

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

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S.C. Supreme Court

CHARLES X. MIXON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Appellate Defender

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)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)	2004-GS-40-10569
)	2005-GS-40-10334
)	2005-GS-40-10529

STATE OF SOUTH CAROLINA)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
CHARLES X. MIXON)	
_____ DEFENDANT)	

November 15, 2005
Columbia, South Carolina

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE.

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

DIETRICH A. LAKE, ASSISTANT SOLICITOR
Attorney for the State

RACHAEL DAIN, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

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EXHIBITS

(There were no exhibits marked.)

1 MR. LAKE: The State calls Charles Mixon.

2 CHARLES MIXON, after being duly sworn, testified
3 as follows:

4 THE COURT: Yes, sir.

5 MR. LAKE: Thank you. Your Honor, may it please
6 the Court.

7 Standing before you is Charles Mixon with his
8 attorney Rachael Dain of the private bar. He's here to
9 plead guilty to one count of murder, one count of armed
10 robbery, and one count of possession with intent to
11 distribute crack cocaine first offense.

12 In exchange for his plea, the State will also be
13 dismissing one count of possession of a stolen motor
14 vehicle and one count of simple possession of marijuana.

15 THE COURT: All right. Ms. Dain, you represent
16 Charles Mixon?

17 MS. DAIN: Yes, your Honor.

18 THE COURT: Have you explained to Mr. Mixon the
19 charges contained in these three indictments, the possible
20 punishments and his rights, including his Constitutional
21 right to a jury trial?

22 MS. DAIN: Yes, your Honor.

23 THE COURT: In your opinion, does Mr. Mixon
24 understand the charges, the punishments, and his rights?

25 MS. DAIN: Yes, he does.

1 THE COURT: How does he indicate to you he
2 wishes to plead, guilty or not guilty?

3 MS. DAIN: Guilty.

4 THE COURT: Do you agree with his decision to
5 plead guilty?

6 MS. DAIN: Yes.

7 THE COURT: From your investigation of the facts
8 and circumstances surrounding these indictments, do you
9 feel that the State could produce sufficient evidence to
10 convince a jury here in Richland County of Mr. Mixon's
11 guilt beyond a reasonable doubt; that if he were to stand
12 trial on these charges, his conviction would be probable?

13 MS. DAIN: Yes.

14 THE COURT: Has Mr. Mixon been ordered to submit
15 to a mental examination to determine his competency to
16 stand trial?

17 MS. DAIN: No, your Honor.

18 THE COURT: Any question in your mind, Ms. Dain,
19 that Mr. Mixon is in fact competent to enter this guilty
20 plea?

21 MS. DAIN: I have no reservations.

22 THE COURT: All right. You are Charles Mixon;
23 is that correct?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Mixon, before I can accept your

1 plea of guilty, it's necessary for me to make sure that
2 you're making this plea freely and voluntarily. To do
3 that, sir, I need to ask you a series of questions.

4 At any point during my questioning of you, if
5 you do not understand anything that I say or any words
6 that I use, please stop me and I'll be more than happy to
7 repeat or explain anything I say, Mr. Mixon.

8 Additionally, I'll be more than happy to stop
9 this plea and allow you as much time as you feel you may
10 need to consult with your lawyer, Ms. Dain.

11 Do you understand, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: How old are you, Mr. Mixon?

14 THE DEFENDANT: Nineteen at the time, your
15 Honor.

16 THE COURT: Nineteen and what?

17 THE DEFENDANT: Nineteen at the time.

18 THE COURT: All right. How old are you now?

19 THE DEFENDANT: Nineteen.

20 THE COURT: Okay. How far did you go in school?

21 THE DEFENDANT: I got my GED.

22 THE COURT: All right. What kind of work do you
23 do?

24 THE DEFENDANT: Right now I'm unemployed, but I
25 used to work at fast food restaurants.

1 THE COURT: All right. Mr. Mixon, have you ever
2 been treated for the abuse of alcohol or drugs or for
3 mental illness?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you taken any medications,
6 drugs, or alcohol in the past 24 hours?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you today aware of any physical,
9 nervous, or emotional problems that might keep you from
10 understanding what you're doing?

11 THE DEFENDANT: No, sir.

12 THE COURT: You know what you're doing, Mr.
13 Mixon; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You agree, Ms. Dain, that Mr. Mixon
16 knows and understands and appreciates what he's doing here
17 today?

18 MS. DAIN: Yes, he does.

19 THE COURT: Now, Mr. Mixon, you heard your
20 lawyer, Ms. Dain, tell me that she has explained to you
21 the charges contained in these three indictments, the
22 possible punishments and your rights, including your
23 Constitutional right to a jury trial and that you
24 understand these things; is that correct?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Mr. Nixon, your first before me on
2 Indictment No. 2005-10334, State versus Charles Nixon.
3 This is an indictment for possession with intent to
4 distribute crack cocaine second offense.

5 Do you understand this charge, sir?

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: This indictment, Mr. Nixon, alleges
8 that you did here in Richland County on or about
9 November 15th of 2004, willingly, knowingly, and
10 unlawfully possess a quantity of crack cocaine with
11 intentions to distribute same.

12 Do you understand this allegation, sir?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: This is what you want to plead
15 guilty to?

16 THE DEFENDANT: No, sir, your Honor. It was
17 first offense.

18 THE COURT: I don't know what it was. I'm just
19 reading the indictment.

20 Was it first or second offense?

21 MR. LAKE: He has a prior drug conviction, your
22 Honor.

23 THE COURT: You have a prior drug conviction, so
24 any subsequent drug conviction would be a second offense,
25 Mr. Nixon.

1 Do you need a chance to talk to your lawyer
2 about this?

3 THE DEFENDANT: No, sir.

4 THE COURT: You sure about that?

5 THE DEFENDANT: Positive.

6 THE COURT: Well, do you understand that this is
7 a second offense and not first offense?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, you understand the charge,
10 possession with intent to distribute crack cocaine second
11 offense.

12 The allegations of this indictment, once again,
13 2005-10334, alleges that you did here in Richland County
14 on or about November 15th of 2004, possess with intent to
15 distribute a quantity of crack cocaine.

16 Now, you understand this allegation?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: This is what you want to plead
19 guilty to?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Realizing by pleading guilty to
22 possession with intent to distribute crack cocaine second
23 offense, Mr. Mixon, that you can go to jail for 30 years
24 and be fined -- I'm sorry, 25 years and be fined \$50,000.

25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Knowing, then, sir, that you can go
3 to prison for 25 years and be fined \$50,000 by pleading
4 guilty to this charge, do you still wish to plead guilty?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Next, Mr. Mixon, I have before me
7 Indictment 2005-10529, the State versus Charles Mixon.
8 This is an indictment for armed robbery.

9 Do you understand this charge?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: This indictment, Mr. Mixon, alleges
12 that you did here in Richland County on or about
13 November 13th of 2004, commit a robbery by feloniously
14 taking from the person or presence of Rob Santos, by means
15 of force or intimidation goods or monies of Rob Santos,
16 such goods or monies being described as United States
17 currency and an automobile, with the intent to deprive the
18 owner permanently of such property, while armed with a
19 pistol or other weapon.

20 I think you used a pistol, did you not?

21 THE DEFENDANT: I was there when the armed
22 robbery took place, but I didn't have a pistol in my
23 possession at the moment.

24 THE COURT: All right. But I'm sure Ms. Dain
25 explained to you that whether it was you with the gun or

1 one of your co-defendants, the hand of one is the hand of
2 them all.

3 Do you understand that, Mr. Mixon?

4 And based on the hand of one, hand of them all,
5 although you didn't have the gun, you participated in this
6 armed robbery so you're just as guilty. Do you understand
7 that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: On that basis, you want to enter a
10 plea of guilty to armed robbery; is that correct?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you realize that by doing so,
13 Mr. Mixon, that you could go to jail for 30 years?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Knowing then, sir, that you could go
16 to prison for 30 years by pleading guilty to armed
17 robbery, do you still wish to plead guilty to it?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Next, Mr. Mixon, I have before me
20 Indictment 2004-10569, the State versus Charles Mixon.
21 This is an indictment for murder.

22 Do you understand this charge?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: This indictment, Mr. Mixon, alleges
25 that you did here in Richland County on or about

1 November 14th, 2004, feloniously, willfully, and with
2 malice aforethought kill one Troy Grady by means of a
3 gunshot wound and that the said victim died as a proximate
4 result thereof.

5 Do you understand this allegation, sir?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: This is what you want to plead
8 guilty to?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you realize that by pleading
11 guilty to murder, Mr. Mixon, that you can go to jail for
12 no less than 30 years and up to life.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Knowing then, sir, that you can go
16 to prison for 30 years to life by pleading guilty to
17 murder, do you still wish to plead guilty.

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Now, Mr. Mixon, are you currently on
20 probation or parole for any prior offenses?

21 THE DEFENDANT: No, sir.

22 THE COURT: Mr. Mixon, I can run these sentences
23 on these three charges consecutively, that is put one
24 after the other or add one to the other, and if I did so,
25 you'd be looking at -- you'd be looking at, if I ran the

1 sentences consecutively on these three indictments, you're
2 looking at 85 years to life, which is one way of putting
3 it. You're exposed to 85 years if you receive 30 years on
4 the armed robbery, if you receive 30 years on the murder,
5 and if you receive the 25 years on the possession with
6 intent to distribute crack cocaine.

7 Now, do you understand all those?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: In any event, of course like murder
10 carries a life sentence. If I were to just sentence you,
11 which I could sentence you to life for murder, then these
12 other sentences wouldn't make that much different.

13 You understand all this, don't you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Understanding, then, sir, that you
18 could go to jail between 85 years to life by pleading
19 guilty to these three charges, do you still wish to plead
20 guilty, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, Mr. Mixon, when you plead
23 guilty, you have to give up certain basic rights.

24 First of all, you have to give up your right to
25 remain silent. Now, this is your right against

1 self-incrimination, Mr. Mixon; this is your right to say
2 nothing at all. No one can compel you to come into court
3 to provide evidence or to testify against yourself.

4 Do you understand this, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Secondly, Mr. Mixon, when you plead
7 guilty, you have to give up your right to a jury trial;
8 that is your right to have a jury here in Richland County
9 to decide whether or not you're guilty of these three
10 charges beyond a reasonable doubt. A jury would base its
11 decision on whatever evidence the State would introduce at
12 trial against you and also on whatever evidence you and
13 your lawyer, Ms. Dain, may wish to introduce.

14 Now I emphasize may wish to introduce,
15 Mr. Mixon, because in a trial you'd be presumed innocent,
16 would not have to prove anything, and you could not be
17 convicted unless the State convinced all twelve jurors of
18 your guilt beyond a reasonable doubt.

19 The jury's decision would have to be unanimous,
20 all 12 would have to agree that you had these drugs, that
21 you committed the armed robbery, and that you killed
22 Mr. Brady.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Now, thirdly, Mr. Mixon, when you

1 plead guilty, you give up your right to confront and to be
2 confronted by the witnesses against you; that is your
3 right to see, hear, and cross-examine any witnesses the
4 State may call to testify against you during a trial.

5 And, additionally, Mr. Nixon, by pleading guilty
6 you give up your right to subpoena and call witnesses on
7 your own behalf; that is someone who may testify for you.

8 Do you understand this, sir?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, Mr. Nixon, do you understand
11 these rights that I just read to you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand, sir, that when
14 you plead guilty you have to give up these Constitutional
15 rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, is that what you want to do?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: You want to give up your
20 Constitutional rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, you realize you will not
23 receive a jury trial on either of these three indictments
24 while pleading guilty?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Once again, Mr. Mixon, you're
2 pleading guilty to armed robbery. That carries a term of
3 30 years of imprisonment.

4 Whatever sentence I impose on you on the armed
5 robbery, you've got to do at least 85 percent before
6 you're eligible for parole. I'm sure your lawyer's
7 already told you that.

8 You're looking at 30 years, 25 years, and
9 \$50,000 on the possession with intent to distribute crack
10 cocaine second offense. That's also a violent, is it not,
11 85 percent; is that correct?

12 MR. LAKE: Correct, your Honor.

13 THE COURT: And, additionally, you're looking at
14 finally murder which carries no less than 30 and up to
15 life in prison.

16 You understand, Mr. Mixon, when I say life, life
17 means life. Do you understand that? If I gave you life
18 in prison, then you will die in jail. Do you understand
19 that? That's what it means.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, Ms. Dain, I'm assuming that
22 you've explained this to him and he understands; is that
23 correct?

24 MS. DAIN: Yes, your Honor.

25 THE COURT: Now, you're giving up all your

1 Constitutional rights, Mr. Mixon.

2 Considering what I just said to you, the time
3 you're facing, the life sentence and all this, I will ask
4 you once again, how do you wish to plead to these charges,
5 guilty or not guilty?

6 THE DEFENDANT: Guilty, your Honor.

7 THE COURT: Do you realize, Mr. Mixon, that when
8 you plead guilty, you admit the truth of the allegations
9 contained in these three indictments against you.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You're telling me that everything I
13 read to you about these three indictments, that's what you
14 did and it's true.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I tell you that, Mr. Mixon, because
18 you may have some defenses to these charges. Of course, I
19 have no way of knowing that. But you need to realize that
20 by pleading guilty here today, you give up any defenses
21 you might have.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Also, Mr. Mixon, I tell you that
25 because when you were arrested by the Richland County

1 Sheriff's office as well as the Forest Acres Police
2 Department, you may have given some type of incriminating
3 statements; that is made some admissions or confessions
4 about your guilt. You need to realize that by pleading
5 guilty here today you waive your right to later on
6 challenge or contest that you gave any statements, whether
7 or not those statements were taken or obtained from you
8 freely and voluntarily in accordance with your
9 Constitutional rights.

10 Do you understand this?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, Mr. Mixon, I will ask you once
13 again, did you commit these offenses?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: So, once again, Mr. Mixon, you're
16 telling me you're pleading guilty to Indictment No.
17 2004-10569, murder, because you did in fact here in
18 Richland County on or about November 14th of 2004,
19 feloniously and willfully and with malice aforethought
20 kill one Troy Brady by means of a gunshot wound and he
21 died as a result of that gunshot wound. You're pleading
22 guilty because this is what you did and that's what
23 happened. Is this correct?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: All right. And once again,

1 Mr. Mixon, as to Indictment 2005-10334, possession with
2 intent to distribute crack cocaine second offense, once
3 again you're telling me you're pleading guilty to this
4 indictment, are you not, sir, because you did in fact here
5 in Richland County on or about November 15th of 2004,
6 possess with intent to distribute a quantity of crack
7 cocaine.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: You're pleading guilty, Mr. Mixon,
10 because you had the crack cocaine; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And, finally, Mr. Mixon, in
13 connection with Indictment 2005-10529, armed robbery,
14 you're telling me you're pleading guilty to this charge
15 once again, are you not, because did in fact here in
16 Richland County on or about November 13th, 2004, commit
17 robbery along with some other people apparently by
18 feloniously taking from the person or presence of Rob
19 Santos, by means of force or intimidation goods and money
20 from Ron Santos, those goods and money being described as
21 United States currency and an automobile, with the intent
22 to deprive the owner permanently of such property, while
23 you or someone else with you was armed with a gun.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You're pleading guilty to armed

1 robbery because you are guilty of armed robbery, certainly
2 under the theory of the hand of one is the hand of all; is
3 that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And have there been any plea
6 negotiations?

7 MR. LAKE: Your Honor, just dismissal of the
8 possession of a stolen vehicle charge and a simple
9 possession of marijuana charge.

10 THE COURT: Anything additional, Ms. Dain, that
11 needs to be added to the record in connection with any
12 plea negotiations or any recommendations?

13 MS. DAIN: Perhaps I just misunderstood the
14 Solicitor. It was my understanding PWID. What is the
15 status of the PWID?

16 MR. LAKE: The other remaining charges will be
17 dismissed. Any additional charges will be dismissed, yes,
18 sir.

19 THE COURT: All right. Let's make sure we're
20 clear.

21 I know you mentioned something about a --

22 MR. LAKE: Possession of a stolen motor vehicle
23 and a drug charge, an additional drug charge that he had.

24 I will just state for the record, any additional
25 charges out there will be dismissed; that the State will

1 not pursue any additional charges against him.

2 THE COURT: Okay.

3 MS. DAIN: Yes, your Honor.

4 THE COURT: All right. I just want to make sure
5 we're all clear.

6 So this is a global plea. Whatever other
7 offenses you may have committed that are known about are
8 being dismissed pursuant to this plea.

9 MR. LAKE: Correct.

10 THE COURT: Now, of course, if there's something
11 else out there you don't know about, you can't dismiss
12 what you don't know about.

13 Do you understand that, Mr. Nixon?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, understanding all that, do you
16 still wish to continue to plead guilty, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, Mr. Nixon, has anyone promised
19 you anything or has anyone held out any hope of reward in
20 order to get you to plead guilty?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Has anyone threatened you or used
23 force to get you to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anyone used any pressure or

1 intimidation to cause you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you had enough time to make up
4 your mind as to whether or not you want to plead guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you pleading guilty of your own
7 freewill and accord?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Now, Mr. Mixon, are you satisfied
10 with the manner in which your lawyer here, Ms. Dain, has
11 advised and represented you on these charges?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Have you talked with her for as long
14 and as often as you feel it necessary for her to properly
15 represent you?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you need any more time to talk to
18 her?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Have you understood your talks with
21 her?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Mixon, has Ms. Dain done
24 everything for you you feel she should do or could do on
25 your behalf in advising and representing you on these

1 charges?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has she done anything that you feel
4 she should not have done?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Are you completely satisfied with
7 her services?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, Mr. Mixon, do you have any
10 complaints against anyone at the Forest Acres Police
11 department or the Richland County Sheriff's Department?

12 THE DEFENDANT: No, sir.

13 THE COURT: Any complaints against anyone
14 working here in the Solicitor's office?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Have you understood my questions?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything you want to ask me
19 about what I just discussed with you, anything at all?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: You realize, Mr. Mixon, that you
22 have a right to appeal this guilty plea and whatever
23 sentence I may impose upon you, but if you're going to
24 appeal, you need to file a notice of intent to appeal
25 within ten days of today's date.

1 Do you understand that, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Also, Mr. Mixon, once you're in the
4 Department of Corrections, if you later on find out that
5 you have some complaints against the Forest Acres Police
6 Department, against the Richland County Sheriff's
7 Department, against the Solicitor's office, against
8 Ms. Dain, or anybody else involved in your case, you need
9 to make those complaints known by filing a post-conviction
10 relief application within one year of today's date.

11 Do you understand this, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Very well. Solicitor.

14 MR. LAKE: Thank you, your Honor.

15 The first incident occurred on November 13th,
16 2004, at 10:15 p.m. at 7501 Brookfield Road here in
17 Richland County. Mr. Santos in that particular case, your
18 Honor, was exiting his vehicle in a parking lot of an
19 apartment complex when this defendant along with a
20 co-defendant, a Charles Jackson, approached him. They
21 produced a handgun, demanded his money and his vehicle.
22 They did receive \$20 along with the 1992 Mazda 323, tag
23 No. 547 SBJ. They did take the car and the money and then
24 fled the scene.

25 He did provide a description of the individuals

1 as wearing certain clothing along with a black hooded
2 sweatshirt. Your Honor, this clothing would be identified
3 later on by the victim as being the clothing of the
4 individuals that they were wearing that particular night.

5 Both defendants also provided written
6 confessions to this particular case. Both of them in
7 their statements claimed that the other person is the one
8 that had the gun.

9 Your Honor, just shortly after stealing the car,
10 that particular vehicle, there's one thing that was wrong
11 with Mr. Santos's car, that it kept stalling.
12 Particularly later on that night, some time just shortly
13 after 12, that vehicle would stall out on the roadway.

14 As it stalled out in the roadway, they came into
15 contact with the second victim in this particular case,
16 your Honor, which is a Troy Brady. Mr. Brady knew
17 Mr. Jackson, had come into contact with him and saw that
18 the vehicle had basically become disabled, and this was at
19 the 100 block of Partridge Drive. This would be in the
20 early morning hours of November 14th, 2004.

21 Mr. Brady actually assisted them in actually
22 taking and pushing the vehicle out of the roadway since it
23 stopped.

24 At that point, your Honor, I think Mr. Brady
25 also provided Mr. Jackson here, I'm sorry, Mr. Mixon here

1 with a beer I think that Mr. Brady actually had. I think
2 he may have drank a beer.

3 At some point, your Honor, Mr. Jackson and
4 Mr. Mixon leave the scene. And for some reason, it's not
5 necessarily clear as to why it happened, but at some point
6 Mr. Mixon just turned around and he shot Mr. Brady in the
7 chest where he actually died in the roadway that
8 particular evening in the early morning hours.

9 Police were called to the scene and did come out
10 there and investigate this incident. There were a number
11 of witnesses as to the number of shots that were fired out
12 there at the scene, your Honor.

13 There's an investigation that continued on for a
14 number of days. They actually got a tip from someone who
15 was actually in jail indicating that they knew the
16 possible individuals that admitted to the shooting of
17 Mr. Brady.

18 They actually made contact with the co-defendant
19 in this case, a Charles Jackson, who's in the Alvin S.
20 Glenn Detention Center at the time. They made contact
21 with him.

22 He did provide a written statement at that
23 particular time. He did admit to being at the scene when
24 this incident occurred. He indicated at that time that he
25 was just shortly ahead of Mr. Brady when Mr. Mixon just

1 turned around and actually shot him. They actually fled
2 the scene just shortly after that.

3 Based upon that information, your Honor, law
4 enforcement did seek Mr. Mixon. They searched for him for
5 awhile. When he was actually found, your Honor, he was
6 actually found, I guess, hiding in a trash dumpster.

7 He was secured after they were trying to track
8 him down.

9 He did provide a written statement, your Honor.
10 In his first statement, I think he initially denied any
11 involvement in this incident and then blamed the
12 co-defendant in this particular case and I think
13 eventually in that third statement he did admit to
14 actually firing the weapon and killing Mr. Brady, and as I
15 indicated, he died as a result of a gunshot wound to the
16 chest.

17 In between that time, between when this incident
18 occurred, the armed robbery and the murder, your Honor, he
19 was still out and he was still free before he was arrested
20 for the murder, and on November 15th, 2004, he was outside
21 a known what's considered to be a crack house, your Honor.
22 Officers with the Richland County Sheriff's Department
23 approached him here in Richland County; they made contact
24 with him and did tell me there was a strong odor of
25 marijuana.

1 They obtained consent, verbal consent to search
2 his person, and this happened at 5313 Fairfield Road,
3 Building 18. He gave consent to search his person and
4 found on his person was a small bag containing a quantity
5 of a yellowish-white rocklike type substance which did
6 field test positive for cocaine. It had been broken into
7 several different pieces, your Honor. The analysis came
8 back on that at 1.09 grams, your Honor.

9 He has been incarcerated since the time of this
10 incident.

11 Just recordwise, your Honor, he has a public
12 disorderly conduct in 2004; a possession of marijuana in
13 2004, your Honor.

14 Also at the appropriate time, your Honor, the
15 victims would like to basically give you their impact
16 information.

17 THE COURT: All right, sir.

18 Now, Mr. Mixon, Ms. Dain, you've heard what the
19 Solicitor just told me. Is that substantially accurate
20 how it all happened? Is that a fair statement, Mr. Mixon?

21 THE DEFENDANT: Not 100 percent, your Honor.

22 THE COURT: All right. You know, just tell me
23 how it's different.

24 THE DEFENDANT: On the night when it first went
25 down, the armed robbery, your Honor, Charles Jackson had

1 possession of the firearm at first, your Honor. And when
2 he took Mr. Santos car I drove off in the other car and he
3 was firing shots in the neighborhood. Also, it was in the
4 report that they heard shots fired then. That's when I
5 came upon the gun and I had taken it from him, your Honor.

6 And the car broke down when he was taking me
7 home, your Honor. And this was another time when we had
8 got back together later on that night he was taking me
9 home and the car broke down, your Honor. And that's when
10 Mr. Troy Brady came along.

11 I had known Mr. Troy Brady for quite sometime
12 now. A couple of times we ran into each other down there
13 at the Richland County jail and unfortunately on the
14 streets a couple of times he had came to me and purchased
15 small amounts of crack cocaine, your Honor. And also I
16 have been with him at times, for a couple of drinks on
17 special occasions also, your Honor.

18 And the night that the murder went down, your
19 Honor, I didn't intend on killing Mr. Brady, your Honor.
20 It was truly an accident, your Honor.

21 THE COURT: Wait a minute now. You shot him in
22 the chest; is that correct?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And you're saying it was an
25 accident? Is that what you're telling me?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Well, we've got a problem then.

3 THE DEFENDANT: I wasn't intending on the gun to
4 go off.

5 THE COURT: Let me ask you this. Let me
6 simplify it.

7 Whether you intend to kill him or not is not the
8 question I'm asking. Did you intend to shoot him is what
9 I'm asking.

10 MS. DAIN: May I speak with my client?

11 THE COURT: Yes, ma'am, please do.

12 Do you need any more time?

13 MS. DAIN: No, your Honor.

14 THE COURT: You may continue, Mr. Mixon.

15 THE DEFENDANT: Your Honor, I want to rephrase
16 that.

17 It's not that I didn't mean to shoot him. I
18 shot at him, your Honor, but I wasn't trying to kill him.

19 THE COURT: How close were you to him when you
20 fired the shot?

21 THE DEFENDANT: I would say probably from around
22 to approximately where the chair is.

23 THE COURT: Where now, that black chair?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What, five or six feet?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Anything else different
3 than what the Solicitor told me you'd like to add or take
4 away?

5 THE DEFENDANT: No, sir, your Honor.

6 THE COURT: You sure about that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Now, Ms. Dain, you agree
9 with all this?

10 MS. DAIN: Yes, your Honor.

11 THE COURT: Very well. I find that there is a
12 substantial factual basis for your plea, Mr. Mixon. I
13 further find your decision to plead guilty to be freely,
14 voluntarily, knowingly, and intelligently made; that
15 you've had the advice of competent counsel with whom you
16 indicate you're completely satisfied with; therefore, I
17 accept this plea.

18 Solicitor, I'll be happy to hear any additional
19 matters from the State at this time.

20 MR. LAKE: Your Honor, at this time there are
21 several victims who would like to give their impact.

22 With us is Molly Brady, the mother of Troy
23 Brady. Also Mike Brady, the father of Troy Brady, would
24 like to address this Court. And Lynn Pope, the sister of
25 Mr. Brady, would like to address this Court.

1 THE COURT: Mrs. Brady, it's unfortunate that I
2 see you again under more troubled circumstances than I did
3 the last time.

4 MRS. BRADY: Thank you, your Honor.

5 I am the mother of two, but one of them is
6 deceased. I had a son, but now he's dead, shot through
7 the heart and his body left in the road like a dog.
8 People pull dead animals out of the road, but my son's
9 body laid there for over an hour before anyone noticed it.

10 The police were called, the ambulance was
11 called, the fire truck was called, but of course it was
12 too late to revive him, so late that even his wish of his
13 donating organs was denied, something he had discussed
14 with me.

15 It feels like it happened just yesterday, so it
16 surprises me to realize that it was a year ago yesterday
17 on November 14th, 2004 that my son was murdered. So here
18 I now stand speaking for my son because he can't speak for
19 himself, making a victim's impact statement.

20 And impact is a good word for it because his
21 death was a blow to my heart, a shock that has altered my
22 life and the lives of my daughter and grandson forever.

23 The least of it is that he lived with me his
24 entire life and I depended on him for physical and
25 financial help, tasks and money that he was happy to share

1 with me because he was loving and he was decent and he was
2 generous with himself and his possessions. The least of
3 it is that I struggled for seven months without his income
4 and then I lost my home because I could no longer afford
5 it.

6 The least of it is that I had to move in with my
7 daughter because I couldn't meet my obligations without
8 any son's help.

9 The least of it is that my already poor health
10 has been further compromised.

11 The least of it is that I have been in grief
12 therapy for ten months learning to cope with the awful
13 circumstances of his death, and I think I'm just now to
14 the point where I hope to discontinue the therapy.

15 The least of it is that I will never again feel
16 safe and sound or secure.

17 And what is the worst of it? Some days it's
18 when I can't stop crying because I miss him so much. Some
19 days it's the pain of looking at his picture and knowing
20 that that's the only way I will ever see him. Some days I
21 just sit in my rocking chair in my bedroom and I stare at
22 the marble box that holds his ashes.

23 Every day it is the misery of his absence,
24 sometimes missing him so much that it causes my chest to
25 hurt and my throat to close up and tears to pop out of my

1 eyes.

2 Every day it is knowing he suffered an
3 undeserved and violent death because someone shot a bullet
4 through his heart.

5 Every day it is knowing that his beloved sister
6 is now an only child.

7 Every day it is knowing that the young nephew he
8 adored will eventually not remember him.

9 Every day it is wanting so much to hug him and
10 tell him I love him one more time. He hugged me a lot,
11 and I miss that.

12 He was a kind and thoughtful son and he wasn't
13 too proud to do whatever he could to help me. He
14 appreciated his home and he loved me and he showed it in
15 100 different ways. Because I have heart disease he did
16 all the cleaning and housework, vacuuming, cleaning the
17 bathroom, mopping the kitchen floor. He carried the
18 groceries in and the garbage out. He didn't mind doing
19 these things, and he did his best to take care of me. How
20 does one measure the loss of a son like that? How does
21 one get used to not seeing him ever again?

22 He had a good personality, a lot of friends, and
23 a rich sense of humor. He loved to dance, he loved to
24 play cards and board games and shoot a game of pool.

25 He loved to swim, and he once saved the life of

1 a young African-American boy who was drowning in a riptide
2 at the Isle of Palms. He loved to dive and once won
3 second place in a city diving championship.

4 He loved to write poetry and sometimes surprised
5 me with a poem placed where I could find it in the
6 morning.

7 He loved to make me laugh by telling bad jokes
8 or making stupid faces. He was my daily companion and I
9 enjoyed sharing my life with him. He was vital and alive
10 and now he's dead.

11 So what is the impact of the loss of a child?
12 Knowing he's gone forever is a wretched thing. It wasn't
13 his time to go. Only God can give life and only God
14 should take it away. He didn't deserve to have his
15 precious life stolen from him. And when he died, a lot of
16 my life died, too. His death was so horrible and ghastly
17 and completely atrocious that I struggle to describe this
18 misery. It can probably only be understood by someone
19 else who's had to pack up and put away her son's clothes
20 and possessions creating an empty room out of a place that
21 was once alive with his books and music and his records.

22 I have lost my sweet son and I'll miss him every
23 day, every minute of every day for the rest of my life.
24 And even if his murderer is sorry for what he did, death
25 is final and irreversible and nothing can bring my son

1 back, and that's why Charles Mixon should pay the maximum
2 penalty for killing him, because he stole his life and it
3 can never be returned.

4 He encountered my son and asked for help and
5 needed a car and my son gave him that help. My son helped
6 him. Charles Mixon took his help and then he took his
7 life for absolutely no reason. My son didn't deserve to
8 die that way; nobody does.

9 I will always remember Charles Mixon's name and
10 may he never forget my sweet son's name, Michael Troy
11 Brady.

12 Thank you, your Honor.

13 THE COURT: Thank you, ma'am.

14 MS. POPE: I've been thinking about what I
15 wanted to say for a long time. And we've had about a year
16 to think about it, to ponder it, to think about the
17 impact, and my mother certainly covered a lot of those
18 areas that I thought about over and over and over and over
19 in my mind.

20 The thing about murder is, it has a rippling
21 effect. You hear about people getting murdered and killed
22 all the time, but, you know, Troy was killed, he was
23 murdered, but, you know, it just wasn't like this, the
24 emotions.

25 You know, I lost my brother, my son lost his

1 uncle, my mother lost her son, my father lost his
2 firstborn son, my friends lost him, and loss changes
3 people.

4 And I can tell you, my mother's changed and I'm
5 changed. And we'll never have another Troy, I'll never
6 have another sibling. He was taken from us very brutally.
7 He died without a chance to say anything to him, no last
8 prayers, no last words spoken, just a very abrupt, sad
9 ending.

10 And I have to say what my mother said, Troy had
11 a really good forgiving and generous heart and we were
12 very, very close and he adored me. He was my protector.
13 He was the typical big brother. He took me to places and
14 introduced me to fun things like bands and hanging out at
15 the lake. He was older and he really took a lot of pride
16 and joy in doing that for me. And I felt safe with him by
17 my side. He was a large man and he didn't fear anything.
18 That's probably why he helped these kids with the car.
19 But in the end, his big size couldn't help him.

20 But what I want to say is that Troy had a fun
21 spirit and a willingness to do anything. And he was very,
22 very good to my mother and to me. And when he died, a
23 huge part of her died, a huge part of my life died because
24 we were very, very close as a family.

25 And most people don't understand this, but I did

1 take a very unusual pleasure at being the person who got
2 to clean up his room after he died because he wouldn't
3 want anybody else to do it and he would trust me to take
4 care of his things. I was the one who packed up the ten
5 bags of clothing to take to Oliver Gospel Mission and I
6 was the one who went through every single item in every
7 single drawer in his room to categorize his life in neat
8 little boxes.

9 I was the one who helped with the funeral
10 arrangements and buying flowers and making sure the bills
11 were paid and food was bought and I called every friend I
12 could find of his to explain the horrific circumstances
13 for when he died.

14 I'm the one who contacted all the out-of-town
15 family and I made the drive alone to Columbia after I got
16 the call at 5:50 in the morning on that Sunday morning and
17 I was the first one to see him dead lying on the gurney at
18 Dunbar Funeral Home. But it wasn't until I saw him in the
19 little box sitting in my mother's apartment that I really
20 realized that he was gone and the only thing left of Troy
21 Brady was this box with his ashes and a few containers of
22 his personal effects.

23 And the reality of being alone and not having my
24 brother here, it's just undescrivable. And you can't
25 explain it to somebody who hasn't felt it and been there.

1 But the direct impact is that I eventually moved
2 back to Columbia and asked my mother to move in with me
3 because she needed me and I needed her. But I have no
4 brother and I have no one for my son.

5 You know, I planned for my brother to teach my
6 son how to dive and had all these plans, but all the plans
7 are gone and done, done and over.

8 He was sweet, he was protective, he was good.
9 And I have to say that I hope one day that I can open my
10 heart to forgiveness because I want to do that, and I hope
11 that that -- I just want my brother to be remembered and I
12 don't want him to, you know, just be forgotten after the
13 trial's over. I want him to be remembered for the good
14 person he is, and he was a beloved son, uncle, grandson,
15 and nephew and brother.

16 And I ask respectfully for the Court to give him
17 what he deserves, the full whatever you have, give him the
18 full sentencing for him. He deserves it. I don't see
19 where any lenience should be given. It was just pointless
20 and heartless. And that's all I can say.

21 Thank you.

22 THE COURT: Thank you.

23 MR. LAKE: In conclusion -- one second, your
24 Honor. He may not be able to address the Court.

25 MR. BRADY: They've said everything that I

1 think. Excuse me.

2 MR. LAKE: Thank you, your Honor. That's all
3 from the State.

4 THE COURT: All right. Ms. Dain, be happy to
5 hear from you.

6 MS. DAIN: Thank you, your Honor.

7 My client, Mr. Mixon, is 19 years old now. He
8 was 18 years old at the time that this happened.

9 As he told the Court, he has a GED and he is a
10 South Carolina native.

11 Your Honor, this is such a tragic set of
12 circumstances, certainly most for Mr. Troy Brady and also
13 for my client, and the ripple effect that Mr. Brady's
14 sister spoke of extends to both of their families. It's a
15 very difficult situation.

16 As my client stated, he and Mr. Brady were
17 casual friends. They knew each other on several
18 occasions. They got together and partied together.
19 They'd seen each other earlier that evening and had
20 somewhat of a -- what friends seem to do better than
21 anyone else, except perhaps family, were occasionally
22 annoying to each other, and that's the circumstances that
23 sparked this when they met later that day.

24 Your Honor, I've met with my client on numerous
25 occasions, and one of the things that I found very

1 shocking to me when I started doing criminal defense is
2 the constant parade of defendants that come through here
3 and don't seem to be concerned with what they do or the
4 ramifications of what they have done. But my client is
5 not one of those people. He is very remorseful of what's
6 happened. He's even talked to me about how things would
7 be if the roles were reversed and what his mother would be
8 going through, which is what Ms. Brady and her family are
9 going through now. He's very, very sorry, but
10 unfortunately, there is no way he can take this back.

11 He's always been very courteous and respectful
12 to me and I can only describe him as a kind individual in
13 all the times that I've had to meet with him.

14 He didn't intend to kill Mr. Brady, but he was
15 in a drug-induced state that night, he had a gun, and
16 drugs and guns do not mix, and he just didn't have any
17 regard at the time for the consequences that would ensue.
18 And I do believe that he realizes now what a tragic end
19 this life-style has brought on himself and on Mr. Brady
20 and their families.

21 If he could do it all over again, I'm sure that
22 things would change as we all do when we look back in
23 hindsight. But I do really believe, based on what he's
24 also told me, that that is not just because of the
25 personal consequences to him but because of what's

1 happened to Mr. Brady and what obviously continues to
2 happen to their respective families.

3 He's here today to take responsibility for what
4 he's done and, your Honor, at a minimum in the sentence
5 that will be given to him for what he's pleading to, he
6 will forfeit his twenties, his thirties, and his forties,
7 not just most of the time but the whole thing, and I don't
8 see how anyone can look at that and say that that is a
9 lenient sentence.

10 One of the things my client approached me about,
11 that I was not even aware of again checking into based on
12 his inquiry, is that he contributes much of what has taken
13 him to where he is in his life and what brought about
14 these circumstances was being involved in gang activity.
15 He tells me that even though he knows he's going to be in
16 jail, that he has to try and find some way to get away
17 from that because that may even be more difficult to do
18 when you're incarcerated than when you're not. He will
19 be, if not the first, then one of the first individuals to
20 participate in a new program that begins at the first of
21 the year put on by the DOC to help people such as my
22 client disguise their past gang affiliations and move
23 beyond that so they can exist in an incarcerated
24 environment without having to deal with the ramifications
25 of that still.

1 Your Honor, I think in handing out a sentence
2 for Mr. Mixon it would be very easy for you to do that if
3 he was a monster, but he's not. There's something in him
4 worth saving and I ask you to consider that when you
5 sentence him.

6 THE COURT: Thank you, Ms. Dain.

7 Anything you would like to tell me, Mr. Mixon?

8 THE DEFENDANT: I would like speak with the
9 victim's family, your Honor. I would like to say how very
10 sorry I am for the crime that I have committed, your
11 Honor, and that it was not intentional at all, your Honor.
12 And I know that I can't bring him back, but if I could I
13 would do anything to, your Honor, and I pray that they'll
14 overcome this.

15 THE COURT: Thank you.

16 Anything further from the defense? Very well.

17 MS. DAIN: Your Honor, I believe his mother
18 would like to address the Court.

19 THE COURT: Yes, ma'am, I'll be happy to hear
20 from you. Tell me your name, please.

21 MS. JONES: Monica Jones.

22 THE COURT: Ms. Jones.

23 MS. JONES: My son is not a monster. We've done
24 everything to help him in our power.

25 I didn't know at the time that he was using

1 drugs, your Honor. I did come to find out that he did
2 know this guy.

3 I just don't know, my son has always been such a
4 good boy, always had such manners. I just never imagined
5 something like this would ever happen, your Honor. I love
6 him so much.

7 Just a few years ago, we were down on our luck.
8 I was by myself, was a single mother, single parent, and
9 my son and my daughter here, they were in school and we
10 had to move into these apartments, that I couldn't afford
11 anything else. My son and my daughter, they had to walk
12 to school and every day they would walk home from school
13 through this little path and the kids would just beat them
14 up every day, your Honor, every day, and then I'd have to
15 go and walk them myself. He eventually learned how to
16 fight for himself and he's just been fighting every since,
17 your Honor. He joined a gang for protection. I'm not
18 saying that he should have done that, your Honor. Every
19 time I'd go and try and get help for these kids, they
20 would make up excuses for them.

21 Your Honor, I'm asking you to have mercy on him
22 where he could start over somewhere along his life. He
23 realizes he did that, what has happened because of the
24 drugs and the gangs, and I'm asking you to have mercy on
25 my son. We love him so much, your Honor. We love him so

1 much.

2 THE COURT: All right. Thank you, ma'am.

3 Is there anything further?

4 MS. MIXON: May I say something?

5 THE COURT: Yes, ma'am. You need to tell me,
6 your name, please.

7 THE DEFENDANT: My name is Natalia Mixon and
8 that's my brother.

9 I would like to first start by saying he's my
10 oldest brother and we have been through a lot together and
11 it hurts me. And I have a baby brother that I watch over
12 all the time because I don't want anything to happen to
13 him.

14 My brother is a very good person and he always
15 taught me right from wrong. He would always help me with
16 my homework and he's very smart and everybody loves him.
17 He has manners. And it hurts me because when I go to the
18 mailbox and I see my name from Charles Mixon and I have
19 over two boxes of letters from him just telling me how
20 sorry he is. And he's unemployed and it's just hard on
21 him because he just felt like he had to prove his point to
22 people to show that he wasn't a crook.

23 My brother is a really great person. I hate
24 being here, but I want to support my brother, just like he
25 supported me through everything. And even though we

1 weren't in school together and he didn't have to walk with
2 me any longer, he would meet me just so I wouldn't have to
3 go through the criminals like we did together and get
4 beaten up, the picking, the name calling, the throwing of
5 rocks, and talking about our momma and everything. We
6 didn't have no car. We used to walk from one end to
7 another.

8 I love my brother and please have mercy on him.

9 THE COURT: Anything further?

10 MS. DAIN: No, your Honor.

11 THE COURT: Very well.

12 On Indictment No. 2005-10334, the State versus
13 Charles Mixon, this is an indictment for possession with
14 intent to distribute crack cocaine second offense, you're
15 sentenced to 25 years.

16 On Indictment No. 2005-10529, State versus
17 Charles Mixon, armed robbery, you're sentenced to 30
18 years.

19 On Indictment No. 2004-10569, the State versus
20 Charles Mixon, the sentence of the Court is that you,
21 Charles Mixon, be committed to the South Carolina
22 Department of Corrections for a period of 45 years.

23 These sentences are to run concurrent each with
24 one another.

25 Do you know how much time you have to do,

1 Mr. Nixon?

2 Let me say this to both of you, especially to
3 the victims. You know, you can hardly have justice
4 without some idea including some sort of redemption or
5 hope for redemption. And I say that to explain to you why
6 I gave him the sentence I did. And at the same time, I
7 say that to you all to explain why I gave him the sentence
8 that I did.

9 There is some hope that some day maybe he can
10 walk out, but this is a terrible tragedy for everybody
11 involved as we all can see. There's no sentence that I
12 can impose upon him that will bring back Mr. Brady, but
13 there's got to be room left on everybody's part for some
14 sort of redemptive reflection and prayer and forgiveness.
15 So I wish you all the very best. That's the sentence that
16 I've decided on. I think it's a fair one.

17 Good luck to everyone.

18 MR. LAKE: Thank you, your Honor.

19 MS. DAIN: Thank you, your Honor.

20

21 (The proceedings were concluded.)

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

23

24

25

STATE OF SOUTH CAROLINA

County of RICHLAND

In the Court of Common Pleas

CHARLES X. MIXON SCDC # 312475
Full name and prison number (if any) of Applicant.

vs.

STATE OF SOUTH CAROLINA
Name of Respondent.APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

- Place of detention LIEBER CORRECTIONAL INSTITUTION, P.O. Box 205
RIDGEVILLE, SC. 29472
- Name and location of Court which imposed sentence RICHLAND COUNTY JUDICIAL CENTER IN THE
COURT OF GENERAL SESSIONS 1701 MAIN STREET COLUMBIA, S.C. 29201
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 05-GS-40-10334 / PRINTED CRACK COCAINE 2ND OFFENSE
 - 05-GS-40-10529 / ARMED ROBBERY
 - 04-GS-40-10569 / MURDER
- The date upon which sentence was imposed and the terms of the sentence:
 - NOVEMBER 15, 2005 / 25 YEARS CONCURRENT TO ALL OTHER SENTENCES LISTED
 - NOVEMBER 15, 2005 / 30 YEARS CONCURRENT TO ALL OTHER SENTENCES LISTED
 - NOVEMBER 15, 2005 / 45 YEARS CONCURRENT TO ALL OTHER SENTENCES LISTED

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?
No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

STATE OF SOUTH CAROLINA

County of RICHLAND

VERIFICATION

I, CHARLES X. MIXON # 312475, 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.

Charles Mixon #312475

SWORN to and subscribed before me this 15th

day of April, 18 2009

Dorinda F. Walker (L.S.)
Notary Public

My Commission Expires: 4/4/2011

RICHLAND COUNTY
FILED
2009 JUN 12 PM 12:38
JEANETTE W. HARRIS
C.C.P. & G.S.

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

I, Charles Mixon Acde # 312475, 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 therefor.

Charles Mixon
Applicant

SWORN or affirmed to and subscribed before me this

15th day of April, 18 2009

Dorinda F. Walker
Notary Public

...ATTACHED...(10) INEFFECTIVE ASSISTANCE OF COUNSEL

TO PREVAIL IN THIS ACTION APPLICANT MUST SATISFY THE TWO PRONG TEST OF STRICKLAND VS. WASHINGTON, 466 U.S. 668 1984, (1) THAT COUNSEL'S ADVICE WAS NOT WITHIN THE RANGE OF COMPETENCE DEMANDED OF ATTORNEYS IN CRIMINAL CASES; AND (2) THAT THERE IS A REASONABLE PROBABILITY THAT, EXCEPT FOR COUNSEL'S ERRORS, HE WOULD NOT HAVE PLED GUILTY BUT WOULD HAVE INSISTED UPON A TRIAL.

IN HILL VS. LOCKHART, 474 U.S. 52 (1985), THIS TEST WAS HELD APPLICABLE TO GUILTY PLEA CHALLENGES BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL.

GROUND ONE: PRONG ONE

COUNSEL WAS INEFFECTIVE BECAUSE COUNSEL FAILED TO INFORM APPLICANT OF HIS RIGHT TO APPEAL HIS CONVICTION AND/OR PLEA. THE COURT HAS HELD THAT "TRIAL COUNSEL IS REQUIRED TO MAKE CERTAIN DEFENDANT IS MADE FULLY AWARE OF HIS APPEAL RIGHTS." SMITH VS. STATE, 309 S.C. 415, 424 S.E. 2d 400 (1992).

PRONG TWO:

IF COUNSEL WOULD HAVE FULLY MADE APPLICANT AWARE OF HIS APPEAL RIGHTS AS REQUIRED BY LAW, APPLICANT WOULD HAVE FILED A DIRECT APPEAL OF HIS CONVICTION AND/OR PLEA TO THE SOUTH CAROLINA SUPREME COURT.

GROUND TWO: PRONG ONE:

COUNSEL WAS INEFFECTIVE BECAUSE COUNSEL ADVISED APPLICANT TO PLEAD GUILTY TO THE CHARGE OF P.W.I.D. CRACK COCAINE 2ND OFFENSE, WHEN IN FACT WHEN APPLICANT HAS NEVER BEEN CHARGED TO ~~BE~~ BE CONVICTED OR PLEAD TO A P.W.I.D. CRACK COCAINE 1ST OFFENSE PRIOR TO THIS CHARGE.

BY COUNSEL ADVISING APPLICANT TO PLEAD GUILTY TO P.W.I.D. CRACK COCAINE 2ND OFFENSE UNDER THE BELIEF THAT IT WAS THE CORRECT DESIGNATION OF THE CHARGE BY LAW, FALLS WELL BELOW THE LEVEL OF COMPETENCE REASONABLY EXPECTED OF ATTORNEYS IN CRIMINAL CASES.

PRONG TWO:

THE EVIDENCE IS UNCONTROVERTED THAT APPLICANT ENTERED HIS GUILTY PLEA TO THE CHARGE OF P.W.I.D. CRACK COCAINE 2ND OFFENSE UNDER THE BELIEF THAT HIS COUNSEL HAD ~~BEEN~~ CORRECTLY AND PROPERLY INFORMED HIM OF ALL THE FACTS AND CONSEQUENCES AS WELL AS THE LAW INVOLVED SURROUNDING APPLICANT'S GUILTY PLEA.

IF ~~BE~~ APPLICANT WOULD HAD BEEN CORRECTLY AND PROPERLY INFORMED BY HIS COUNSEL, THAT IN ORDER TO BE CHARGED, AND ALSO PLEAD GUILTY TO THE CHARGE OF P.W.I.D. CRACK COCAINE 2ND OFFENSE, HE MUST HAVE PREVIOUSLY BEEN CONVICTED OR PLEADED GUILTY TO THE CHARGE OF P.W.I.D. CRACK COCAINE 1ST OFFENSE. HAD HE KNOWN SUCH APPLICANT WOULD NOT HAVE PLEAD GUILTY.

... CONTINUED ATTACH...

10. (B) UNKNOWNING, UNINTELLIGENTLY AND INVOLUNTARY GUILTY PLEA

THE UNITED STATES SUPREME COURT ESTABLISHED STANDARDS FOR GUILTY PLEAS IN BOYKIN VS. ALABAMA, 395 US 238 (1969). IN BOYKIN THE COURT HELD THAT A GUILTY PLEA WOULD NOT BE ACCEPTED UNLESS THERE WAS AFFIRMATIVE EVIDENCE THAT THE PLEA WAS NOT ONLY VOLUNTARY, BUT THAT DEFENDANT IS FULLY INFORMED OF HIS RIGHTS CONCERNING THE CHARGES, FULLY ADVISED OF THE CHARGES AGAINST HIM AND THE POSSIBLE SENTENCE THAT HE COULD RECEIVE BY PLEADING GUILTY TO THOSE CHARGES, AND THAT DEFENDANT MADE AN INTELLIGENT AND KNOWING DECISION TO PLEAD GUILTY.

IN LIGHT OF SUCH STANDARDS THE COURTS HAS TIME AND TIME AGAIN VACATED GUILTY PLEAS WHEN DEFENDANTS HAVE BEEN ABLE TO SHOW THAT TRIAL COURT FAILED TO MEET STANDARDS SET FORTH IN BOYKIN VS. ALABAMA, SUPRA, AND THAT GUILTY PLEA WAS NOT KNOWING AND VOLUNTARILY ENTERED.

APPLICANT GUILTY PLEA WAS NOT INTELLIGENTLY ENTERED WHERE HE WAS NOT FULLY INFORMED OF HIS RIGHTS CONCERNING THE CHARGES. THE JUDGE NEVER INFORMED APPLICANT THAT HE COULD ONLY BE CONVICTED OF P.W.I.D. CRACK COCAINE 2ND OFFENSE IF HE HAD PREVIOUSLY BEEN CONVICTED OR PLEAD GUILTY TO P.W.I.D. CRACK COCAINE 1ST OFFENSE. THUS, APPLICANT WAS NOT FULLY ADVISED OF THE CHARGES AGAINST HIM, AS IS REQUIRED BY THE STANDARDS OF BOYKIN VS. ALABAMA

2009c P400 3437

US - 1100711-0001 / 04-10569 53

State of South Carolina
County of Richland

Charles X. Nixon SCDC # 312475
vs.
State of South Carolina

} In the Court of Common Pleas;
} Amendments to the Application
} for POST-CONVICTION RELIEF

This is the matter before the Court of Common Pleas whereas amendments to the application for Post-Conviction Relief apply to application 2009c-D400-3437 time and date stamped ^{GM} filed May 11th, 2009 12:08 pm by the Richland County Clerk of Court Jeanette W. McBride.

Amendments are as.

* Additions to the above mentioned application for Post Conviction Relief not limited therein as such having been filed (See attached...)

May I apologize for any inconveniences I may cause in doing such. However, yours and the Courts time, effort and consideration would be appreciated.

Charles X. Nixon
Charles X. Nixon # 312475

Applicant

Sworn to and subscribed before me this 11th day of May, 2009

[Signature] (L.S.)
Notary Public

My commission expires 4/4/2011

JEANETTE W. McBRIDE
C.C.P. & G.S.

2009 JUN 12 AM 11:17

RICHLAND COUNTY
FILED

JEANETTE W. McBRIDE
CLERK OF COURT



MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, S.C. 29202-2766

ANNE G. KELLY
Chief Deputy Clerk of Court

TELEPHONE:
(803) 576-1950
Fax (803) 576-1785
TDD (803) 748-4999

RICHLAND COUNTY CLERK OF COURT
Richland County Judicial Center
1701 Main Street
Columbia, S. C. 29201

June 12, 2009

Mr. Brian Petrano, Esquire
South Carolina Attorney General Office
Post Office Box 11549
Columbia, South Carolina 29211

Re: Charles X. Mixon Vs. State of South Carolina 2009CP4003437

Dear Mr. Petrano:

I am enclosing a copy of an Amended Application for Post Conviction Relief that has been filed in the Office of the Clerk of Court and assigned civil action number 2009-CP-40-3437

Also, I have enclosed a copy of his/her criminal records.

Sincerely,

Judy N. Davis

Judy N. Davis
Deputy Clerk of Court – Civil Records

Enclosures

cc: Mr. W. Barney Giese, Esquire

State of South Carolina
County of Richland

} In the Court of Common Pleas;

Charles X. Nixon ^{SCDC #} 312475

} Amendments to the Application
for Post Conviction Relief

vs.
State of South Carolina

2009 JUN 12 AM 11:17
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Amendments are as follows and to be applied to enclosed documents stamp dated 2009 May, 11?

Under Sentencing and punishment, guidelines set out in section 16-3-10 were not followed by the lower court.

I, the applicant, argue(s) that I have received an illegal 45 year sentence on the charge of Murder as indicted and convicted in the Court of General Sessions, dated November 15, 2005 case # 05-GS-40-10569.

SC Code annotated sentencing and punishment title 16-3-10 states: There should be punishable for the crime; a mandatory minimum of 30 years, life imprisonment or death.

Unless under the circumstances that Murder was committed in the Commission of another felonious crime (not in my case), the 45 years received were illegal and falls in the range of being sentenced outside of the guidelines set forth in title 16-3-10 as is.

The above mentioned is in addition to support where I, the applicants claim to ineffective assistance of counsel would be furthered and not to only challenge the illegality of case # 05-GS-40-10334-P.W.I.D. Crack Cocaine 2nd offense - 25 year conviction but also case # 05-GS-40-10569-Murder-45 year conviction.

Amendments to be made to the application for Post-Conviction Relief applies to that which was time and stamp dated 12:08 PM May 11th 2009 in the Richland County Judicial Center by Jeanette W. McBride C.C.I. and G.S.

Amendments to apply to application for Post-Conviction Relief are specifically to be added to the number 10 applicable question (10-A) including attachment page ~~one~~^{one} of application furthering questioned answers.

..Continuance)

Amendments are to be made as in addition; omitting none therein file already.

Amendments to be made are, as follows:

10)-A) Ineffective assistance of counsel whereas counsel:

- Failed to request the lesser included offense,
- Failed to act as a diligent and conscientious advocate,
- Failed to give complete loyalty,
- did not ~~give~~ have clients best interest in mind,
- neglected necessary investigations and preparations,
- did not do necessary factual investigation,
- did not do legal research,
- did not conscientiously gather information to protect rights,
- did not advise client of all rights or take any actions that were necessary^{mm} to protect and preserve them,
- never properly ascertained whether or not client actually understood or comprehended all of the issues involved in the case,
- never explained or discussed with client how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against client, related to on another and did not discuss how the sentencing would be done especially as it is related to the elements of the crime in State v. Boyd,
- never intended to offer any defense to the court on my behalf.
- Failed to properly acquaint herself with the law and facts in the assessment of both the law and facts,
- Failed to function as the counsel that the Constitution's 6th amendment guarantees, and
- failed to appeal my case.

Further more I, the applicant, state concisely that counsels conduct so undermined proper functioning of adversarial process that trial could not have been relied on as having produced a just result. To succeed on a 6th amendment claim of ineffective assistance of counsel I show that there is a "reasonably probability," which is a probability sufficient to undermine confidence in the outcome, that, but for counsels' unprofessional errors result of the proceeding would have been different. Limitations of time and money however, forced early strategic choices, often based solely on conversations with, I, the applicant and really no review of the prosecutions evidence.

Page 2 of 3

(Continued...)

...Continuance)

Though requested I, the applicant, did not receive the prosecution's evidence in the counsel's possession to assist in building a defense in the listed cases. However, I did finally retrieve evidence come January 14, 2009, some 38 months later, which revealed after discovered evidence which only enhance the claim of ineffective assistance of counsel by legal advise in which I, the applicant, took a plea to the illegal indictment charge of P.W.I.D. Crack Cocaine 2nd offense where I, the applicant, had never been ~~convicted~~ convicted let alone charged with a first offense ever in my criminal history which is a discovery violation by the prosecution and should have been told ~~to~~ to render my guilty plea inadmissible.

By counsel's ineffectiveness I was advised to take a plea in which the Honorable Judge Manning accepted without affirmatively showing that it (guilty plea) was made intelligently and voluntarily which is error as admissibility of a plea must be based on reliable determination ~~on~~ ^{on} voluntariness issue which satisfies constitutional rights of ~~the~~ ^{the} applicant.

A plea of guilt is more ^{than} admission of conduct, it is a conviction. Ignorance and incomprehension has been a perfect cover up for unconstitutional ~~in~~ in this case. As an effective waiver of a federal constitutional right in a proceeding is of course governed by federal standards.

Page 3 of 3

Charles L. Milton
Charles L. Milton #312475
Applicant

Sworn to and subscribed before me this 28th day
of May, 2009

[Signature] (L.S.)
NOTARY PUBLIC

My Commission expires: 4/4/2011

amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve the issue(s). See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Tynika A Claxton, Esquire regarding when the hearing should be set.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 19, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2009-CP-400-3437

Charles X. Mixon, 312475

Applicant,

vs

State of South Carolina,

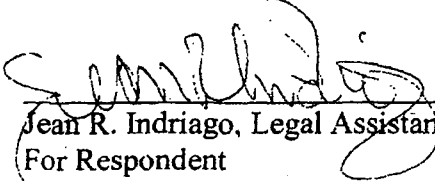
Respondent.

)
)
)
) 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(s) by depositing same in the United States mail, postage prepaid:

Tynika Claxton, Esquire
Post Office Box 50
Blythewood, South Carolina 29016

DATED this 23rd day of March, 2010.


Jean R. Indriago, Legal Assistant
For Respondent

State of South Carolina

Court of Common Pleas

County of Richland

2009-CP-40-03437

Charles X. Mixon

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

June 8, 2011

Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge.

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

Anna Good, Esquire
Attorney for the Applicant

Brian T. Petrano, Esquire
Attorney for the State

Daphne D. Helms
Circuit Court Reporter

1 **The Court:** All right. Thank y'all. Please be seated
2 if you would. All right. This is -- the first case we have
3 is Charles Nixon. Are you Mr. Nixon?

4 **Mr. Nixon:** Yes, sir.

5 **The Court:** All right. If you want to come on over here
6 and have a seat, please, sir. All right. It is my
7 understanding -- I've been informed by Ms. Good and Mr.
8 Petrano that Ms. Dain is ill and, therefore, would be
9 unavailable if we have to go forward with the hearing on the
10 merits. Is that correct?

11 **Mr. Petrano:** That is correct, Your Honor.

12 **Ms. Good:** Yes, sir.

13 **The Court:** And I think she called you, Ms. Good, and
14 left a message with you but -- spoken to your office, but
15 there is some preliminary matters that -- a motion or
16 something that we can deal with that Ms. Dain's testimony
17 would not be needed, and we'll take those matters up and if
18 we have to do -- if Ms. Dain becomes necessary, then we'll
19 have to continue the rest of the hearing until she recovers,
20 whether that would be later on this week or in August or
21 whatever the situation. Have you been advised, Mr. Nixon,
22 that Ms. Dain is ill?

23 **Mr. Nixon:** Yes, sir.

24 **The Court:** You told him this morning?

25 **Ms. Good:** Yes, sir.

1 **The Court:** So you understand what the situation is?
2 We'll deal with these preliminary matters, but if we have to
3 go forward with the hearing on the merits, we won't be able
4 to do that today.

5 **Mr. Mixon:** Okay.

6 **The Court:** We'll have to -- and we'll call. I don't
7 know if they can get you back over here later this week or
8 what her situation is, but we're clearly not going to bring
9 her here if she's not well. That's self-protection motive on
10 my part. My age can't handle exposure to a cold. All right.
11 Mr. Petrano, what do we have?

12 **Mr. Petrano:** May it please the Court, Your Honor? This
13 is 2009-CP-40-03437, Mr. Charles X. Mixon. There was a PCR
14 application filed May 11th, 2009. He had pled guilty in
15 front of Judge Manning on November 15th, 2005. He was
16 represented by Ms. Rachel Dain of the private bar. I believe
17 she was appointed.

18 He -- in exchange for the plea, they dropped possession
19 of a stolen vehicle and a marijuana charge, but he did
20 ultimately plead guilty to a crack cocaine charge, armed
21 robbery, and a murder. That's 2005-GS-40-10334, 10529 and
22 69. He got 45 years for the murder, 25 for the cocaine.

23 **The Court:** 30 for the armed robbery.

24 **Mr. Petrano:** Thank you, Your Honor. There was no
25 direct appeal. Out of an abundance of caution, I did order

1 the transcript. You do have the transcript in your packet
2 although I don't think the transcript is actually relevant.
3 It's the State's position that this application is untimely.

4 We did have an attorney appointed. Ms. Claxton was
5 originally appointed I believe in May of 2009. Shortly
6 thereafter we received an amended PCR application in June of
7 2009. The amended application is not in your packet. I, of
8 course, have a copy if you want it, but the State moves to
9 strike that because there is no hybrid representation as you
10 know. So any amendment to the application would have to come
11 from the appointed counsel once appointed counsel came up.

12 **The Court:** So the amended application was filed by the
13 applicant himself.

14 **Mr. Petrano:** That's correct, Your Honor.

15 **The Court:** All right.

16 **Mr. Petrano:** At least that's the State's argument, and
17 that should be struck and the---

18 **The Court:** Do you have a copy of it?

19 **Mr. Petrano:** Of course I do, Your Honor, and I have a
20 copy of the original appointment from the clerk if Your Honor
21 needs that.

22 **The Court:** All right.

23 **Mr. Petrano:** And that was on May 22nd, 2009. Ms.
24 Tynika Claxton was appointed.

25 **The Court:** All right. Was there an attorney prior to

1 this appointment of Ms. Claxton?

2 **Mr. Petrano:** I do not believe so, Your Honor.

3 **The Court:** All right. Well, let's see here. Mr.
4 Mixon?

5 **Mr. Mixon:** Yes, sir.

6 **The Court:** You filed this amended post-conviction
7 relief application; correct?

8 **Mr. Mixon:** Yes, sir.

9 **The Court:** All right. And it was filed on June 12th.
10 You had it notarized on the 28th day of May. I assume you
11 sent it to the clerk of court within several days after that,
12 in a relatively short period of time after that.

13 **Mr. Mixon:** Yes, sir.

14 **The Court:** When did you get notice of Ms. Claxton's
15 appointment? Prior to filing this or after filing this?

16 **Mr. Mixon:** I can't really say, but I have a letter from
17 her that I could probably refer to.

18 **The Court:** All right. How long was Ms. Claxton
19 involved in the case?

20 **Mr. Petrano:** Up until the substitution, I believe.

21 **The Court:** I know, but I don't know when that was.

22 **Ms. Good:** That was January of 2010, Your Honor.

23 **The Court:** All right. Did you ever provide Ms. Claxton
24 with a copy of this, Mr. Mixon, your post-conviction relief
25 amended application?

1 **Mr. Mixon:** I was thinking that probably the courts was
2 going to provide her with it like they had provided her with
3 a copy of the original.

4 **The Court:** Well, the file would be available to her
5 but... What is the difference in the amendment -- amended
6 application than the original one, Mr. Petrano?

7 **Mr. Petrano:** It's in more detail.

8 **The Court:** Same claims? Any additional claims?

9 **Mr. Petrano:** Yeah, there are some additional claims,
10 Your Honor.

11 **The Court:** What would they be?

12 **Mr. Petrano:** One of them is that the sentence for
13 murder was an illegal sentence. I didn't really
14 understand---

15 **Ms. Good:** Your Honor, I could go ahead and clarify
16 that. I have spoken with Mr. Mixon about that, and that's
17 nothing we will be bringing up in the PCR.

18 **The Court:** Is there any difference between the amended
19 application and the---

20 **Ms. Good:** The only difference, Your Honor, is he goes
21 into a little bit more detail about the ineffective
22 assistance of counsel.

23 **The Court:** Well, have you done anything to attempt to
24 adopt this amended application, Ms. Good?

25 **Ms. Good:** No, sir, Your Honor.

1 **The Court:** You're prepared to go forward on the
2 original application.

3 **Ms. Good:** Yes, sir.

4 **The Court:** So this really is not an issue at this
5 point.

6 **Ms. Good:** Correct.

7 **The Court:** All right. Well, then---

8 **Mr. Petrano:** It's clearly a mechanical motion.

9 **The Court:** All right. All right. So Ms. Good is --
10 wants to proceed under the original application although you
11 have another motion; correct?

12 **Mr. Petrano:** The State moves to dismiss this
13 application. It is untimely, beyond the one-year statute of
14 limitations for a PCR.

15 **The Court:** All right. Ms. Good, is there anything you
16 want to say with respect to that?

17 **Ms. Good:** Yes, sir, Your Honor. Our argument is that
18 under 17-27-45, Section C., it gives one year for the
19 applicant to file a PCR from finding out the date of actual
20 discovery of the facts by the applicant. In this situation,
21 Your Honor, it's Mr. Mixon's claim that he did not go through
22 all the discovery with Ms. Dain before the plea, and
23 eventually when he finally got the discovery from Ms. Dain he
24 saw facts and issues that would have changed his mind about
25 whether he pled or not.

1 We have a letter from July 25th of 2008 from Ms. Dain
2 saying that she got his letter and she would send him his
3 discovery, and then she finally sent him discovery
4 January 12th, 2009, Your Honor, and he filed his PCR in May
5 of 2009 which would have been one year from when he actually
6 got the discovery and went through it and noticed these
7 additional things that he wasn't aware of. So it's our
8 argument that he did follow the timeline, Your Honor,
9 according to the South Carolina code regarding the one year.

10 **The Court:** What is it that he is alleging that he
11 learned after---

12 **Ms. Good:** He learned during one of the witness --
13 looking at one---

14 **The Court:** After the -- three years after the fact
15 of---

16 **Ms. Good:** Looking at one of the witness statements that
17 he had never seen before, he noticed that the witness gave a
18 description of the individual who shot the victim in this
19 case, and it did not match his description. The heights were
20 off; the weights were off. There wasn't anything of his body
21 type, body build that would point to him as the person who
22 pulled the trigger, Your Honor, and it's a statement he said
23 he had never seen before.

24 **The Court:** All right. Mr. Petrano, what do you want to
25 say?

1 **Mr. Petrano:** Well, Your Honor, the standard is as far
2 as newly-discovered evidence is what could have been
3 discovered. Clearly discovery materials were available all
4 along. He could have chosen to not go forward with the plea.
5 They did drop some other charges. There was some
6 negotiations, if you will, regarding that matter. I submit
7 he did get a lengthy sentence, but I don't think that's the
8 measure. Also---

9 **The Court:** Well, this would not be an after-discovered
10 evidence situation, would it? It would be---

11 **Mr. Petrano:** By definition, no.

12 **Ms. Good:** Correct.

13 **The Court:** And his position would be, hey, no
14 application for PCR was filed because I didn't know this
15 information until sometime down the road, and when it became
16 known to me, I filed within the one-year statute. That's not
17 a newly-discovered evidence. That would have been evidence
18 that existed at the time that was not made available to him.
19 I guess in this instance he's saying his lawyer didn't
20 provide it to him as opposed to the State not having provided
21 it to him. So---

22 **Ms. Good:** Yes, Your Honor, and also---

23 **The Court:** ---therefore, she was ineffective in not
24 reviewing this so he could...

25 **Mr. Petrano:** And you're actually walking right into my

1 very next point, Your Honor, is that would be correct. It
2 would be ineffective assistance of counsel, and by definition
3 that claim has a one-year statute of limitations. And I
4 understand it's being framed via the information and the
5 alleged evidence and statement that he supposedly didn't see,
6 but the actual essence of the claim is ineffective assistance
7 of counsel which it's very clear there is a one-year statute
8 of limitations for that.

9 **The Court:** All right. Anything further, Ms. Good?

10 **Ms. Good:** No, sir, Your Honor. It's just our argument
11 goes towards he didn't knowingly plead because he wasn't
12 aware of all the facts at the time because of the ineffective
13 assistance of counsel.

14 **The Court:** Okay. Well, I will take this under
15 advisement and let you know. If we go forward with it, we'll
16 have to find the time that I guess -- I guess what we
17 realistically need to do is if your motion is not granted is
18 just schedule this thing for August.

19 **Mr. Petrano:** Correct.

20 **The Court:** I mean, trying to get the applicant back
21 here and trying to figure out the logistics with Ms. Dain to
22 do it tomorrow because really all we're dealing with -- it's
23 probably not realistic. The earliest probably, Mr. Nixon,
24 would be August. That's the next term of PCR.

25 **Mr. Nixon:** Yes, sir.

1 **The Court:** We'll take it from here and let y'all know.

2 **Ms. Good:** Thank you, Your Honor.

3 **Mr. Petrano:** Thank you, Your Honor.

4 **The Court:** All right. Thank y'all.

5 (Whereupon, the proceedings were concluded. There were
6 no exhibits introduced.)

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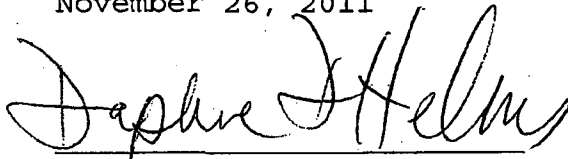
24

25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 8th of June, 2011.

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

November 26, 2011

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in black ink and is positioned above a horizontal line.

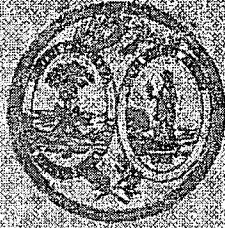
Daphne D. Helms, court reporter

571875
✓

The Circuit Court of South Carolina
Fifth Judicial Circuit

James R. Barber, III
Circuit Court Judge
Richland County Judicial Center
P.O. Box 2766
Columbia, South Carolina, 29201

(803) 576-1779
FAX (803) 576-1782



June 17, 2011

Anna Good, Esquire
1720 Main St
Columbia, SC 29201

Brian T. Petrano, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549

Re: Charles X. Mixon v. State of South Carolina

Dear Ms. Good and Mr. Petrano:

I am granting the State's Motion to Dismiss the Post-Conviction Relief action in the above-referenced case. The Court finds that the PCR application was filed after the statute of limitations had run.

I would ask that Mr. Petrano please prepare an order setting for the above findings and send a copy to Ms. Good.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James R. Barber III", is written over a horizontal line.

James R. Barber III
Circuit Court Judge

JRB: mcn

ATTORNEY GENERAL'S OFFICE

RECEIVED 6/20/77

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END
 HAVE 2 COPIES MADE
 ROUTE TO _____
 ORDER: _____ TRANSCRIPT
 PEN RECORDS CLERK RECORDS
 OTHER: 10/2 LB

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2009CP4003437

IN THE COURT OF COMMON PLEAS

Charles X #312475 Mixon

vs.

State of South Carolina

Plaintiff

Defendant

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other:
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____

JEANETTE W. BRIDE
 2011 AUG 22 PM 3:10
 RICHLAND COUNTY
 CLERK OF COURT

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

- Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED:

See attached order;

Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 22 August 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Anna Good
Charles X #312475 Mixon

Brian T Petrano

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. Bride
 Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2009-CP-40-03437

Mixon, Charles X., 312475,
Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

RICHLAND COUNTY
FILED
2011 AUG 22 PM 3:06
JEANETTE W. McBRIDE
C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 11, 2009. An amended Application for Post-Conviction Relief was filed June 12, 2009. The Respondent made its Return on March 23, 2010. An evidentiary hearing into the matter was convened on June 8, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Anna Good, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the outset, the State made a motion to dismiss based on the defense of statute of limitations. In response, the Applicant made some generic ineffective assistance of counsel claims. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated at the South Carolina Department of Corrections ("SCDC") pursuant to order of commitment of the Clerk of Court for Richland County. He was

indicted for murder during the December 2004 term of the Richland County Grand Jury, and PWID crack cocaine second (2nd) and armed robbery during the February 2005 term of the Richland County Grand Jury. The Applicant's plea counsel was Rachel Dain, Esquire. On November 15, 2005, Applicant pled guilty to PWID crack cocaine second (2nd), armed robbery, and murder. The Honorable L. Casey Manning sentenced Applicant to confinement for a period of twenty five (25) years for the PWID crack cocaine second (2nd), thirty (30) years for the armed robbery, and forty five (45) years for the murder. These sentences are to run concurrent each with one another. There was no appeal.

In the amended PCR application 2009-CP-40-03437 the applicant alleges:

Amendments are as follows and to be applied to enclosed documents stamp dated 2009 May 11?

Under sentencing and punishment, guidelines set out in section 16-3-10 were not followed by the lower court.

I, the applicant, argue(s) that I have received an illegal 45 year sentence on the charge of Murder as indicted and convicted in the Court of General Sessions, dated November 15, 2005 case # 05-GS-40-10569.

SC Code annotated sentencing and punishment title 16-3-10 states These should be punishable for the crime, a mandatory minimum of 30 years, life imprisonment or death.

Unless under the circumstances that Murder was committed in the Commission of another felonious crime (not in my case), the 45 years received were illegal, and falls in the range of being sentenced outside of the guidelines set forth in title 16-3-10 as is.

The above mentioned is in addition to support where I, the applicants claim to ineffective assistance of counsel would be furthered and not to only challenge the illegality of case # 05-GS-40-10334-P.W.I.D. Crack Cocaine 2nd offense - 25 year conviction but also case # 05-GS-40-10569 - Murder - 45 year conviction.

Amendments to be made to the application for Post-Conviction Relief applies to that which was time and stamp dated 12:08 PM May 11th 2009 in the Richmond County Judicial Center by Jeanette W. McBride C.C.I. and G.S.

Amendments to apply to application for Post-Conviction Relief are specifically to be added to the number 10 applicable question (10-A) including attachment page ~~one~~ one of application furthering questioned answers.

Page 1 of 2

(Continued...)

Continuance)

Amendments are to be made as in addition, omitting none
therein file already.

Amendments to be made are, as follows:

10) A) Ineffective assistance of counsel whereas counsel:

- Failed to request the lesser included offense,
- Failed to act as a diligent and conscientious advocate,
- Failed to give complete loyalty,
- did not ~~even~~ have clients best interest in mind,
- neglected necessary investigations and preparations,
- did not do necessary factual investigation,
- did not do legal research,
- did not conscientiously gather information to protect rights,
- did not advise client of all rights or take any actions that were necessary^{em} to protect and preserve them,
- never properly ascertained whether or not client actually understood or comprehended all of the issues involved in the case,
- never explained or discussed with client how^{em} the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against client, related to on another and did not discuss how the sentencing would be done especially as it is related to the elements of the crime in State v. Boyd,
- never intended to file any defense to the court on my behalf
- failed to properly acquaint herself with the law and facts in the assessment of both the law and facts,
- failed to function as the counsel that the Constitution's 6th amendment guarantees, and
- failed to appeal my case.

Further more I, the applicant, state concisely that counsels conduct so undermined proper functioning of adversarial process that trial could not have been relied on as having produced a just result. To succeed on a 6th amendment claim of ineffective assistance of counsel I show that there is a "reasonably probability," which is a probability sufficient to undermine confidence in the outcome, that, but for counsels unprofessional errors result of the proceeding would have been different. Limitations of time and money however, forced early strategic choices, often based solely on conversations with, I, the applicant and really no review of the prosecutions evidence.

Page 2 of 3

(Continued...)

... Continuance)

Though requested I, the Applicant, did not receive the prosecution's evidence in the counsel's possession to assist in building a defense in the listed cases. However, I did finally receive evidence come January 14, 2009, some 30 months later, which revealed after discovered evidence which only enhance the claim of ineffective assistance of counsel by legal advise in which I, the Applicant, took a plea to the illegal indictment charge of P.W. to Crack Cocaine 2nd offense where I, the Applicant, had never been ~~convicted~~ convicted let alone charged with a first offense ever in my criminal history which is a discovery violation by the prosecution and should have been held ~~to~~ to render my guilty plea inadmissible.

By counsel's ineffectiveness I was advised to take a plea in which the Honorable Judge Manning accepted without ~~offering~~ showing that it (guilty plea) was made intelligently and voluntarily which is ~~error~~ error as admissibility of a plea must be based on reliable determination ~~on~~ on voluntariness issue which satisfies constitutional Rights of ~~the~~ the Applicant.

A plea of guilt is more ~~an~~ admission of conduct, it is a conviction. Ignorance and incomprehension has been a perfect cover up for unconstitutional ~~in~~ this case. An effective waiver of a federal constitutional right to a proceeding is of course governed by federal standards.

Page 3 of 3

At the evidentiary hearing, in reply to the State's motion to dismiss, the Applicant proceeded on the allegations that his plea counsel did not go through his entire discovery with him, that he would not have pled if he knew his entire discovery, and that he didn't knowingly plea because discovery was not known. None of those claims defeat the statute of limitations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Respondent made a motion to dismiss based on the defense of statute of limitations.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going

to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

This Court interprets all of the Applicants claims as ineffective assistance of counsel. This Court finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offense(s) he challenges in this Application on November 15, 2005. The Applicant was therefore required to file his application before November 16, 2006.¹ The original Application was filed on May 11, 2009 which was well beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to

¹ SCRCP, Rule 6 (a) – In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included.

judgment as a matter of law." Therefore, this Court summarily dismisses the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 17 day of August, 2011.



The Honorable James R. Barber
Presiding Judge
Fifth Judicial Circuit

August, South Carolina.

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

JAMES R. BARBER, CIRCUIT COURT JUDGE

2009-CP-40-03437

Charles X. Mixon,.....Petitioner.

vs

The State of South Carolina,.....Respondent.

EXPLANATION AS TO WHY DETERMINATION BY TRIAL COURT THAT THE POST-CONVICTION RELIEF APPLICATION SHOULD BE DISMISSED DUE TO THE STATUTE OF LIMITATIONS IS IMPROPER

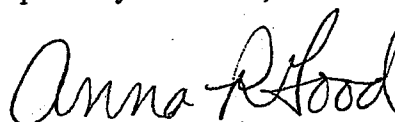
PURSUANT TO SCACR RULE 227(C)

Under Section 17-27-45 of the South Carolina Code of Laws, “an application for relief filed pursuant to this chapter must be filed within one year after the entry of judgment of conviction.” Section 17-27-45(a), South Carolina Code Annotated (1976). In addition, “if the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after *the date of actual discovery of the facts by the applicant.*” Section 17-27-45(c), South Carolina Code Annotated (1976).

Mr. Mixon pled guilty to Murder, Armed Robbery, and Possession with Intent to Distribute Crack Second Offense on November 15, 2005, after being advised by his attorney. After Mr. Mixon’s plea, he asked his attorney, Ms. Rachael Dain, for a copy of his discovery materials. After numerous letters and attempts to get his discovery, Ms. Dain finally sent it to Mr. Mixon, and he received it in January of 2009. Upon receiving his discovery, Mr. Mixon learned that Ms. Dain had not reviewed allof his discovery with him, including the victim’s statement regarding the description of the alleged suspect, a photo lineup where the victim selected two people, and witness statements he had never seen that did not indicate him as a suspect. If Mr. Mixon had had this information at the time of his plea, he would not have pled guilty due to the discrepancy and credibility of the witnesses and identification of suspects.

Under the laws set forth upon above in the South Carolina Code, the post-conviction relief application can be filed within one year after the date of actual discovery of the facts by the applicant, in this case, Mr. Mixon. He did not find out about this information until January 2009. Upon learning this information, Mr. Mixon filed his application in May 2009, within one year of him ascertaining this information. Therefore, the Petitioner argues that the dismissal of his post-conviction relief application is improper.

Respectfully submitted,



Anna R. Good
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201
Telephone: (803) 429-9107
Fax: (803) 799-4059

Attorney for the Petitioner.

September 16, 2011.

OTHER COUNSEL OF RECORD:

Brian Petrano
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

WITNESSES

Sgt. Bryant Hinson, FAD/①

ARREST WARRANT NUMBER

1290554

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

DEC 14 2004

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-40-10569

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

52

THE STATE
vs.

CHARLES X. MIXON

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116
Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and am guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

T T E S T I M
A T T E S T A T I O N
C. C. C. P. & G. S.

Genevieve W. McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 15, 2004, the Grand Jurors of Richland County present upon their oath:

MURDER

That Charles X. Mixon did in Richland County on or about November 14, 2004, feloniously, willfully and with malice aforethought, kill one Troy Brady by means of a gun shot wound and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF STATE

Highland

Charles Mixon

AKA:

Race: D

Sex: M

Age:

DOB: 2/15/76

SS#:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

05

-GS-

40

10569

A/W#:

7290554

Date of Offense:

11/19/04

S.C. Code §:

16-3-10, 20

CDR Code #:

0 1 1 1 1 1 6

CASE RESTORED SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO:

Murder

in violation of § 16-3-10, 20 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6

NON-VIOLENT

VIOLENT

SERIOUS

MOST SERIOUS

17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature] Solicitor

[Signature] Charles Mixon Defendant

[Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 45 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: to all other sentences

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

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

Payment Terms:

set by SCDPPPS

Recipient:	
*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

[Signature] Barbara Scott Clerk of Court/Deputy Clerk

Court Reporter:

[Signature] C. Thum

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning: _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code: (61)

Sentence Date: 4/15/05

A B C D E F G H

I J K L M N O P Q R S T U V W X Y Z

[Signature] Jeannette [Signature] (7/28/03) S.C. Code of Laws (7/28/03)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

WITNESSES
(S) S. FAUST - RCSD

DOCKET NO. 2005-GS-40-10529

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina
County of Richland

Defendant

COURT OF GENERAL SESSIONS

I hereby appear in my own proper person and plead guilty to the within indictment or to

FEBRUARY TERM 2005

106

ARREST WARRANT NUMBER

H904078

Defendant

THE STATE
vs.

Witness:

CHARLES X. MIXON

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Lee K. McClure
Foreperson of Grand Jury
Date: FEB 18 2005

VERDICT

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330 (A)
CDR Code: 139
Class A/F(V)

Foreperson of Petit Jury
Date:

James W. Grubbs
JUDGE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 16, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That CHARLES X. MIXON did in Richland County on or about NOVEMBER 13, 2004, commit robbery by feloniously taking from the person or presence of Rob Elijo Santos by means of force or intimidation goods or monies of Rob Elijo Santos; such goods or monies described as: U.S. Currency and/or an automobile, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor or other deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, all in violation of 16-11-330, 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.

Warren B. Giese

WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE

INDICTMENT/CASE#:

AKA: Charles Mixon

05 -GS- 40 - 10529

Race: B Sex: M Age:

A/W#: H904078

DOB: 2/15/86 SS#:

Date of Offense: 11/13/04

Address:

S.C. Code §: 16-11-570(A)

City, State, Zip

CDR Code #: 011319

DL#

SID#

CASE RESTORED

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Armed Robbery

in violation of § 16-11-570(A) of the S.C. Code of Laws, bearing CDR Code # 011319

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature]
Solicitor

[Signature]
Charles Mixon
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 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: to all other sentences

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient:	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(L) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
TOTAL	\$ _____

Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

[Signature]
Clerk of Court/Deputy Clerk

Court Reporter: [Signature]
L. Thueme

PRESIDING JUDGE [Signature]
Judge Code: (b)
Sentence Date: 11/15/05

A T T E S T E
I, [Signature]
Pink - Defendant
G. C. C. P. & G. S.

White - Clerk Green - Corrections Canary - Probation

ARREST WARRANT

H- 904078

STATE OF SOUTH CAROLINA

County/ Municipality of RICHLAND COUNTY

THE STATE

against 413 BEDFORD DRIVE

CHARLES XAVIER MIXON

Address: COLUMBIA SC 29223 - 0000

Sex: M Race: B Height: 5 8 Weight: 160

DL State: SC DL: 2/15/86

Agency OR#: RICHLAND COUNTY SHERIFF'S

Prosecuting Officer: S FAUST

Offense: ROBBERY/ARMED OR ALLEGED W/DEADLY WEAPON

Offense Code: 0139 Code/Ordinance Sec. 16-11-0330(A)

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

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant CHARLES XAVIER MIXON

on 11/24/04

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: LYKESLAND MAGISTRATE 1403 CAROLINE ROAD COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA County/ Municipality of RICHLAND COUNTY

AFFIDAVIT

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

Personally appeared before me the affiant S FAUST being duly sworn deposes and says that defendant CHARLES XAVIER MIXON did within this county and state on 11/13/04 violate the criminal laws State of South Carolina (or ordinance of County/ Municipality of in the following particulars:

DESCRIPTION OF OFFENSE: ROBBERY/ARMED OR ALLEGED W/DEADLY WEAPON

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 11-13-04 WHILE AT 7501 BROOKFIELD ROAD IN THE DENTSVILLE MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE CHARLES XAVIER MIXON DID COMMIT THE CRIME OF ARMED ROBBERY IN THAT HE DID PARTICIPATE WITH A CO-DEFENDANT (CHARLES JACKSON) AND WHILE ARMED WITH A HANDGUN, ROB ELIJO SANTOS OF HIS WALLET AND CONTENTS VALUED AT \$20.00, AND A 1992 MAZDA 323 (SC TAG 547 SBJ) VALUED AT APPROXIMATELY \$1,000.00 THE CO-DEFENDANT HAS IMPLICATED THE DEFENDANT AND HIS STORY HAS BEEN COORBORATED. RCSD CASE #04111379

AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME.

Signature of Affiant

STATE OF SOUTH CAROLINA County/ Municipality of RICHLAND COUNTY

Affiant's Address: RCSD - 5623 TWO NOTCH ROAD COLUMBIA SC 29223 - 0000 Affiant's Telephone: 803-576-3000

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 11/13/04 defendant CHARLES XAVIER MIXON did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of as set forth below:

DESCRIPTION OF OFFENSE: ROBBERY/ARMED OR ALLEGED W/DEADLY WEAPON

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 11/23/04

Signature of Issuing Judge (L.S.)

Signature of Judge

Judge's Address: LYKESLAND MAGISTRATE COLUMBIA SC 29209 - 0000

Judge's Telephone: 803-576-2500

Issuing Court: Magistrate

ORIGINAL

Vertical stamp: State of South Carolina, Richland County, Sheriff's Office, 11/24/04

Vertical stamp: RECEIVED 11/24/04

WITNESSES

(S) G. WALMSLEY - RCSD

DOCKET NO. 2005-GS-40-10334

The State of South Carolina

County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2005

106

I hereby appear in my own proper person and plead guilty to the within indictment or to

A F T B S C I S
A TRUE BILL
James H. ...
G. C. C. P. L. S. & G. S.

ARREST WARRANT NUMBER

H787936

THE STATE
vs.

Defendant

Witness:

C.C.C. PLS. AND G.S.

CHARLES X. MIXON

ACTION OF GRAND JURY

TRUE BILL

West Napoleon Tolbert
Foreperson of Grand Jury

Date: **FEB 18 2005**

VERDICT

Indictment for

**POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE
2ND OFFENSE**

SC Code: 44-53-375(B)(2)

CDR Code: 0113

Class FEL/B

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 16, 2005, the Grand Jurors of Richland County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

That CHARLES X. MIXON did in Richland County on or about NOVEMBER 15, 2004, did willfully, knowingly and intentionally, manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance, to wit: Crack Cocaine, such not being a first offense in violation of Section § 44-53-375 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.

Warren B. Giese

WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Richland)
 STATE)
 VS. Charles Nixon)
 AKA:)
 Race: D Sex: M Age:)
 DOB: 2/15/86 SS#:)
 Address:)
 City, State, Zip)
 DL#) SID#)

IN THE COURT OF GENERAL SESSIONS

05 -GS- 40 - 10334
 INDICTMENT/CASE#: H787436
 Date of Offense: 10/15/09
 S.C. Code §: 44-53-375 (D)(2)
 CDR Code #: 0 1 1 1 3
 CASE RESTORED
 SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: PW I.D Crack Cocaine 2nd
 in violation of § 44-53-375 (D)(2) of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 3
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEYS:
[Signature] Solicitor Charles Nixon Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 25 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: to all other sentences
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered.
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly
 prmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient:	_____
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
TOTAL	\$ _____

Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

Barbara A. Scott
 Clerk of Court/Deputy Clerk
 Court Reporter: [Signature]
C. Thumle

PRESIDING JUDGE [Signature]
 Judge Code: 61
 Sentence Date: 11/15/09

A T T E S T E
 TRUE COPY
[Signature]
 C. C. C. P. & G. S.

ARREST WARRANT

H-787936

STATE OF SOUTH CAROLINA

County/ Municipality of RICHLAND COUNTY

THE STATE RCSO#0411157015 against

CHARLES XAVIER MIXON

Address: COLUMBIA - 0000

Sex: M Race: B Height: 5'9 Weight: 152

DL State: SC DL#

DOB: 2/15/86 Agency ORI#:

Prosecuting Agency: RICHLAND COUNTY SHERIFF'S

Prosecuting Officer: G WALMSLEY

Offense: PWID CRACK COCAINE

Code/Ordinance Sec. 44-53-0375(B)(1) Offense Code: 0112

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

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant CHARLES XAVIER MIXON

on Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: RICHLAND COUNTY BOND COURT 201 JOHN MARK DIAL DRIVE COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA County/ Municipality of RICHLAND COUNTY

AFFIDAVIT

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

Personally appeared before me the affiant G WALMSLEY being duly sworn deposes and says that defendant CHARLES XAVIER MIXON did within this county and state on 11/15/04 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) in the following particulars: DESCRIPTION OF OFFENSE: PWID CRACK COCAINE

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 11/15/04 WHILE AT 5313 FAIRFIELD RD. BLDG. 18 IN THE UPPER TOWNSHIP MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE CHARLES X. MIXON DID COMMIT THE CRIME OF PWID CRACK COCAINE IN THAT HE DID HAVE IN HIS POSSESSION AND CONTROL ONE CLEAR PLASTIC BAG CONTAINING A QUANTITY OF CRACK COCAINE, SEPERATED FOR SALE INTO FIVE PIECES, WHICH FIELD TESTED POSITIVE FOR CRACK COCAINE. THE CRACK WAS LOCATED ON THE DEFENDANT'S PERSON FOLLOWING A CONSENT TO SEARCH WHILE THE AFFIANT WAS OUT WITH THE DEFENDANT FOR LOITERING IN A NARCOTICS AREA. AN ODOR OF MARIJUANA WAS DETECTED AROUND THE INCIDENT LOCATION. AFFIANT AND OTHERS ARE

Signature of Affiant

STATE OF SOUTH CAROLINA County/ Municipality of RICHLAND COUNTY

Affiant's Address: RICHLAND COUNTY SHERIFF'S DEPT COLUMBIA SC 29223 - 0000 Affiant's Telephone: 803 576-3000

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 11/15/04 defendant CHARLES XAVIER MIXON did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) as set forth below: DESCRIPTION OF OFFENSE: PWID CRACK COCAINE

WITNESS TO PROVE THE SAME.

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 11/16/04 Signature of Issuing Judge C. L. Hudnell (L.S.) Judge Code: GS

Judge's Address: JUDICIAL CENTER COLUMBIA SC 29201 - 0000 Judge's Telephone: 803 576-1800 Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL