 2018. 2016, giving false information. And
16 that's the extent of his 10-year record.

17 THE COURT: He's presently on probation?

18 MS. MANIGAN: Yes, Your Honor. May it please the
19 Court? On January the 23rd of 2018, Mr. Banks was
20 sentenced here in Spartanburg County under
21 2016-GS-42-3993 for the offense of failure to stop for a
22 blue light. That was before Judge Knie. He received a
23 sentence of two years. The balance was suspended to 15
24 months probation, with the special conditions of random
25 alcohol and drug testing. And these pleas today would

1 violate the federal probation case, Your Honor.

2 THE COURT: Anything else from the State?

3 MS. HALLFORD: Nothing, Your Honor.

4 THE COURT: Yes, sir.

5 MR. DELANEY: Thank you, Your Honor. We would
6 ask the Court to accept the negotiated sentence of 17
7 years, run it concurrent, and also run his probation --
8 revoke his probation and run it concurrent as well. We
9 would also respectfully request that the Court give him
10 credit for time served in the amount of 386 days. Thank
11 you.

12 THE COURT: Sir, do you agree with the statements
13 just made by your lawyer?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is there anything else that you would
16 like to say or want me to know or consider?

17 THE DEFENDANT: Your Honor, what they all said
18 has been true. You know, I came home in 2014 from doing
19 a 10-year sentence, sir. And September the 22nd I lost
20 my father, 2014. December the 16th I lost my nephew in
21 2015. I started drinking a little bit heavier. That's
22 how I ended up catching the failure to stop for a blue
23 light. My mom passed away May 23rd, 2016. 2017,
24 February, my grandma passed away. Went to a little
25 treatment to get myself off of alcohol, get myself back

1 together.

2 Reinstated myself back in Spartanburg Community
3 College so I can finish up school, but then I got into
4 some more trouble. And all I'm asking is if you just
5 like show me a little leniency with what the State is
6 offering me I'll appreciate it. I don't know if you can
7 do that. Ask me a question. If you can just go with
8 the State's recommendation I'll really appreciate it.

9 THE COURT: Thank you, Mr. Banks. But you
10 understand that the State and your lawyer they've
11 negotiated out the plea so that if I accept the plea,
12 I'm gonna impose the sentence that -- the 17-year
13 sentence? You understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right.

16 THE DEFENDANT: I figure it would be better than
17 life without parole.

18 THE COURT: I find that there's a substantial
19 factual basis for the plea. And I'll find that you're
20 in willful violation of the terms and conditions of
21 probations by having entered the plea. We can go full
22 revocation, give him credit for 386 days. Let the time
23 he's gonna serve satisfy any monetary obligations he
24 can. Anything else that's left over can be reduced to a
25 civil judgment. That can run concurrent with the

1 sentences under the drug cases.

2 Each of the drug cases will be 17-year sentences
3 at the state Department of Corrections. It'll be a
4 five-year sentence on the escape. Run concurrent with
5 each other. He gets credit for 386 days to all these
6 cases. Good luck to you, sir.

7 MS. HALLFORD: Thank you, Your Honor.

8 (Hearing concluded at 4:00 p.m.)

9

10 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court OF General Sessions for Spartanburg County, South Carolina, on the 13th day of February, 2019.

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

s/Julie A Cendroski
Julie A. Cendroski
Circuit Court Reporter
Seventh Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of SPARTANBURGANTHONY BANKS #214073

Full name and prison number (if any) of Applicant

2019-CP-42- 03713

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible 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 Lieber Correctional Institution
Ridgelyville, S.C.
2. Name and location of Court which imposed sentence Spartanburg County
Court House 190 Magnolia St. Spartanburg S.C. 29304
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) 2018A4210202366 and 2018A4210202688
 - (b) 2018A4210202690 and 2018A4210202689

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SPARTANBURG COUNTY
SOUTH CAROLINA

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- (c) 2517 A4210103060
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (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?
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Applicant received no notice of right to appeal
- (b) _____

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MAY W. COX

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment.
- (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 a petition if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

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SPARTANBURG COUNTY
SOUTH CAROLINA

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(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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 SPARTANBURG COUNTY
 AMY W. COX

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

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

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

No _____

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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 SPARTANBURG COUNTY
 JIMMY W. COX

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

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

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

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SPARTANBURG COUNTY
AMY W. COX

I, Anthony S. Banks, 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.



SWORN to and subscribed before me this 15th
day of October, 2019.

Linda K. Be (L.S.)
Notary Public

My Commission Expires: 6-26-26

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

I, Anthony S. Banks, 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.


Applicant

SWORN or affirmed to and subscribed before me this
15th day of October, 2019.


Notary Public

My Commission Expires: 6-26-26

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SPARTANBURG COUNTY
AMY W. COX

3. Ineffective Assistance of Counsel for failure to investigate, develop and present evidence critical to Applicant's decision to plea or proceed to trial.

Applicant reserves the right for his PCR counsel to amend this application prior to his hearing.

by Anthony S. Banks 214073

X [Signature] 214073

DATE: 10-15-2019

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SPARTANBURG COUNTY
AMY W. COX

ATTACHMENT

10(a): Applicant was denied the right to effective assistance of counsel — guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution — during the plea phase.

11(a): Supporting facts: Plea counsel's performance during the guilty plea phase was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, following:

1. Ineffective Assistance of Counsel for failure to challenge indictments.

Applicant contends evidence exists that shows flaws in the indictment process.

2. Ineffective Assistance of Counsel for failure to timely present a more favorable plea that was presented by the State.

Applicant contests counsel's performance fell below the objective standard of reasonableness when original plea offer expired prior to counsel's presentation to Applicant.

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CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINASTATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURGIN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUITANTHONY BANKS,
APPLICANT.

AMENDED APPLICATION

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE # 2019-CP-42-3713

This matter comes before the Court by way of application of post conviction relief filed October 21, 2019. A Return and Motion for a More Definite Statement was made on March 6, 2020. This application is intended to incorporate the allegations of the original application and clarify the following allegation:

1. Ineffective assistance of trial counsel for failure to
 - (a) move to quash the indictment or investigate the grand jury proceedings; and
 - (b) properly communicate and advise applicant regarding the State's plea offer and failure to accept the plea offer prior to its expiration.

Respectfully submitted,


 Susannah Ross
 Attorney for the Applicant
 330 E. Coffee St.
 Greenville, SC 29601
 (864) 242-0029
This 13 day of August, 2020

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

ANTHONY BANKS,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

AFFIDAVIT OF SERVICE
BY MAIL

CASE # 2016-CP-42-4550

CLERK OF COURT
SPARTANBURG COUNTY
CLAY W. COX

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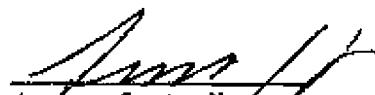
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1. I am the attorney for the Applicant in the above-captioned matter.

2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.

3. I have this day served a copy of the Amended Application in the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of Attorney General Alan Wilson
PCR Division
P.O. Box 11549
Columbia, SC 29211


Attorney for Applicant

This 13 day of August, 2020

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Anthony Banks, #214073,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-42-03713

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

NOW COMES the Respondent, respectfully moving for a more definite statement and submitting its Return to the application for post-conviction relief (hereafter "PCR") filed on October 21, 2019 by Anthony Banks (hereafter "the Applicant"). Respondent respectfully offers the following in support of its Return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During the August 2018 term, the Spartanburg County Grand Jury indicted Applicant for criminal sexual conduct with minor or attempt with victim under eleven years of age, first degree (2018-GS-42-04499). During the October 2019 term, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute marijuana (2018-GS-42-5784), possession with intent to distribute methamphetamine (2018-GS-42-5783), trafficking in cocaine more than ten but less than twenty eight grams (2018-GS-42-5782), and escape (2018-GS-42-5781). Brendan M. Delaney Esquire, (hereafter "Counsel") was the Applicant's attorney. Assistant Solicitor Wendy D. Hallford, Esquire represented the State. On February 13, 2019, Applicant appeared before the Honorable Mark Hayes, II, circuit court judge, on the escape, trafficking cocaine, and possession

with intent to distribute marijuana charges and pled guilty to a negotiated sentence of seventeen years on the two drug charges and five years on the escape charge, all running concurrent. Judge Hayes sentenced Applicant to seventeen years of imprisonment, sentences running concurrently. Both the possession with intent to distribute methamphetamine and the criminal sexual conduct charges were dismissed February 14, 2019, Nolle Prosequi. Applicant timely filed a PCR claim on October 21, 2019.

II. Statement of Facts

Applicant was charged with escape based upon a text alert sent to home detention on June 19, 2018, alerting them Applicant entered victim's zone and the home detention monitor was tampered with. (Plea Tr. 9-10). They were unable to get in touch with him and ultimately located the devise with a cut strap. (Plea Tr. 10). On July 11, 2018, officers approached him to issue a warrant while he was in his car. In the car, they found 2.8 grams of marijuana, 18 grams of cocaine, and 5.6 grams of crack cocaine on him. (Plea Tr. 10). They also found sandwich bags, a bottle of powder, a scale, a police scanner, and currency on him. Defendant was arrested on the aforementioned charges. (Plea Tr. 10).

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III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Defense counsel was ineffective because:
 - a. "evidence exists that shows flaws in the indictment process."
 - b. "[the] original plea offer expired prior to counsel's presentation to Applicant."
 - c. "Failure to investigate, develop and present evidence¹ critical to Applicant's

¹ Respondent is interpreting "failure to . . . develop and present evidence" as an allegation concerning Counsel's alleged deficiency in failing to show the Applicant evidence that would impact his decision to take the plea or go to trial.

decision to plead or proceed to trial.”

Applicant failed to respond to the question on the application concerning relief sought.

Attached to and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the Applicant’s case, the Applicant’s records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel, Generally

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, which the Supreme Court expanded upon through developing the two-pronged test outlined in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by the preponderance of the evidence² that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to

² As per Rule 71.1(e) SCRCF

best represent a criminal defendant” and the scope limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 295. Realistically, this matters ““only in the rarest case”” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (quoting *Strickland*, 466 U.S. at 697).

Regarding guilty pleas specifically, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). The applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness inherently included in the plea’s judicial procession. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of

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the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

To establish voluntariness and knowingness, the record must establish that the applicant had a full understanding of the charges against him and the consequences of taking a plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). Further, an applicant can attack the voluntary, knowing and intelligent character of a guilty plea entered on advice of counsel by showing counsel's advice in taking the plea fell below an objective standard of reasonableness. *Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006).

Here, Applicant claims ineffective assistance of counsel regarding taking the guilty plea because of flaws in the indictment process, failure to present plea, failure to investigate, failure to develop and present evidence to the Applicant. Each of these allegations is addressed below.

Flaws in Indictment Process

Applicant is alleging he is entitled to PCR relief because there were “flaws in the indictment process.” Challenges to the indictment must be raised before a jury is sworn in. S.C. Code Ann. §17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce and the defendant knows what he has to answer to and whether he can plead acquittal or conviction

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upon it and whether it apprises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) citing *State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

Here, there is no indication Applicant was asserting indictment flaws prior to resolution of the case through the plea process. If he did not assert these claims prior to the resolution of the case, he waived his right to assert this claim and cannot be granted relief upon assertion of flaws now. That said, even if this right was not waived, Applicant has not asserted with specificity the flaws he alleges are in the indictments. Consequently, Respondent is unable to ascertain whether or not this argument has merit. Thus, Respondent respectfully requests this Court to require Applicant, through Counsel, to file an amendment with greater specificity regarding claims made in the original application.

Failure to Present Plea

Applicant alleges ineffective assistance of counsel because Counsel failed to present a favorable plea to Applicant before the offer expired. "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye*, 566 U.S. 134, 145 (2012). Further, ineffective assistance is given "[w]hen defense counsel allow the [plea] offer to expire without advising the defendant or allowing him to consider [the plea]." *Id.* at 145.

When determining prejudice for failure to convey a plea, a case-by-case determination is made "assessing whether but for counsels deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefited from the offer." *Bell v. State*, 410 S.C.436, 443, 765 S.E.2d 4, 7 (2014). Prejudice is found if applicant "would have taken the plea offer had [he] been afforded effective assistance of counsel", if "the plea

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would have been entered without prosecution canceling it or the trial court refusing to accept it”, and “the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.” *Collins v. State*, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (quoting *Frye*, 566 U.S. 147) (quotations omitted). Presumed prejudice is reserved to limited situations. *Bell*, 410 S.C. at 443, 765 S.E.2d at 7.

Here, Applicant alleges that his attorney failed to convey a plea offer to him before it expired. If true, Respondent concedes this constituted deficient assistance of counsel. That said, Applicant fails to specify how he was prejudiced by this deficiency. Consequently, Respondent is unable to ascertain whether or not Applicant was prejudiced and, accordingly, entitled to relief sought. Thus, Respondent requests a more specific statement regarding this claim to ascertain the merit, or lack thereof, of the allegation.

Failure to Investigate

Applicant alleges ineffective assistance of counsel for “failure to investigate.” *Blackland* makes clear that Defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 631. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* That said, counsel is required to, at minimum, “interview potential witnesses and make an independent investigation of the facts and circumstances of the case”, *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic

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evidence.” *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Here, Applicant shows no facts indicating that any failure to investigate on the part of Counsel occurred, let alone was unreasonable. Counsel had no obligation to investigate every conceivable defense available in the case; only to engage in reasonable investigation. The Applicant has made no showing that Counsel’s inaction regarding investigations fell outside the zone of reasonableness, nor has Applicant specifically stated what exactly Counsel failed to investigate. Thus, Respondent requests a more specific statement regarding this claim to ascertain the merit, or lack thereof, of the allegation.

Failure to Develop and Present Evidence to Applicant

Applicant alleges ineffective assistance of counsel for failure to “develop and present evidence critical to Applicant’s decision to plead or proceed to trial.” For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, the charges against him, the consequences of taking a plea, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant “lacks knowledge of material evidence in the prosecution’s possession.” *Gibson v. State*, 334 S.C. 515, 523, 514

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S.E.2d 320, 324 (1999).

Here, Applicant alleges Counsel was ineffective in failing to present evidence to the Applicant that would have affected his decision to either plead or go to trial. He did not specifically state what evidence was not shown to him that would have affected his decision. Consequently, Respondent is unable to ascertain whether or not this argument has merit. Thus, Respondent respectfully requests this Court to require Applicant, through Counsel, to file an amendment with greater specificity regarding claims made in the original application.

Here, the allegations of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

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V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding the Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective because of flaws in the indictment process, failure to present plea, failure to investigate, and failure to develop and present evidence to the Applicant. That said, it does not explain exactly what Counsel did that constituted ineffective assistance of counsel regarding each of these allegations. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina

(1976). In an application for post-conviction relief, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in the Applicant's post-conviction relief application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

The Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, the Applicant's court appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP, and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C.

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115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases, . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicants may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

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VIII. Conclusion

WHEREFORE, Respondent respectfully requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: Chelsey F. Marto
ATTORNEYS FOR RESPONDENT

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

March 6, 2020

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AMY W. COX

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

ANTHONY BANKS, #214073

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

2019-CP-42-03713

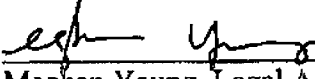
AFFIDAVIT OF SERVICE BY MAIL

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

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

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 SPARTANBURG COUNTY
 AMY W. COX

DATED this the 6th day of March, 2020.


 Meghan Young, Legal Assistant
 For Respondent



ALAN WILSON
ATTORNEY GENERAL

March 6, 2020

The Honorable Amy W. Cox
Clerk of Court - Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

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SPARTANBURG COUNTY
AMY W. COX

Re: Anthony Banks, #214073 v. State of South Carolina
2019-CP-42-03713

Dear Ms. Cox:

Enclosed please find the original Return of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Chelsey F. Marto

Chelsey F. Marto
Assistant Attorney General

CFM/my
Enclosure

cc: Susannah C. Ross, Esquire

State of South Carolina	)	
	)	
County of Spartanburg	)	
Anthony Banks,	)	2019-CP-42-03713
	)	
Applicant,	)	
	)	
v.	)	Transcript
	)	
The State of SC,	)	of
	)	
Defendant.	)	Post-conviction
	)	Relief Hearing
	)	
	)	
	)	
	)	
	)	
	)	

Date: 9/16/2021

Time: 1:38 p.m.

Location: Spartanburg County Courthouse

180 Magnolia Street, Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable William A. McKinnon

For the Applicant: Susannah Ross, Esq.
Ross and Enderlin, P.A.
330 East Coffee St.
Greenville, SC 29601

For the Defendant: Chelsey Marto, Esq.
SC Attorney General's Office
1000 Assembly St. Room 519
Columbia, SC 29201

Also Present: Brendan Delaney, Esq.
Seventh Circuit Public Defender
366 North Church St., Ste. 300
Spartanburg, SC 29303

INDEX

	Page
Hearing:	4
Direct Examination of Mr. Banks by Ms. Ross:	8
Cross-Examination of Mr. Banks by Ms. Marto:	23
Direct Examination of Mr. Delaney by Ms. Marto:	30
Cross-Examination of Mr. Delaney by Ms. Ross:	39
Closing Arguments by Ms. Ross and Ms. Marto:	42
Court Reporter's Certificate:	44

EXHIBITS

Applicant's Exhibit No. 1: Grievances Detail Report	15
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1 PROCEEDINGS

2 THE COURT: Yes, ma'am.

3 MS. MARTO: Good afternoon, Your Honor. May
4 it please the Court. We're here today on the
5 case of Anthony Banks, Docket Number 2019-CP-
6 42-03713. I do have a packet of the pleadings
7 if Your Honor would like.

8 THE COURT: Please.

9 MS. MARTO: Thank you.

10 THE COURT: Thank you.

11 MS. MARTO: He was indicted in the August 2018
12 term of the Spartanburg County Grand Jury.
13 The criminal sexual conduct with a minor or
14 attempt with victim under 11 years of age,
15 first degree.

16 During the October 2019 term, he was
17 indicted for possession of intent to
18 distribute marijuana, possession with intent
19 to distribute methamphetamine, trafficking and
20 cocaine more than 10 but less than 28 grams,
21 and then escape. He was represented by Mr.
22 Brendan Delaney. And on February 13th, 2019,
23 he appeared before the Honorable J. Mark
24 Hayes, who -- and pled to the escape,
25 trafficking cocaine, and possession of intent

1 to distribute marijuana. And pled guilty to a
2 negotiated sentence of 17 years on the two
3 drug charges and five years on the escape
4 charge, sentences running concurrently.

5 THE COURT: (To Ms. Marto) Tell me the
6 charges one more time that he pled guilty to.

7 MS. MARTO: Yes, Your Honor. That would have
8 been -- he was indicted, and I think they
9 dismissed the criminal sexual conduct charge,
10 second degree, but that he pled to escape,
11 trafficking cocaine, and possession with
12 intent to distribute marijuana. And then he
13 received a negotiated sentence of 17 years on
14 the two drug charges and five on the escape,
15 sentences running concurrently.

16 Both the -- from my understanding, both
17 the intent to distribute meth and the criminal
18 sexual conduct charges were dismissed, and he
19 did not appeal.

20 THE COURT: All right.

21 MS. MARTO: He then filed a PCR application
22 October 21st, 2019, in which he alleged
23 ineffective assistance of counsel for flaws in
24 the indictment process that the original plea
25 offer expired before being communicated to the

1 applicant, failure to investigate and present
2 evidence critical to his decision to plead or
3 proceed to trial; and then the State made its
4 return March 6th, 2020.

5 With that I turn it over to Ms. Susannah
6 Ross to state the allegations.

7 THE COURT: Ms. Ross?

8 MS. ROSS: Thank you, Your Honor. May it
9 please the Court. Yes. Mr. Banks is alleging
10 that pursuant to "Davie v. State, 675 S.E.2d,
11 416," -- it's a 2009 case -- that his attorney
12 was ineffective for allowing a prior plea
13 offer of 15 years to expire before accepting
14 it. He also has issues with the Grand Jury
15 proceeding and the indictment.

16 THE COURT: Okay. So under that Davie case,
17 which I will be honest I'm not familiar with,
18 allowing a plea offer to expire is ineffective
19 assistance?

20 MS. ROSS: Correct. If he -- if he's harmed
21 by that, and -- and I don't think it's exactly
22 that specific; and, I'm sorry, I didn't print
23 it out. But, essentially, it says, "If you
24 have a plea -- if there's a plea offer and
25 it's not communicated to the client, then --

1 then" --

2 THE COURT: If he ends up with a worse plea --

3 MS. ROSS: Right. So this isn't that exact

4 situation, but it's simply that it was

5 communicated a 15-plea offer, and he's like,

6 "Let me think about it;" and then it expired

7 before he could accept it. And he's got some

8 evidentiary things running back and forth,

9 emails between him and the attorney saying --

10 THE COURT: Okay.

11 MS. ROSS: Okay. We call Anthony Banks at

12 this point. (To Mr. Banks) Oh, go up and

13 testify. Do you want your -

14 MR. BANKS: Yeah. Thank you, Your Honor.

15 (WHEREUPON, the witness was sworn.)

16 THE COURT: What?

17 THE WITNESS: Your Honor --

18 THE COURT: I'm sorry.

19 THE WITNESS: You talking to me now?

20 THE COURT: Well, Ms. Ross has been ordered

21 to --

22 MS. ROSS: I'll ask you questions.

23 THE COURT: -- ask some questions.

24 THE WITNESS: All right. Yeah.

25 THE COURT: Yeah.

1 MS. ROSS: I should have clarified that with
2 you before.

3 DIRECT EXAMINATION

4 BY MS. ROSS:

5 Q Now, Mr. Banks, we've talked about the PCR. The
6 remedy is to be put back in the position you were
7 in before the plea.

8 A Yes, ma'am.

9 Q And you still want to proceed?

10 A Yes, ma'am.

11 Q And we also talked about in how "Davie" sometimes
12 the remedy is specific performance of the -- the
13 plea offer that -- that expired. Is that what
14 you're looking for as well?

15 A Yes, ma'am.

16 Q Okay. And why do you allege ineffective assistance
17 of counsel?

18 A Because -- my attorney at the time was Mr. Brendan
19 Delaney, and he came to see me. And when he came
20 to see me, he came with a plea of 15 years. And I
21 was cussing him out that day, because then that's
22 just -- I -- I felt like what he was trying to get
23 me to plea to, at the time, it wasn't right. So,
24 when he told me about the plea, the 15, he had
25 wrote it on a little yellow notepad and had me what

1 he wanted me to look at and think about the plea
2 of. I don't have that paper with me right now. I
3 don't know if I -- I missed that over the years.
4 But the conversation, I told him give me time to
5 think about it. And I wrote him on the kiosk to
6 let him know that I told him, "Just give me some
7 time to think about it. Let me talk to my peoples
8 about it, and I'll be back with him."

9 He wrote me back and told me, "Yes." He said,
10 "Okay," on that -- on that question right there,
11 so . . .

12 Q Okay.

13 A A couple of days go by --

14 Q Uh-huh.

15 A -- and I talked to my wife back there and told her
16 what -- what was happening, and he turned around --
17 I turned around and I told him to come and see me.

18 Q So this is a --

19 A I --

20 Q -- a couple of -- or week or so later?

21 A A week or so later, I told him to come to see me.

22 He never answered me. He never answered me. So I
23 turned around again, a couple of days later, giving
24 him time to -- to write me back on the kiosk. And
25 I wrote him again, and I say, "You need to come and

1 see me before the deadline," and then he never came
2 to see me. And then I said, "I thought you was
3 going to" -- I wrote him again, and I asked him, I
4 said, "I thought you was going to come and see me
5 before the deadline."

6 He wrote me, like a month later on the -- like
7 the -- the 3rd of October, and told me, "I will
8 come and see you soon. I'm sorry. And I'll come
9 and see you soon." So, okay.

10 When he came -- when he finally came, which
11 was about a month later, he comes to me, and now
12 he's telling me about a 17 -- the 17 years, which
13 I'm like, "Whoa. Whoa. What happened to the 15?"

14 He's told me, out of his mouth, because we was
15 in the room, and I don't want say hearsay stuff,
16 but he was like, "Don't worry about that. We got
17 this right now." The whole time I'm still trying
18 to figure out what happened to the 15, because he
19 told me it was a deadline on it. That's the whole
20 catch. He told me it was a deadline on it.

21 Q All right.

22 A And I just -- and I'm not mad at the whole -- what
23 he did, I'm just -- I'm just trying to see how can
24 I get that 15 back, if anything. Because then the
25 time that I did got (verbatim), you know what I'm

1 saying, it -- it's just a little bit -- I can do
2 it. I have no choice, but I prefer the -- the --
3 trying to get what I -- I was promised. That's
4 all.

5 Q Okay. And you mailed me copies of what it says are
6 "kiosk reports." Tell me about those kiosk
7 reports.

8 A The kiosk reports is --

9 THE COURT: (To the witness) Let me interrupt
10 you just one second. Is -- is "kiosk" -- is
11 that like an email system?

12 MS. ROSS: Yes.

13 THE WITNESS: Yes. Yes. Yes, sir.

14 A The kiosk reports is just a mail system to -- to
15 get in contact with the lawyers in the public
16 defender's office, and they go straight to the
17 lawyers. But it took him long (verbatim) to get in
18 touch with, he just didn't answer none of the
19 emails; and the deadline has finished.

20 Q And you testified about that before, but just going
21 through, do you recognize that?

22 A Yes, ma'am. These are my -- this --

23 Q Okay. So just going through -- just -- just let's
24 tell the Court what's happening with each one of
25 these things. It doesn't have your whole

1 discussion --

2 A Okay.

3 Q -- but it just has --

4 A All right. On August the 30th, that's when he came
5 to me with the plea.

6 Q The 15?

7 THE COURT: Ms. Ross, do you have a copy that
8 I can look at?

9 MS. ROSS: I don't. He does, but I --

10 THE WITNESS: Oh, I got -- I got plenty of
11 copies.

12 THE COURT: Okay. All right. Do you have a
13 copy, Ms. Marto?

14 MS. MARTO: No. I was given one for a minute,
15 but I passed it up, but --

16 THE WITNESS: Well, I will just hand -- can I
17 just hand it to -- (To Ms. Ross) I'll hand it
18 to you for you to hand to him.

19 A On this first copy of -- this is the date he came
20 to see me. He offered me the first plea of the 15.

21 THE WITNESS: Here you go, ma'am.

22 Q All right.

23 THE COURT: Thank you.

24 A The second time -- the second time I wrote him, it
25 was -- I was asking him -- I asked him to try to

1 come to see me, so we can talk, you know what I'm
2 saying, which was nine -- what is that? That is
3 the September the 9th -- September the 9th, and he
4 didn't answer me on that date again.

5 And I wrote him again on 9/15th (verbatim) --
6 on September the 15th, and he actually didn't
7 answer me on that day, either. And I asked him, "I
8 asked you to come to see me before the deadline.
9 What happened?" Right here (indicating.) He
10 didn't answer me. That's nine -- that's 9/15
11 (verbatim.)

12 And -- this -- I wrote this one to him. I
13 just wrote and say, "Hello. Can you come and see
14 me?" That was 10 -- 10/01 -- October the 1st.

15 On October the 3rd, he answered all five
16 emails all in one day, as you can see is -- if you
17 back up and look at the -- the one he say, "I'm
18 coming to see you soon." He answered one of them,
19 but it was on October the 3rd, which is a month and
20 a week later after he done came and brung
21 (verbatim) me the plea agreement.

22 I don't know what happened with the plea that
23 he brung to me. Don't know. I just wanted to know
24 how could we resolve this. And I was talking to my
25 lawyer, "What is the best way to try to resolve

1 this issue," because, like I said, he offered me
2 that with -- on a platter. And if I'd have a
3 signed -- if I'd have just said "yes" that day, I
4 would've -- I would've had 15 instead of the 17
5 that I got now.

6 THE COURT: (To the witness) And what -- is
7 there one missing here, though, because it
8 says that -- it looks like Mr. Delaney's
9 response is to one of them is addressed in an
10 earlier, though; is that what we're looking
11 at?

12 THE WITNESS: No. The one that say "early
13 response," he's just referring back to it.
14 But if you look at the "resolve" -- the date
15 of -- of resolving the problem up under --

16 THE COURT: Right.

17 THE WITNESS: -- you'll see 10/03 on all of
18 them, which is -- and -- and the first one I
19 put in was in August.

20 THE COURT: Okay.

21 MS. ROSS: And I would offer those as
22 Applicant's Exhibit 1.

23 THE COURT: Ms. Marto, any objection?

24 MS. MARTO: No objection, Your Honor.

25 THE COURT: Entered into evidence without

1 objection.

2 (WHEREUPON, the report is marked for
3 identification as Applicant's Exhibit No.
4 1.)

5 THE COURT REPORTER: So it's all one exhibit?

6 THE COURT: Yes, ma'am. Yeah.

7 THE COURT REPORTER: Okay. (To Ms. Ross) Did
8 you need a stapler?

9 MS. ROSS: If we can staple it, that would
10 work.

11 THE COURT REPORTER: Okay.

12 Q I believe you've made that issue fairly clear for
13 the Court. Are there any other issues that you
14 have?

15 A Other than the indictment, which I don't really --
16 like, I'm learning the law just like -- like
17 anybody who would get -- would be incarcerated and
18 trying to help theyselves (verbatim.) Other than the
19 indictment, which the -- my indictment date is not
20 adding up with the Grand Jury calendar dates of
21 which the judge set forth for the Grand Jury to be
22 summoned on, and -- and to be -- so, I guess, you
23 know -- what's the word?

24 Q True-billed?

25 A True-billed. To be true-billed on it doesn't match

1 up with the calendar, and I just want to put that
2 on record. And I'm saying, I think my lawyer at
3 the time, Mr. Delaney, he could've caught that and
4 raised the issue on that even if he couldn't did
5 nothing on, or whatever the case may be, he should
6 at least been aware of these things that they're
7 not adding up.

8 Q And you wrote to the clerk -- Spartanburg Clerk of
9 Court, asking for those dates?

10 A And I asked for them dates on -- on every last one
11 of them, which they just don't add up. I have the
12 -- do I need to pull them out?

13 THE COURT: Mr. Banks, are you saying that the
14 indictments are frauds, and they weren't
15 really true-billed, or are you just saying
16 that there's a mistake in the date?

17 THE WITNESS: No. I'm -- I'm basically saying
18 that they could be fraud only because the
19 dates are not adding up with what the judge
20 had -- had written down for the true-bill for
21 the Grand Jury of -- calendar of 2018. It
22 should and would be fraud, because then it
23 wouldn't exist. If they did it on another
24 date, it -- on another date instead of the
25 date that the judge set forth to have these

1 dates set aside, the true-bill indictments,
2 and you've got another date that's not on the
3 same date is fraud and it should be looked at
4 -- should be looked at. And that's all I'm
5 trying to get it looked at. I -- like I say,
6 I don't know who is rescheduling program.

7 I wrote the Clerk of Court. She sat down
8 and wrote me back and said, "There wasn't no
9 extra dates added on to the calendar." And I
10 also have -- also, do I need to pull that out?

11 THE COURT: You can look.

12 MS. ROSS: You can. You -- you pulled out
13 three -- one letter before, and I said, "Keep
14 it out, so you can have it." If you don't --

15 THE WITNESS: Well --

16 Q Essentially, we've discussed how with that, your
17 lawyer -- if they're errors in the indictment
18 process, your lawyer has to object to the
19 indictment --

20 A Yeah. At the beginning --

21 Q -- prior.

22 A -- yeah. Prior to me taking the plea and
23 everything, which is true and I understand. I'm
24 saying -- like I said, I don't know it all.

25 Q You're saying he should've --

1 A He should've caught that.

2 Q Caught that the dates were off.

3 A Yeah.

4 Q And -- and made an objection to --

5 A An objection to it. Regardless if they done ruled

6 in the favor or not, he should have did that.

7 That's his job. That's defending me.

8 Q Okay.

9 A And I'm just looking -- and I'm not -- I'm not

10 really like that dude to really know -- try to

11 point fingers, but right is right and wrong is

12 wrong. I did something wrong and I'm -- I'm

13 sitting where I'm sitting. I shouldn't have to go

14 through all of this and notice all these things and

15 I'm sitting in this seat, you know what I'm saying?

16 I don't -- like I say, I'm learning.

17 Q All right.

18 A I'm learning some things.

19 Q Okay.

20 A And I would've never -- sitting on this side, you

21 know what I'm saying, I just . . .

22 Q No. You're fine. You're fine. You have answered

23 my questions. Is there anything else you'd like to

24 add?

25 A No. That's it.

1 Q All right.

2 A That's it.

3 Q Thank you.

4 MS. ROSS: (To the witness) Please answer
5 any --

6 THE COURT: I'm --

7 MS. ROSS: -- questions --

8 THE COURT: I'm looking, Ms. Ross, at -- is --
9 the two indictments I've found in the packet
10 so far are the cocaine, trafficking, and
11 possession, and attempt to distribute meth.
12 And they're both true-billed October 26, 2018,
13 which matches up with the letter from the
14 clerk's office as the date the Grand Jury met
15 Which indictments don't have the right date on
16 them?

17 MS. ROSS: I'm not sure, Your Honor. I -
18 I --

19 THE WITNESS: It's the August -- August the 20
20 -- 27th of 2018, was for the criminal sexual
21 misconduct charge.

22 THE COURT: Hold on a second. I -- I'm
23 looking at them.

24 MS. ROSS: That one was dismissed, though.

25 THE WITNESS: And that was dismissed. And the

1 drug charges -- and the drug charges was
2 indicted on 10[REDACTED] -- 10[REDACTED] which is my
3 birthday, of 2018.

4 THE COURT: (To the witness) Which drug
5 charge? Okay. So the two I found so far in
6 the packet are the trafficking cocaine and the
7 possession and attempt to distribute
8 methamphetamine. They were indicted on the
9 26th.

10 THE WITNESS: Well, Ms. -- Ms. Cox have it
11 right here they all was indicted on the 29th,
12 sir.

13 MS. ROSS: I think that was the term of court.

14 THE COURT: Okay. What -- what indictment
15 number are you looking at?

16 THE WITNESS: I'm looking at warrant numbers
17 of --

18 THE COURT: The last four numbers of the
19 warrant. Where are they?

20 THE WITNESS: Last four numbers: 2366.

21 THE COURT: Yeah. I can't find that one yet.
22 Okay. Hold on a second.

23 THE WITNESS: 26 -- 2688.

24 THE COURT: Okay. Hold on a second. Yeah.
25 I've got 2688. That was the true-bill done

1 October 26th.

2 THE WITNESS: I've got it right here saying
3 indictment date was on the eight --

4 THE COURT: That's not the indictment date.
5 That's -- that's the date the clerk handled
6 it, but the true-billed date is right there
7 (indicating.) It's October 26th.

8 THE WITNESS: The 26th?

9 THE COURT: And that's the date the Grand Jury
10 met.

11 THE WITNESS: Okay, sir. I'm just -- I'm
12 just --

13 THE COURT: No. I -- but I --

14 THE WITNESS: Thank you. Thank you.

15 THE COURT: And it's okay. And I -- I just
16 want to get to the bottom of things. If you
17 tell me that the indictments don't match up to
18 the Grand Jury date, that's a serious
19 allegation. So I -- I need to --

20 THE WITNESS: Well, I -- I --

21 THE COURT: -- need to know.

22 THE WITNESS: Okay. I'm just -- I'm just
23 going off of what I've got. And I just --
24 like I said, I'm --

25 THE COURT: I understand.

1 THE WITNESS: -- new to this.

2 THE COURT: But it appears to the Court the
3 true-bill date does in fact match the date the
4 Grand Jury met.

5 THE WITNESS: Well, the Clerk of Court gave me
6 the wrong dates.

7 THE COURT: Well, sir. It's just a -- the
8 date -- the date in the middle here is -
9 is -- is a jury term date.

10 THE WITNESS: Uh-huh.

11 THE COURT: The date the Grand Jury acted is
12 where it says, "true-bill," and the date over
13 there.

14 THE WITNESS: Okay. Okay.

15 THE COURT: They're two different things.

16 THE WITNESS: Okay. Okay. Okay. All right.

17 THE COURT: But --

18 THE WITNESS: I apologize for that, Your
19 Honor.

20 THE COURT: There's nothing to apologize for,
21 Mr. Banks. But I do -- the last question, I
22 think, your attorney asked you: Is there
23 anything else that you want to raise as an
24 issue in your PCR?

25 THE WITNESS: No. I think you got that. I

1 think you did everything, sir.

2 THE COURT: Okay.

3 CROSS-EXAMINATION

4 BY MS. MARTO:

5 Q Good afternoon, sir.

6 A How you doing, ma'am?

7 Q Good. How are you doing?

8 A I'm good.

9 Q Good. So how many times did you meet with Mr.
10 Delaney about your case?

11 A Approximately three times.

12 Q Okay.

13 A Two -- two, because he came to see me. And one,
14 because I caught him inside of Pod 6 --

15 Q Okay.

16 A -- and I asked him, "Could I come and talk to him?"

17 Q And what did y'all discuss at those meetings?

18 A I was discussing my case with him. I kept on
19 telling him that I wanted to go to trial on the --
20 on the CSC and try to help me get a plea for the
21 drug charges.

22 Q Okay. Did he tell you how much time you could
23 potentially be exposed to?

24 A He told me I was looking at a third-strike life
25 sentence, and I understand that at the time.

1 That's the reason why I told him I would like to
2 try to get a plea -- a nice plea --

3 Q Okay.

4 A -- for the drug charges, because the CSC was bogus.
5 And I wanted to take that to trial, which they end
6 up dismissing it with prejudice at the -- at the --
7 you know what I'm saying, at the end. At the end
8 of that there.

9 And then, like I said, he came to me with 15.
10 And he just never -- when he gave me time to think
11 about it, the 15, he never answered me or nothing,
12 never came back to see me and that was a month
13 later. And I'm trying to figure out what happened
14 to the 15, and the whole time I correspond with Mr.
15 Delaney -- which I like Mr. Delaney, he's a -- he's
16 a good attorney on the low, but at the same time,
17 it's just that I think he made a mistake and
18 slipped up or -- or just forgot, because his -- his
19 docket was a little too loaded or whatever. I
20 don't know what the case may be. I don't want to
21 talk for him or think for him, but I just wanted to
22 know what happened to my 15. Because the next
23 thing I heard that came out of his mouth, when --
24 when he did come to see me the second time, that
25 17, and I was like, "What happened to the 15 that

1 you -- you came and brought to me?"

2 And he was, like, "Let's not talk about that."

3 His words, "We can't talk about that. This is what
4 we got right now."

5 So I still want that 15, because I wanted it
6 then. I just wanted to talk to my wife about it
7 first.

8 Q So did --

9 A That's all I wanted to do.

10 Q -- did you affirmatively ask Mr. Delaney to proceed
11 forward with the 15-year?

12 A He would never get back in contact with me, ma'am.

13 Q Did you attempt to reach out to him?

14 A Yes. I did. Plenty of times.

15 Q Okay. Were you ever served with a LWOP notice? Do
16 you remember?

17 A A LWOP notice. Yes. I was.

18 Q You were served with an LWOP notice?

19 A Yes. I was.

20 Q Why did you enter a plea to 17 years if you thought
21 you had a better deal before?

22 A Because he sat there and told me the date --
23 because I didn't even know I was going to court
24 that day that they came and grabbed me out the
25 County that day. That was on the 4th -- the 14 --

1 February the 14th of 2019.

2 Q Why didn't you tell the Court that you had gotten a
3 better offer previously?

4 A When the judge asked me was I happy with the --
5 with the work that Mr. Delaney did, I -- we --
6 we -- I -- I say, "Not really."

7 And the judge was, like, "Y'all need to go and
8 talk about it," and we went to the side.

9 And Mr. Delaney turned around and said to me
10 that, "This is the best you're going to get." He
11 told me, "This is the best you're going to get. Go
12 ahead and take this." And I took it across the
13 chin because now we're in the courtroom. It ain't
14 like that we was sitting down just talking trying
15 to come up with a game plan. It was right there on
16 the spot. Right there on the spot. And the way
17 that he put it to me was, like, I'm not going to
18 get a better deal than this at the time.

19 But you came to me with 15 first, man --

20 Q Okay.

21 A -- you know? So I just -- to this very day, that
22 15 haunts me, because I guess -- I guess, I
23 should've said "yes" that day -- at the time he
24 offered it to me instead of making a call to my
25 family just to let them know this is what they

1 offered me. I'm thinking about taking it. You
2 know?

3 Q Okay.

4 A I just wanted to let my family know, but, I guess,
5 I shouldn't even had -- I shouldn't even did that,
6 because now I feel like by me doing that, I -- I'm
7 in the wrong.

8 Q So you still stand by your decision to plead,
9 right? You just want a lighter sentence?

10 A I -- I would've took the 15, ma'am.

11 Q Okay.

12 A I would've took the 15, but he never -- he never
13 came back. He told me it was a deadline. I got in
14 touch with him before the deadline. And he just
15 never reached back out to me.

16 Q Okay.

17 A I did all my part. It's just that, I don't know,
18 he might had a death in the family. I don't know
19 what was on his plate, you know? He just never got
20 back in touch with me.

21 Q So, as a part of the 15, were they willing to
22 dismiss the child sexual or criminal sexual
23 conduct, as well?

24 A That -- that was -- I -- if they would've did --
25 did -- they didn't have to dismiss that. I wanted

1 to go to trial on that, because I -- on that -- I
2 was that sure of that. He knew that. I have -- I
3 have correspondence of me telling him, "Find me a
4 deal on the drug charge, and I want to go to trial
5 on the CSC."

6 Q Okay.

7 A So I'm saying, yeah. He knew. He knew.

8 Q Okay. So it wasn't a primary concern of yours that
9 as a part of the plea offer they dismiss that
10 charge?

11 A Because I initially said --

12 Q Yeah.

13 A -- you know, I'll -- I will go to trial on this. I
14 will -- put -- put 12 in the box for me.

15 Q Okay. And it was your decision to enter the plea
16 on the day you did, right?

17 A It was, I guess, because I put the deal in because,
18 I guess, we're inside the courtroom. I was rushed
19 in, like -- I -- like I said, I wouldn't have -- I
20 would -- I didn't even have time to call my family
21 or have my family present or try to be there so
22 they'll know what's going on, ma'am. I even had --
23 I even asked him to reach out to my brother, "Could
24 you call my brother?" Before I even went up,
25 "Could you call out to my brother and tell him to

1 come up here, because I'm fixin' (verbatim) to go
2 to trial -- I mean, go to court?" I didn't -- I
3 didn't. They was that quick, ma'am. It wasn't --
4 it wasn't like that I knew I was on this date -- on
5 the 14th -- February the 14th, Valentine's Day,
6 like I -- like I knew I was going to go to -- yeah.
7 That's all, ma'am.

8 Q So you had no idea you were going to plead that
9 day?

10 A Ma'am?

11 Q You had no idea you were going to go plead that day
12 prior --

13 A No. No.

14 Q -- to that day?

15 A No. Because they -- really, I thought it was
16 another hearing or -- or it was going to get pushed
17 back. I wasn't looking to plead that day. When he
18 came and talked to me, he got my back -- it was
19 like my back was against this wall, "Either you
20 take the 17, or you get this life." I'm still --
21 on that date, I'm still asking him for about the
22 15, ma'am. On that day, I'm -- I'm -- when the
23 judge told us to take a moment, which is in the
24 transcripts (verbatim), that I -- we went to the
25 side, and he was like, "This is the best you're

1 going to get," you know. But I'm still asking him,
2 at that same time, "What happened to my 15?"
3 Because of the deal that he offered on that table
4 at that time, it's better than what I got now.
5 That's all. Not trying -- like I say, don't know
6 what was going on with him during those days he
7 never got back in touch with me.

8 Q Okay.

9 MS. MARTO: No further questions, Your Honor.

10 THE COURT: Ms. Ross?

11 MS. ROSS: No redirect, Your Honor.

12 THE COURT: Okay. Thank you, sir. You can
13 step down.

14 THE WITNESS: All right.

15 (WHEREUPON, the witness was excused.)

16 THE COURT: Any additional witnesses, Ms.
17 Ross?

18 MS. ROSS: No.

19 THE COURT: Ms. Marto?

20 MS. MARTO: Your Honor, the State would call
21 Mr. Brendan Delaney to testify, please.

22 (WHEREUPON, the witness was sworn.)

23 DIRECT EXAMINATION

24 BY MS. MARTO:

25 Q Good afternoon, sir.

1 A Good afternoon.

2 Q Thank you for being here. So you work at the
3 public defender's office, right?

4 A I do.

5 Q Okay. How long have you worked there for?

6 A I've been there for about four years. I've been
7 practicing law for 21.

8 Q Okay. So when did you begin representing Mr.
9 Banks?

10 A Yeah. I believe it was 2017/2018. Mr. Banks got
11 charged with a criminal sexual conduct in the first
12 degree. He was incarcerated at that time, and a
13 very high bond was set. At that time, I filed my
14 notice of representation and received the
15 discovery. I received it. It was very serious
16 allegations regarding disclosures made by a child
17 who was six years old.

18 And the evidence showed that the mother of the
19 child was Mr. Banks' girlfriend, and part of their
20 theory on that case is that the girlfriend and
21 mother of the child was in denial and that she had
22 subjected her child to a very bad situation wherein
23 she had been abused. There was documents from the
24 Children's Advocacy Center, written statements by
25 the child and pictures. There was denial by the

1 mother, but some of the folks at the Children's
2 Advocacy Center said that they had talked to her at
3 one point, and she acknowledged the allegations.
4 So I guess what I'm getting at, it -- from my seat
5 and my review of the evidence, it was certainly not
6 a bogus charge. The State filed a notice of --

7 MS. ROSS: Well, Judge, I -- I just object to
8 this line, because it doesn't go to the -- the
9 issue that he's brought forth today, which is
10 this -- this plea offer thing. The CSC was
11 dismissed if I understand correctly.

12 THE COURT: Well, but I -- I -- my
13 recollection of your client's testimony was
14 that -- that the CSC was not a part of the 15-
15 year plea, and he -- and he did -- he thought
16 he was going to go to trial on that charge,
17 because he knew he wasn't guilty.

18 MS. ROSS: Okay.

19 A Yeah. The -- the plea deal was all about the CSC
20 charge. He was incarcerated for quite a lengthy
21 amount of time on the CSC charge and a high bond.

22 I had -- I had numerous conversations with his
23 brother. I actually went to high school and played
24 football with Mr. Banks' brother. He was
25 previously in law enforcement, I think maybe with

1 Probation, Pardon, and Parole down here in
2 Spartanburg County, but he had recently moved to
3 Washington, D.C. He got -- from what I think was a
4 really good law enforcement type of job with some
5 federal agency, but I had numerous telephone
6 conversations with him while he was in Washington,
7 D.C. He would ask me about bond, about the charges
8 against his brother; Anthony had gave me permission
9 to talk to his brother. I enjoyed catching up with
10 his brother. We had numerous conversations, just
11 like I did with Mr. Banks when I would go visit him
12 at the jail.

13 Mr. Banks bonds out, and then one night he
14 cuts his ankle monitor. They go find the monitor,
15 can't find him. Two days later they find him, and
16 in his possession large quantities of cocaine,
17 trafficking level offenses. And he gets put back
18 in the detention center.

19 At that point, I filed my notice of appearance
20 and request for discovery on the drug charges.
21 That bounces down the road a little bit. I get the
22 drug charge discovery, and, you know, they had a
23 very strong case on the drug cases, as well. They
24 found Mr. Banks, basically, in the car with the
25 drugs. And when they approached the vehicle, he

1 was holding the drugs up, and he was also holding a
2 scale up as if to say, "I surrender." And this was
3 all on body cam.

4 So we, obviously, had some problems here on
5 how we're going to deal with these charges. But
6 still, up to this point, the most serious charge
7 was the criminal sexual conduct charge, because
8 they served -- served him with an LWOP on that
9 specific charge; so we had a problem.

10 And then one day, and -- and I can still
11 remember the -- the feeling of surprise, I guess.
12 I get an email from Wendy Hallford, and she says --
13 and this is the way most plea -- in my experience
14 from what I've seen, when the prosecutor's office
15 is going to try to work out a deal with you on a
16 criminal sexual conduct case involving a child,
17 more times than not, those conversations are
18 started by, "If your client will agree to plead
19 guilty -- we don't want to have to have the child
20 be further traumatized through a trial or
21 testimony. We'll make the following offer." And
22 their offer was, "If he'll plead guilty on the drug
23 charges, we'll dismiss the CSC charge, because we
24 don't want the child to be subjected to further
25 traumatization, and we'll agree to a negotiated

1 plea of 20 years."

2 And I was like, "Wow. This is a really good
3 deal," based on what we were exposed to for the
4 last three years that I've been representing Mr.
5 Banks. He -- he has really just -- and I know he
6 doesn't see it this way, but he has just dodged a
7 bullet.

8 And, you know, you can -- you never know the
9 answer to this, because I always think of the
10 phrase, you know, "I'm not going to look a gift
11 horse in the mouth." Has their CSC case -- has
12 something happened that I don't know about wherein
13 the case is now, you know, it's imploded on itself?
14 Well, that's a gamble you can't take. They're
15 telling me they don't want the child further
16 traumatized, so, "Here's your good deal, Mr.
17 Banks." You can't look that gift horse in the
18 mouth. I mean, some people do, and they regret
19 that very much so, but, nonetheless.

20 So I -- I get that. I go meet with Mr. Banks.
21 I say, "Hey. They've offered you -- they've
22 offered to dismiss, you know, the most serious
23 charge, the CSC, if you will plead to the drug
24 charges and take 20." We talked about it for a
25 little while. He was, you know, hedging. I didn't

1 expect him to make a decision that day. I
2 certainly gave him time to think about it. I said
3 -- I said, "Why don't you let me do this, Anthony.
4 Why don't you let me go back to them and take them
5 15, see if they will do 15? I said, "I don't think
6 they will." I said, "But let me go back to them
7 and see if they will take 15."

8 And he said, "All right."

9 There was never an expiration date; nothing
10 ever expired. So I go back, and I send Wendy
11 Hallford an email, "Hey, can we do 15?" And we did
12 that little tango for probably several weeks. And
13 I've been doing that tango long enough to know when
14 somebody's actually still participating in the
15 tango, and she was. She ultimately came down to
16 19, 18, 17, and then at 17, she said, "I'm done."
17 And I know when they're done. You can just tell.
18 And even up to the day that we were in court, I --
19 or, you know, that morning or whenever it was,
20 "Wendy, you know, can I get 16? Can -- can y'all
21 come down?" "No." They're done. That was as low
22 as they were going to go. On a negotiated
23 sentence, they have to stop somewhere. The best I
24 could get them to do was to move to 17.

25 THE COURT: Mr. Delaney, so the -- so the

1 record's clear. The only mention of 15 years
2 was by you as a counter offer, not from the
3 State?

4 THE WITNESS: Yes. And -- when I took the --
5 when I took the offer to Mr. Banks and we were
6 back and forth on it a little bit and he was
7 trying to make a decision, I said at some
8 point towards the end of the conversation, I
9 said, "How about this? Why don't -- why don't
10 we try this: Why don't you let me go take 15
11 to them, see if they'll -- see if I can get
12 them to do 15?"

13 He said, "Let's do that," and so that's
14 what I did. I went to them and said, "Hey.
15 My guy will do 15."

16 THE COURT: But at no point did the State
17 offer a 15-year plea?

18 THE WITNESS: At no point ever did the State
19 offer a 15-year-plea. That just never
20 happened.

21 A So as for the kiosk messages and stuff, that's
22 always, you know, they're -- that -- it's common
23 practice for anybody in the public defender's
24 office to have 7, 10, 15, 20-day old kiosks until
25 they're able to respond to them. And sometimes you

1 -- and if you don't have any information on
2 someone's case, what happens is if -- if you write
3 them back and say, "No new information," then they
4 immediately right you back with another question.
5 And you can just ping-pong like that forever. It's
6 just a real -- it's a real beast that kiosk. It's
7 impossible to keep up. There's just no way to do
8 it.

9 You just got to -- when you get new
10 information to your -- on your client's case, you
11 need to get it to them, or if there's something
12 that's happened or broken on the case, you got to
13 get it to them. And -- and that's usually by going
14 to the jail and setting up a visit. The -- the
15 kiosk is not a safe mechanism in which to
16 confidentially communicate with your client. You
17 can kind of give them general information if they
18 got a court date coming up or something like that,
19 but there's usually not a whole lot that's gonna --
20 other than to make them feel good or -- or make
21 them feel like their lawyer's doing something for
22 them or, you know, which is -- there's something to
23 that. I get it. But it's -- that's essentially
24 what it is. They just want to feel like their
25 lawyer's doing something and if I'm emailing them

1 and emailing them nothing, and that's what I do
2 more than 50 percent of the time, because that's
3 just the nature of -- of what it is; and they don't
4 understand that.

5 Q So just to confirm, 17 years was the best offer he
6 was afforded?

7 A That was it. He told me to talk to his brother.
8 The first time we met him, I find out he's my old
9 football teammates -- teammate. That's the first
10 thing I did when I got back, I called him; 1991
11 State Champions, 30-year anniversary this year.

12 Q Okay.

13 THE COURT: Mr. Delaney, was there ever any
14 kind of plea offer from the State that had a
15 deadline that -- does it expire without a
16 response from the defendant?

17 THE WITNESS: No deadlines were missed.
18 Absolutely not.

19 MS. MARTO: Okay. Thank you. No further
20 questions, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. ROSS:

23 Q Okay. So, again, you -- in Greenville, I usually
24 just get a plea offer letter that says, "This offer
25 expires on this date." But here you're just

1 talking the emails causally back and forth between
2 you and the solicitor?

3 A Sometimes they'll put a deadline on the bottom of
4 their email that says, "This -- this offer expires
5 October 31st or if your client's arrested on new
6 charges."

7 Q All right.

8 A The -- the email I got from Ms. Hallford on this
9 case was, "Hey. I -- I -- if your guy -- will your
10 guy agree to -- we'll dismiss the drug --" I'm
11 sorry. "We'll dismiss the CSC."

12 Q Uh-huh.

13 A "We don't want to have the child further
14 traumatized, if he will plea to all the drug
15 charges, and we'll give him 20 years."

16 Q Okay.

17 A There was no expiration date. No nothing. And
18 which isn't necessarily the norm, but I think that
19 it was done that way, maybe, is that it was because
20 he had been out on bond and then rearrested while
21 he was on an ankle monitor; so he wasn't going
22 anywhere.

23 Q Right.

24 A He wasn't going anywhere outside of the custody of
25 the detention center until we resolve this -- these

1 charges, so it was not a time sensitive issue in
2 the eyes of the solicitor.

3 Q Now, just talking to him during your direct, is it
4 possible that you asked him, "Would you take 15,"
5 at some point when you're saying that you went back
6 and --

7 A I don't know the specific words I used, but this
8 isn't the first time that I've used this similar
9 type of negotiating tactic, if you will. They
10 offer you a certain amount of years. You take it
11 to your client. They can't decide. And then I
12 say, "Okay. Well, I got to -- I need to go back to
13 them with something. Do you want me to go back to
14 them with 15?"

15 Q I gotcha.

16 A And -- and Anthony's response was, "Yeah. Let's
17 try that. Let's see if they'll do 15."

18 Q Okay.

19 MS. ROSS: (To the Court) I've got no --
20 well, go ahead. Beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 MS. ROSS: Okay. (To the Court) I've got no
23 further questions.

24 THE COURT: Ms. Marto?

25 MS. MARTO: No redirect, Your Honor.

1 THE COURT: (To Ms. Ross) Any objection to
2 excusing the witness?

3 MS. ROSS: None.

4 THE COURT: Ms. Marto?

5 MS. MARTO: No, Your Honor.

6 THE COURT: Thank you, Mr. Delaney.

7 THE WITNESS: Thank you.

8 THE COURT: You're excused.

9 MS. MARTO: Thank you, sir.

10 (WHEREUPON, the witness was excused.)

11 THE COURT: Ms. Ross (as spoken), are -- was
12 there any further witnesses --

13 MS. MARTO: No, Your Honor.

14 THE COURT: Argument, Ms. Ross?

15 CLOSING ARGUMENTS

16 MS. ROSS: Judge, I -- just Mr. Banks is just
17 telling me he heard, "Fifteen. Would you take
18 15?" And accepted that as a plea offer; and I
19 cited the case law on that, "State v. Davie."

20 THE COURT: Yes, ma'am.

21 MS. ROSS: Thank you.

22 THE COURT: Anything from the State?

23 MS. MARTO: The State would hold that it's
24 likely just a source of confusion in this case
25 about what -- where the 15 came from, but I

1 think Counsel credibly testified one was an
2 offer of 15 years and was never seriously
3 extended to him. The best he was able to work
4 out with the State was 17 years, and that's
5 what Mr. Banks in the end took. And so the
6 State would request you deny relief based upon
7 that. Thank you.

8 THE COURT: I'll take this matter under
9 advisement. Thank you, Counsels.

10 MS. MARTO: Thank you, Your Honor.

11 MS. ROSS: Thank you, Judge.

12 (Whereupon the within hearing was
13 concluded at 2:22 p.m.)

14 (*This transcript may contain quoted material.
15 Such material is reproduced as read or quoted
16 by the speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

CERTIFICATE

Be it known that Amber J. Payne took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and
for the State of South Carolina-at-large;

that the witness was first duly sworn to testify to the truth, the whole truth, and nothing but the truth, concerning the matter in the controversy aforesaid;

that the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.

Amber J. Payne, CVR

Date: 1/4/2022
Notary public for South Carolina
My commission expires August 12, 2029

Spartanburg County Sheriffs Detention
950 California Avenue
Spartanburg, SC 29303

Grievances Detail Report

Inmate ID**Inmate Name**

268645

BANKS, ANTHONY STEVENS

Status**Group****Entered on Kiosk****Date Filed:**

CLOS

BDeaney

DORM6-KIOSK

08/30/2018

Assigned To

BDeaney

Reviewed Byyou came with
the first plea**Date Reviewed:****Resolved By:****Date Resolved:**

08/30/2018

Subject

PAGE TWO/PUBLIC DEFENDER/I NEED TO CONTACT MY PUBLIC DEFENDER/BRENDAN DELANEY

Inmate's Statement:

I WANT TO SAY SORRY FOR THE WAY I ACT AND FOR CUSSING. BUT I DID NOT DO THAT CSC.SO GIVE ME A FEW DAYS TO THINK ABOUT THE PLED.ONCE MORE IM SORRY FOR MY ACTION TODAY.

Officer's Review:**Officer's Findings:**

NO PROBLEM^^B Delaney



Spartanburg County Sheriffs Detention
950 California Avenue
Spartanburg, SC 29303

Grievances Detail Report

Inmate ID

268645

Inmate Name

BANKS, ANTHONY STEVENS

Status

CLOS

Group

BDeLANey

Entered on Kiosk

DORM6-KIOSK

Assigned To

BDeLANey

Reviewed By**Date Filed:**

09/09/2018

Date Reviewed:**Resolved By:****Date Resolved:**

10/03/2018

Subject

PAGE TWO/PUBLIC DEFENDER/I NEED TO CONTACT MY PUBLIC DEFENDER/BRENDAN
DELANEY

Inmate's Statement:

TRY TO COME AND SEE ME THIS WEEK.THANK YOU.

Officer's Review:**Officer's Findings:**

I WILL COME SEE YOU SOON. SORRY IT HAS TAKEN SO LONG. YOU ARE ON MY LIST^^B
DeLANey

Spartanburg County Sheriffs Detention
950 California Avenue
Spartanburg, SC 29303

Grievances Detail Report

Inmate ID

268645

Inmate Name

BANKS, ANTHONY STEVENS

Status

CLOS

Group

BDeLANey

Entered on Kiosk

DORM6-KIOSK

Assigned To

BDeLANey

Reviewed By**Date Filed:**

09/15/2018 Measking

Date Reviewed:**Resolved By:****Date Resolved:**

10/03/2018 Him answering

Subject

PAGE TWO/PUBLIC DEFENDER/I NEED TO CONTACT MY PUBLIC DEFENDER/BRENDAN
DELANEY

Inmate's Statement:

I ASK YOU TO COME TO SEE ME BEFORE THE DEADLINE. WHAT HAPPEND?????

Officer's Review:**Officer's Findings:**

ADDRESSED IN EARLIER RESPONSE.

Spartanburg County Sheriffs Detention
950 California Avenue
Spartanburg, SC 29303

Grievances Detail Report

Inmate ID

Inmate Name

268645

BANKS, ANTHONY STEVENS

Status

Group

Entered on Kiosk

Date Filed:

CLOS

BDeLANey

DORM6-KIOSK

10/01/2018 *me still asking*

Assigned To

BDeLANey

Reviewed By

Date Reviewed:

Resolved By:

Date Resolved:

10/03/2018

Subject

PAGE TWO/PUBLIC DEFENDER/I NEED TO CONTACT MY PUBLIC DEFENDER/BRENDAN DELANEY

Inmate's Statement:

HELLO CAN YOU COME TO SEE ME.....

Officer's Review:

Officer's Findings:

ADDRESSED IN EARLIER RESPONSE.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Anthony Banks, #214073,)
Applicant,)

Case No.: 2019-CP-42-03713

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

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SPARTANBURG COUNTY
AMY W. COX

This matter comes before this Court by way of Applicant's post-conviction relief application filed October 21, 2019. Respondent made its return on March 6, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on September 16, 2021, at Spartanburg County Courthouse. Susannah C. Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Brendan M. Delaney, Esquire, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During the August 2018 term, the Spartanburg County Grand Jury indicted Applicant for first degree criminal sexual conduct with minor or attempt with victim under eleven years of age (2018-GS-42-04499). During the October 2019 term, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute marijuana (2018-GS-42-5784), possession with intent to

distribute methamphetamine (2018-GS-42-5783), trafficking in cocaine more than ten but less than twenty eight grams (2018-GS-42-5782), and escape (2018-GS-42-5781). Brendan M. Delaney, Esquire represented Applicant. Assistant Solicitor Wendy Hallford prosecuted the case. On February 13, 2019, Applicant pled before the Honorable J. Mark Hayes, II, circuit court judge, to a negotiated seventeen years' imprisonment. Judge Hayes accepted the plea and sentenced Applicant to seventeen years' imprisonment. Applicant did not appeal his conviction or sentence.

Summary of Relevant Facts

Applicant was charged with escape based upon a text alert sent to home detention on June 19, 2018, alerting them Applicant entered victim's zone and the home detention monitor was tampered with. (Plea Tr. 9-10). They were unable to get in touch with him and ultimately located the device with a cut strap. (Plea Tr. 10). On July 11, 2018, officers approached him to issue a warrant while he was in his car. In the car, they found 2.8 grams of marijuana, 18.2 grams of cocaine, and 5.6 grams of crack cocaine on him. (Plea Tr. 10). They also found sandwich bags, a bottle of powder, a scale, a police scanner, and currency on him. Defendant was arrested on aforementioned charges. (Plea Tr. 10).

Current Action before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Defense counsel was ineffective because:
 - a. "evidence exists that shows flaws in the indictment process."
 - b. "[the] original plea offer expired prior to counsel's presentation to Applicant."
 - c. "Failure to investigate, develop and present evidence critical to Applicant's decision to plead or proceed to trial."

Applicant amended his application on August 13, 2020, alleging:

1. Ineffective assistance of trial counsel for failure to:

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 SPARTANBURG COUNTY
 MAY W. COX

- a. Move to quash the indictment or investigate the grand jury proceedings; and
- b. Properly communicate and advise applicant regarding the State's plea offer and failure to accept the plea offer prior to its expiration.

At the PCR hearing, Applicant proceeded forward solely on the allegations raised in amended application. All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant testified he knew the remedy afforded in PCR actions and still wanted to proceed. Applicant stated his plea attorney was Brendan Delaney. Applicant stated Counsel presented him a plea offer for fifteen years. Applicant stated that the day he was presented with the fifteen year plea offer he was cussing his attorney out because he was trying to get him to plead to something he did not want to plead to. Applicant testified Counsel wrote the plea offer on a notepad and gave it to him to think about. Applicant stated he has since lost that paper. Applicant stated he asked for time to think about the offer and that he ultimately told Counsel he would accept the offer. Applicant stated that a couple days went by, he spoke with his wife, and then asked Counsel to come see him, but he never came. Applicant stated that on October 3 he was told by Counsel that he would meet with him soon. However, Applicant testified that by the time he came back the deadline had passed and the offer was bumped up to seventeen years' imprisonment.

Applicant stated that Kiosk reports are developed as a part of the mail system within the department of corrections. Applicant testified that Counsel came to see him and offered him the plea on August 15. Applicant stated that the second time he wrote Counsel he asked that he come see him on September 9 and he again wrote Counsel on September 15. Applicant testified that

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OCT 22 AM 9:37
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Counsel did not answer him. He stated he wrote Counsel again on October 1 and Counsel finally answered on October 3. Applicant testified that Counsel told him he would visit him soon. Applicant stated this conversation took place a month and a week later. He testified he does not know what happened with the plea offer, but that if he had a chance to accept it, he would have received fifteen years' imprisonment, not seventeen.

Applicant stated that the date on his indictment does not correlate with the grand jury calendar dates. Applicant stated this means that they could not appropriately true bill the indictment when they stated they did because of the discrepancy in dates. He stated Counsel could have caught that and brought it up prior to the plea. He alleges they were fraudulent indictments. He stated he understood Counsel should have objected to the indictments prior to the plea, and says his failure to do so was ineffective assistance. Upon examination, this Court discovered that the dates on the indictment and on the court calendar did line up and no discrepancy was found, which Applicant conceded upon further examination.

On cross-examination, Applicant stated he spoke with Counsel approximately three times twice in person and once over the phone. Applicant state they discussed the case and he told him that he wanted a trial on the criminal sexual conduct charge because he thought he would win, but that it was ultimately dismissed. Applicant stated he requested a plea for the drug charges. Applicant stated he was told that he was looking at a third strike life sentence. He testified that Counsel told him about the fifteen year offer and then did not follow up.

He stated Counsel is a good attorney "on the low", but believes he messed up because his workload may be too heavy. Applicant stated he was served with an LWOP notice. He testified he entered a plea to seventeen years' imprisonment because he did not know he was going to court that day. Applicant stated that he was dissatisfied with Counsel's performance and that

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2021 OCT 22 AM 9:37
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they talked about his concerns privately during the plea hearing. Applicant stated Counsel told him he could not get a better plea deal. Applicant stated he still proceeded forward because they were in the plea hearing and everything was happening on the spot. Applicant stated he wished he did not take extra time to think about his options, because it led to the fifteen year offer lapsing. Applicant stated he would have taken the offer but could not get in touch with Counsel until after it lapsed. Applicant stated he did not care if the criminal sexual conduct charge was dropped in the original offer because he thought it was made up and he would win at trial. Applicant stated he wanted his brother at the plea hearing but that there was no time to ensure his family was present at the hearing. Applicant testified he did not know what was going on with Counsel during the time when he would not get back in touch with him, but it cost him the offer.

Counsel Testimony

Counsel stated that he works for the public defender's office and has been practicing law for twenty-one years. He stated he began representing Applicant in 2017 or 2018. At the time, Counsel testified Applicant was incarcerated with a very high bond.

Counsel stated there were serious child sexual abuse allegations made by Applicant's girlfriend's six-year-old child. Counsel testified that the State's theory of the criminal sexual conduct charge was that the mother was in denial about the abuse and had subjected the child to the abuse. Counsel stated that though there was denial by the mother about the abuse, the people at the Child Advocacy Center said that she had acknowledged the allegations. Counsel stated that from his review of the evidence, he did not believe the allegations were fabricated.

Counsel stated that he had numerous conversations with Applicant's brother about the case, whom he knew personally. In these conversations, Counsel said they discussed issues like bond and the charges. Counsel stated that Applicant was released from jail and at one point cut

off his ankle monitor. Counsel stated they found him two days later with large quantities of cocaine. Counsel testified he was put back in the detention center shortly thereafter.

Counsel stated he entered his appearance and received discovery for the drug charges. Counsel opined that the State had a very strong case because Applicant was caught literally holding up the drugs and a scale when the police approached him, as if to say "I surrender."

Counsel stated that the most serious charge Applicant was facing was the child sexual conduct charge, for which he was served with a notice of intent to seek life without parole. Counsel stated he was surprised at the offer. Counsel stated that in child sexual assault cases the State usually offers something to avoid having the child testify. However, Counsel testified in this case they offered to dismiss the charge entirely in exchange for a negotiated plea on the drug charges. He stated that Applicant dodged a bullet on this charge. Counsel stated he was curious whether something happened with this charge that caused the State's case to implode, but was unsure whether or not that was the case. Counsel stated that, given the circumstances, he did not want to take the gamble.

Counsel stated he took this offer to Applicant. Counsel testified that the original offer was a plea to the drug charges for twenty years' imprisonment and dismissal of the sexual conduct charge. Counsel stated that there was no expiration date concerning acceptance of the offer. Counsel stated that Applicant told him he wanted a fifteen years' imprisonment sentence. Counsel stated he asked the prosecutor for a fifteen years' imprisonment sentence. After several weeks of back and forth, Counsel testified that he talked the prosecutor down to seventeen years' imprisonment before they refused to lower it any more. Counsel stated that on the court date he asked for sixteen years' imprisonment and was told no. Counsel stated that the fifteen years' imprisonment sentence was only posed as a counteroffer, not an actual offer from the State.

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Counsel testified that it is common for kiosk messages to age out of relevance before a response is sent. Counsel stated that typically if you write a client back immediately and inform him that there is no new information they will immediately write back with new questions. Counsel stated he would set up a visit with his client if he had new information to provide him with. Counsel stated that the kiosk is not a good way to confidentially communicate with incarcerated clients. Counsel stated it is best to reserve the kiosk for general information about scheduling or to make them feel satisfied that their attorney is continuing to work on their case.

On cross-examination, Counsel stated that the plea offer was made casually through email, but no formal offer sheet was produced. Counsel stated that no deadline for acceptance was placed on the plea, which is not necessarily the norm, but Counsel stated he thought that was done this way because Applicant was out on bond and then re-arrested. Counsel stated that both parties knew Applicant was not going anywhere until the case was resolved. Thus, Counsel stated he did not think the State viewed it as a time sensitive issue.

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 and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the

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application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(c), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence"). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that

2021 OCT 22 AM 9:37
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"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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. It is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice than that course should be followed. *Id.* at 696-97.

Failure to Communicate Plea Offer

Applicant claims Counsel was ineffective for failing to communicate a fifteen years' imprisonment offer to him before it lapsed. "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye*, 566 U.S. 134, 145 (2012). Further, ineffective assistance is given "[w]hen defense counsel allow the [plea] offer to expire without advising the defendant or allowing him to consider [the plea]." *Id.* at 145.

When determining prejudice for failure to convey a plea, a case-by-case determination is made "assessing whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefited from the offer."

Bell v. State, 410 S.C.436, 443, 765 S.E.2d 4, 7 (2014). Prejudice is found if applicant "would have taken the plea offer had [he] been afforded effective assistance of counsel", if "the plea would have been entered without prosecution canceling it or the trial court refusing to accept it", and "the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." *Collins v. State*, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (quoting *Frye*, 566 U.S. 147) (quotations omitted). Presumed prejudice is reserved to limited situations. *Bell*, 410 S.C. at 443, 765 S.E.2d at 7.

This Court finds it unlikely that a plea offer was ever extended to Applicant at all. Counsel credibly testified that the only mention of a fifteen years' imprisonment plea offer was as a counteroffer and that the original offer from the State was twenty years' imprisonment, which was then reduced to seventeen years' imprisonment. Counsel is not deficient for failing to communicate a non-existent plea offer and Applicant was not prejudiced as a result. Applicant has not offered any proof of this offer's existence other than his own self-serving testimony, and therefore has failed to meet the burden imposed upon him. The allegation shall be denied and dismissed with prejudice.

Issues with Indictments

Applicant alleges he is entitled to PCR relief because there were flaws in the indictment process, as it pertains to the date on the indictment sheet and the court calendar not lining up. Challenges to the indictment must be raised before a jury is sworn in. S.C. Code Ann. § 17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with

FILED
2021 OCT 22 AM 9:37
CLERK OF COURT
JANIS R. COOK
JANIS R. COOK

enough specificity that the court knows what judgement to announce and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it apprises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) citing *State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

This Court finds this argument is without merit because the dates on the indictment and on the calendar correspond with one another. The discrepancy Applicant alleged of does not exist. Applicant acknowledged as much during the evidentiary hearing. However, even if the discrepancy existed, this was waived when Applicant freely, knowingly, and voluntarily entered the guilty plea. Thus, this claim is without merit and relief denied on this ground.

FILED
2021 OCT 22 AM 9:37
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

[conclusion and signature line on following page]

Conclusion

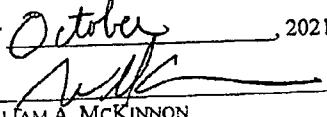
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to 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 Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 12 day of October, 2021.


 WILLIAM A. MCKINNON
 Presiding Judge
 Seventh Judicial Circuit

Spartanburg, South Carolina.

FILED
 2021 OCT 22 AM 9:37
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

DOCKET NO. **18-GS-42-5781**
The State of South Carolina
County of Spartanburg
Barry Barnette, Solicitor
COURT OF GENERAL SESSIONS
OCT 23 2018
TERM

WITNESSES
1. SENTENCE MADE
2. REPORTED
3. CARD FILED
4. INDEXED
5. OFFICED WARRANTS
6. CHECKED SIGNATURE
7. ASSESSMENT AND FINE CARD MADE
8. TRAFFIC VIOLATION COPY
Computer
Computer

ARREST WARRANT NUMBER

2018a4210202366

ACTION OF GRAND JURY

True Bill

OCT 26 2018

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

ESCAPE

SC Code: 24-13-1570 & Common Law
CDR Code: 2570

Foreperson of Petit Jury

Date:

2018 OCT 30 PM 3:59
CLERK OF COURT
H. HOPE GLADLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

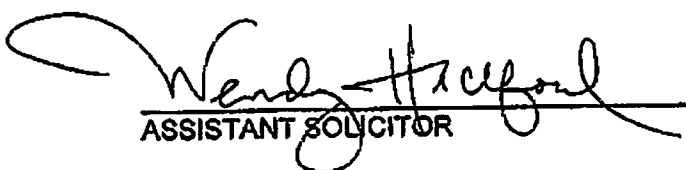
INDICTMENT

At a Court of General Sessions, convened on JUL 26 2018 the
Grand Jurors of Spartanburg County present upon their oath:

ESCAPE

The defendant, Anthony Banks did in Spartanburg County on or about
- June 18, 2018, unlawfully escape or attempt to escape from home
detention and/or custody of the Spartanburg County Detention Facility to-
wit: by removing his GPS device without authority to do so, in violation of
§24-13-1570, and Common Law, of the *CODE OF LAWS OF SOUTH
CAROLINA*, (1976, as amended.)

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
 STATE VS.
Anthony Stevens Banks

AKA: _____

Race: BLACK Sex: M Age: 46DOB: [REDACTED] SS#: [REDACTED]Address: 740 Union St. Fullerton Ave.City, State, Zip: Spartanburg, SC 29303-2841 29306DL#: [REDACTED] SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Escape / Escape (0-10 C/L)

In violation of § 00-00-0000 of the S.C. Code of Laws, bearing CDR Code # 2570
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: Wendy D. Hallford SCB66304 [Signature] SCB68596
 HALLFORD, WENDY D. SC Bar# Defendant Delaney, Brendan M. SC Bar#
 Attorney for Defendant

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. SCB68596

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 §14-1-206 (Assessments 107.5 %) \$ _____
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso (Public Def/Probation) \$500 \$ _____
 §14-1-212 (Law Enforce. Funding)* \$25 \$ 25.00
 §14-1-213 (Drug Court Surcharge) \$150 \$ _____
 §50-21-114(BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75Clerk of Court/ Deputy Clerk C. PoolCourt Reporter: J. Gendrowski

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS **Computer**INDICTMENT/CASE#: 2018GS4205781A/W#: 2018A4210202366Date of Offense: 6/18/2018S.C. Code § : 00-00-0000CDR Code #: 2570

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS 5. negotiated concurrent

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees

Presiding Judge _____

Judge Code: 2132Sentence Date: 2/12/19

DOCKET NO. -

18-GS-42-5782

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 29 2018

TERM

THE STATE
vs.

Anthony Stevens Banks

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370

1. SENTENCED BY JURY
Computer

REPORTED

2. CARD FILLED

INDEXED

SCSO

3. CHECKED WARRANTS

4. CHECKED STATE

7. ASSIGNED TO

8. CHECKED

9. TRAFFIC VIOLATION

ARREST WARRANT NUMBER

2018A4210202688

ACTION OF GRAND JURY

True Bill

OCT 26 2018

Foreperson of Grand Jury

Date:

VERDICT

Forep
Date:Spartanburg County
2018 OCT 30 PM 4:00
H. MCLELLAN

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

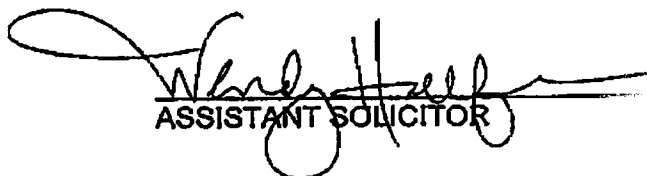
INDICTMENT

At a Court of General Sessions, convened on July 26 2018 the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That Anthony Steven Banks did in Spartanburg County on or about July 11, 2018, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than 10 Ten but less than 28 grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Anthony Stevens Banks

AKA:

Race: BLACK Sex: M Age: 46

DOB: [REDACTED] SS#: [REDACTED]

Address: 740 Union St. Fullon Ave

City, State, Zip: Spartanburg, SC 29303-2841 29306

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 2nd offense

in violation of § 44-53-0370(e)(2)(a)2 of the S.C. Code of Laws, bearing CDR Code # 0387

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ \$17-25-40

w/minor 1st or Lowd Act)

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

SCB66304

SC Bar#

Defendant

DeJony, Brendan M.
Attorney for Defendant

SCB68500

WHEREFORE, the Defendant is committed to the State Department of Corrections, ☐ County Detention Center for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

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

*Fine:

§14-1-206 (Assessments 107.3 %)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$150.00
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$8.25

TOTAL

\$283.25

Clerk of Court/ Deputy Clerk

Court Reporter: J. Gendroski

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS Computer

INDICTMENT/CASE#: 2018GS4205782

A/W#: 2018A4210202688

Date of Offense: 7/11/2018

S.C. Code § : 44-53-0370(e)(2)(a)3

CDR Code #: 0147

SENTENCE SHEET

negotiated
17 years☐ CONVICTED OF or ☒ PLEADS

(5-30)

WHEREFORE, the Defendant is committed to the State Department of Corrections, ☐ County Detention Center for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

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

*Fine:

§14-1-206 (Assessments 107.3 %)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$150.00
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$8.25

TOTAL

\$283.25

Clerk of Court/ Deputy Clerk

Court Reporter: J. Gendroski

SCCA/217 (04/2018)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel. Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2132

Sentence Date: 2/13/19

WITNESSES

SCSO

[Signature]
J. G. R.

ARREST WARRANT NUMBER

2018A4210202689

ACTION OF GRAND JURY

True Bill

OCT 26 2018

Foreperson of Grand Jury

Date:

VERDICT

82:2144 11:11:1602

Foreperson of Petit Jury

Date:

DOCKET NO.

18-GS-42-5783

The State of South Carolina

County of Spartanburg

Barry J. Bamette, Solicitor

COURT OF GENERAL SESSIONS

OCT 29 2018

TERM

THE STATE
vs.

ANTHONY BANKS

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
METHAMPHETAMINE

SC Code: 44-53-376

2.13.19 - Note pro se.
Defendant pled to
other charges?
Wendy Hefley

2018 OCT 30 PM 4:00
CLERK OF COURT
J. HOPE BLAIRLEY

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

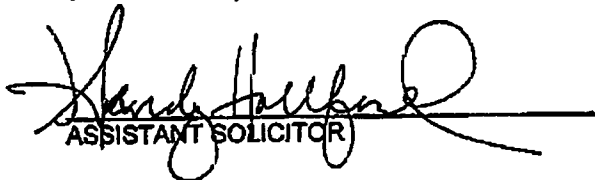
INDICTMENT

At a Court of General Sessions, convened on Jul 26 2018 the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Anthony Stevens Banks did in Spartanburg County on or about
- July 11, 2018, manufacture, distribute, dispense, deliver, purchase, or
otherwise aid, abet, attempt or conspire to manufacture, distribute,
dispense, deliver or purchase, or possess with intent to manufacture,
distribute, dispense, deliver, or purchase a quantity of Methamphetamine, a
schedule II controlled substance under provisions of § 44-53-375, *THE
CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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


ASSISTANT SOLICITOR



DOCKET NO. **18-GS-42-5784**
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 29 2018 TERM

THE STATE
vs.

ANTHONY S. BANKS

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SC Code: 44-63-370

2018 OCT 30 PM 4:00
CLERK OF COURT
H. ILLIUS BLANCHLEY

WITNESSES
1. SENTENCE MADE
Spartanburg County Sheriff's Office
2. RETURNED TO COURT

1. CARD PULLED
INDEXED
2. CHECKED WARRANTS
3. CHECKED STRANDED
4. ASSESSED FINE
5. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

2018AA210202690

ACTION OF GRAND JURY

True Bill

OCT 26 2018

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

At a Court of General Sessions, convened on July 26 2018, the
Grand Jurors of Spartanburg County present upon their oath:

That Anthony S. Banks did in Spartanburg County on or about July 11, 2018, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Anthony Stevens Banks

AKA:

Race: BLACK Sex: M Age: 46

DOB: [REDACTED] SS#: [REDACTED]

Address: 240 Union St Fullen Ave

City, State, Zip: Spartanburg, SC 29303-2841 29306

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Drugs / Manuf., poss. of other sub. in Sch. I, II, III or flunitrazepam, w.i.t.d.

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

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC

w/minor 1st or Lewd Act)

☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

WITNESSE: HALFORD, WENDY D.

SCB66304
SC Bar#

Defendant

Delaney, Brendan M.
Attorney for DefendantSCB68596
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

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

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter: J. Gendowski

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4205784

A/W#: 2018A4210202690

Date of Offense: 7/11/2018

S.C. Code § : 44-53-0370(b)(2)

CDR Code #: 0186

SENTENCE SHEET negotiated
17 years☐ CONVICTED OF or ☒ PLEADS

(5-29)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2122

Sentence Date: 8/13/17

WITNESSES

Spartanburg County Sheriff's Office

Kevin Goff

ARREST WARRANT NUMBER

2017A4210103050

ACTION OF GRAND JURY

True Bill

AUG 24 2018

Foreperson of Grand Jury
Date:

VERDICT

2019 FEB 14 PM 12:28

Foreperson of Petit Jury
Date:

DOCKET NO.

18-GS-42-4499

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2018

TERM

THE STATE
vs.

Anthony Stevens Banks

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREESC Code: 16-3-0165(A)(1)
CDR Code: 03a5
Class FEL/Exempt*2.13.19 Adm. pen.
without leave to
reindict. Defendant
pled to other charges
Wendy H.*CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG 29 PM 3:07
M. HOPE BLACKLEY

(27)

ARREST WARRANT

2018A4210202366

STATE OF SOUTH CAROLINA

County/ ☒ Spartanburg

Address: 740 Union St Apt 5

Spartanburg, SC 29303-2841

THE STATE against

Anthony Stevens Banks

Phone: [redacted] SSN: [redacted]

Sex: M Race: [redacted] Height: 6 2 Weight: 200

DL #: [redacted] Agency ORI #: SC042063C

Prosecuting Agency: Spartanburg County Detention Center

Prosecuting Officer: Dustin C Clevenger - S00092

Offense: Escape / Escape

Offense Code: 2570

Code/Ordinance Sec: 00-00-0000

This warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Spartanburg

to be arrested and brought before me to be dealt with according to the law.

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant on

Anthony Banks

7-11-18

General Sessions

180 Magnolia Street

P O Box 3483

Spartanburg, SC 29304

CLERK OF COURT

SPARTANBURG COUNTY

BY: [Signature] ORIGINAL

7-13-18

STATE OF SOUTH CAROLINA

County/ ☒ Spartanburg

Personally appeared before me the affiant Dustin C Clevenger being duly sworn deposes and says that defendant Anthony Stevens Banks did within this county and state on or about 6/18/2018 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg in the following particulars:

DESCRIPTION OF OFFENSE: Escape / Escape

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

That on June 18, 2018, in the county of Spartanburg, one Anthony Stevens Banks did commit the crime of Escape / Escape in that the defendant did remove his GPS device without authority to do so. Affiant belief based on police investigation, as

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ ☒ Spartanburg

Affiant's Address: 950 California Ave

Affiant's Telephone: Spartanburg, SC 29303-

2018 JUL 13 PM 1:06

M. HOPE BLACKLEY

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 6/18/2018 defendant Anthony Stevens Banks did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Escape / Escape

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

Sworn to and subscribed before me on 6/19/2018

Signature of Issuing Judge

Donnie Benjamin Blackley

Judge Code: 5862

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

Signature of Judge

RETURN WARRANT TO:

General Sessions

180 Magnolia Street

P O Box 3483

Spartanburg, SC 29304

CLERK OF COURT

SPARTANBURG COUNTY

BY: [Signature] ORIGINAL

7-13-18

Form Approved by U.S. Attorney General 4-11-2003 80CA518

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA

County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Dustin C Clevenger being duly sworn deposes and says that defendant Anthony Stevens Banks did within this county and state on or about 6/18/2018 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg in the following particulars:

DESCRIPTION OF OFFENSE: Escape / Escape

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

That on June 18, 2018, in the county of Spartanburg, one Anthony Stevens Banks did commit the crime of Escape / Escape in that the defendant did remove his GPS device without authority to do so. Affiant belief based on police investigation, as

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ ☒ Spartanburg

Affiant's Address: 950 California Ave

Affiant's Telephone: Spartanburg, SC 29303-

2018 JUL 13 PM 1:06

M. HOPE BLACKLEY

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 6/18/2018 defendant Anthony Stevens Banks did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Escape / Escape

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Sworn to and subscribed before me on 6/19/2018

Signature of Issuing Judge

Donnie Benjamin Blackley

Judge Code: 5862

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

Signature of Judge

RETURN WARRANT TO:

General Sessions

180 Magnolia Street

P O Box 3483

Spartanburg, SC 29304

CLERK OF COURT

SPARTANBURG COUNTY

BY: [Signature] ORIGINAL

7-13-18

ARREST WARRANT

2018A4210202690

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Anthony Stevens Banks

Address 740 Union St

Spartanburg, SC 29303-2841

Phone: (864)357-2587 SSN: [REDACTED]

Sex M Race B Height 6 2 Weight 181

IL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0420000

Rescuing Agency: Spartanburg County Sheriff

Rescuing Officer: Brendall K Mathis - S00588

Offense: Drugs / Manuf., poss. of other sub. in Sch. I, II, III

or flunitrazepam or analogue, w.i.d. - 1st offense

Offense Code: 0186

Code/Ordinance Sec 44-53-0370(b)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

Spartanburg

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Anthony Banks

on 7/11/2018

Signature of Court/Clerk Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

180 Magnolia Street

P O Box 3483

Spartanburg, SC 29304

SPARTANBURG COUNTY

BY: *Michael Blackley* D.C. ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Brendall K Mathis

being duly sworn deposes and says that defendant Anthony Stevens Banks

did within this county and state on or about 7/11/2018

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

Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I, II, III or flunitrazepam or analogue, w.i.d. - 1st offense

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

That on July 11, 2018 in the city/county of Spartanburg, one Anthony Stevens Banks did aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver, purchase and or possess MARIJUANA, with the intent to manufacture, distribute, dispense, deliver, or purchase MARIJUANA, a controlled substance or a controlled substance analogue classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) or in Schedule II which is a narcotic drug. WARRANTS BASE UPON POLICE INVESTIGATION. CEH

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Spartanburg, SC 29303-

Affiant's Telephone

CLERK OF COURT
SPARTANBURG COUNTY
2018 JUL 13 PM 1:08
M. HOPE BLACKLEY

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/11/2018

defendant Anthony Stevens Banks

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

☒ County/ ☐ Municipality of

Spartanburg

) as set forth below

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I, II, III or flunitrazepam or analogue, w.i.d. - 1st offense
Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me on 7/11/2018

Signature of Issuing Judge

Keith Sherlin

Judge Code: 7230

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

Judge's Address 180 Magnolia Street

Spartanburg, SC 29306-

Judge's Telephone (864)596-3424

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
Attorney General
August 31, 2005
SCCA-018

ARREST WARRANT

2018A4210202688

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Spartanburg

THE STATE
against

Anthony Stevens Banks

Address: 740 Union St

Spartanburg, SC 29303-2841

Phone: (864) 357-2387 SSN: [REDACTED]

Sex: M Race: B Height: 6 2 Weight: 181

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Brendall K Mathis - S00588

Offense: Drugs / Trafficking in cocaine, 10g or more, but less than 28g - 3rd or sub. offense

Offense Code: 0147

Code/Ordinance Sec: 44-53-0370(6)(2)(a)3

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

Spartanburg

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

(L.S.)

Date:

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant

on 7/11/18 Anthony Stevens Banks

M. Hope Blackley
Signature of Court/Clerk/Enforcement Officer

RETURN WARRANT TO:

General Sessions

180 Main Street

P.O. Box

Spartanburg

ACQUITTAL COPY

M. Hope Blackley

SPAR

BY: DATE

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant

Brendall K Mathis

being duly sworn deposes and says that defendant

Anthony Stevens Banks

did within this county and state on or about

7/11/2018

State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

Spartanburg

in the following particular:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10g or more, but less than 28g - 3rd or sub. offense

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

That on July 11, 2018, in the county of Spartanburg, one Anthony Stevens Banks did commit the crime of Drugs / Trafficking in cocaine, 10g or more, but less than 28g - 3rd or sub. offense. WARRANTS BASE UPON POLICE INVESTIGATION. CEH

[Signature]
BY: *[Signature]*

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Affiant's Telephone Spartanburg, SC 29303-

CLERK OF COURT
SPARTANBURG COUNTY
2018 JUL 13 PM 1:07
M. HOPE BLACKLEY

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/11/2018

defendant Anthony Stevens Banks

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

☒ County/ ☐ Municipality of

Spartanburg

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10g or more, but less than 28g - 3rd or sub. offense

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

[Signature]
7/20/18

(L.S.)

Judge's Address

180 Main Street

SC 29306

Judge's Telephone

Issuing C

ORIGINAL

FILE

ORIGINAL

AFFIDAVIT

Form Approved by
U.S. Justice Dept.
April 21, 2009
SCCA 318