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S.C. SUPREME COURT

EXHIBIT NO. 1

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Artrell Hickson,

Applicant

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2013-CP-02-1153

(Appellate Case No. 2015-00214)

ORDER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harce, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUL 01 2022

Robert J. Harce
C.C.P. & G.S., Aiken County, S.C.
Charla Gifford Plouffe
Deputy Clerk

This matter is before this Court pursuant to the April 5, 2022 Order from the South Carolina Supreme Court remanding this case to reconstruct the record of the evidentiary hearing held on September 11, 2015 during Applicant's first post-conviction relief (PCR) action. A hearing was held on April 28, 2022 before the Honorable Edgar W. Dickson via the WebEx virtual platform. Applicant was present and represented by Appellate Defender Lara M. Caudy. Senior Assistant Deputy Attorney General Megan Harrigan Jameson represented Respondent.

At this hearing, the Court heard testimony from four witnesses: Applicant Artrell Hickson; Kelley Brown, Applicant's trial counsel; Daniel Gourley, who represented the State during Applicant's first PCR action; and Aimee Zmroczek, who represented Applicant during his first PCR action. This Court also had before it: (1) Applicant's Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing filed February 23, 2022; (2) the State's Return to Petitioner's Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing filed on March 4, 2022; (3) the Order of the South Carolina Supreme Court remanding this matter to this Court to reconstruct the record dated April 5, 2022; (4) the Aiken County Clerk of Court

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Robert J. Harce CMC
C.C.P. & G.S.
Charla Gifford Plouffe
Deputy Clerk

records; (5) Applicant's trial transcript dated September 20, 2010; (6) Applicant's direct appeal records; (7) Applicant's original PCR application filed May 21, 2013; (8) the State's Return dated July 1, 2013; (9) the Order of Dismissal from Applicant's first PCR action filed January 9, 2017; (10) Applicant's Motion to Reconsider filed January 17, 2017; (11) the State's Return to Applicant's Motion to Reconsider dated February 3, 2017; (12) the Order Denying Applicant's Motion to Reconsider dated March 14, 2017; (13) Applicant's second PCR application filed June 19, 2019; (14) Applicant's third PCR application filed March 16, 2020; (15) the State's Return and Motion to Merge PCR Applications dated August 9, 2021; and (16) the Order Granting Belated Appellate Review of Initial PCR Action Pursuant to Austin v. State filed September 10, 2021.

PROCEDURAL HISTORY

An Aiken County grand jury indicted Applicant in December 2009 for armed robbery and in April 2010 for possession of a firearm during the commission of a violent crime. Applicant's case was called to trial on September 20, 2010 before the Honorable Doyet A. Early, III, and a jury. Applicant was tried jointly with his brother and codefendant, Javier Hickson. Then Solicitor J. Strom Thurmond, Jr. and Assistant Solicitor Susanna Ringler represented the state. Kelley Brown represented Applicant and Michael Routzong represented Javier Hickson. On September 22, 2010, the jury found Applicant guilty as indicted. He was sentenced to twenty-eight years for armed robbery and five years concurrent for the weapons offense.

Applicant filed a timely notice of appeal. The appeal was perfected by Jerry M. Screen. The Court of Appeals affirmed Applicant's convictions and sentence in an unpublished opinion. State v. Hickson, 2012-UP-667 (S.C. Ct. App. filed December 19, 2012).

On May 21, 2013, Applicant filed an application for post-conviction relief (PCR) alleging the following grounds for relief:

- a. The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's armed robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
- b. The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from applicant's armed robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
- c. The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
- d. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to provide written notice of the applicant's intent to offer a "Alibi Witness."
- e. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses, Charles Smalls; Tommy Parker; for the defense during applicant's criminal trial.
- f. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised.

- g. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil-vs-Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest.
- h. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence.
- i. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel failing to fully and completely cross-examine cooperating witness concerning charges that were dismissed as part of his plea agreement with the State and the minimum and maximum penalties he would have faced for those offenses.
- j. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to MOTION FOR RECONSIDERATION of his sentence where cooperating witness received a lesser sentence following his testimony against the applicant; thereby giving rise to the inference that this witness may have been lead to expect far greater potential benefit from his cooperation than the jury could reasonably have anticipated.

The state filed a return to this application on July 3, 2013. An evidentiary hearing was held on September 11, 2015 before this Court. Assistant Attorney General Daniel Gourley represented the state, and Aimee Zmroczek represented Applicant. Applicant and his trial counsel, Kelley Brown, testified at the hearing. Two exhibits were entered into evidence: Applicant's Exhibit No. 1 (Statement of Tommy Parker) and Applicant's Exhibit No. 2 (Statement of Charles Smalls). By order filed January 9, 2017, this Court denied Applicant relief.

On January 19, 2017, Applicant filed a motion to reconsider pursuant to Rule 59(e), SCRCR. The state filed a return to the motion to consider on February 6, 2017. By order filed March 17, 2017, this Court denied the motion.

Applicant's counsel failed to file a notice of appeal from the order denying him post-conviction relief. On June 19, 2019, Applicant filed a second PCR application seeking a belated appeal from the denial of his first application. On March 16, 2020, Applicant filed a third PCR application again seeking a belated appeal. The state filed a return and a motion merge the two PCR actions on August 13, 2021. An evidentiary hearing was convened on September 7, 2021 before the Honorable Courtney Clyburn-Pope. Senior Assistant Deputy Attorney General Megan Harrigan Jameson represented the state, and Nancy Fennell represented Applicant.

By order filed September 10, 2021, Judge Clyburn-Pope granted Applicant a belated appeal from the denial of his first application for post-conviction relief. In the same order, the judge also granted the state's motion to merge the two PCR actions.

Applicant timely filed a notice of appeal with the South Carolina Supreme Court. The Division of Appellate Defense undertook representation of Applicant. It was determined that a transcript of the evidentiary hearing held on September 11, 2015 during Applicant's first action for post-conviction relief could not be transcribed because more than five years had passed from the date of the hearing and the date the transcript was first requested from the court reporter. See Rule 607(i), SCACR (requiring court reporters to retain the tapes of a proceeding for five years).

On February 23, 2022, Applicant filed a Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing with the Supreme Court. The State filed a return to this motion on March 4, 2022. By order dated April 5, 2022, the



Supreme Court remanded the matter to reconstruct the record of Applicant's September 11, 2015 evidentiary hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

"South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal." State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007); See China v. Parrott, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968) (holding that where a portion of the court reporter's notes were lost, the trial judge properly considered affidavits from counsel and the court reporter in reconstructing the record); Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (recognizing a court's power to remand for a reconstruction hearing), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 105, 610 S.E.2d 494, 501 (2005); Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (finding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992) (holding the trial court did not err in granting property owner's request to reconstruct the record of zoning proceeding where portions of original tape of hearing were incapable of being transcribed). A reconstructed record on appeal must allow for "meaningful appellate review." Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274.

This Court concludes that the record of the September 11, 2015 evidentiary hearing cannot be reconstructed to allow for meaningful appellate review. This Court has had the opportunity to review the available record and heard the witness testimony and arguments of counsel at the reconstruction 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 in reaching the conclusion



that the record cannot be sufficiently reconstructed.

The first witness presented at the reconstruction hearing was Aimee Zmroczek, who represented Applicant during his first PCR action. Zmroczek had no independent recollection of the evidentiary hearing held on September 11, 2015, nor did she recall what claims Applicant raised. However, she testified that she would have attempted to elicit testimony from the witnesses at the evidentiary hearing on each of the allegations raised in the application. Significantly, Zmroczek did not have any notes from the hearing. Kelley Brown, Applicant's trial counsel, was the second witness called at the reconstruction hearing. Brown had no independent recollection of her testimony during the September 11, 2015 evidentiary hearing. Applicant Artrell Hickson was the third witness to testify. Hickson likewise had no independent recollection of his testimony during the evidentiary hearing.

Daniel Gourley, who represented the State during Applicant's first PCR action, was the last witness to testify. Gourley also had no independent recollection of the September 11, 2015 evidentiary hearing. However, he had notes that he took during the course of the hearing. Gourley's notes were marked and admitted as Respondent's Exhibit No. 1. During his testimony, Gourley explained the content of his notes to the best of his ability. His notes included some of the questions he asked the witnesses during the evidentiary hearing as well as some of their responses. His notes also touched on some of the testimony elicited from the witnesses by Zmroczek during the hearing. However, his notes were incomplete, at times hard to decipher, and made no mention of the two exhibits that were admitted into evidence during the evidentiary hearing.

During his testimony, Gourley identified an email exchange between this Court's administrative assistant, Peggy Smith, then Assistant Attorney General Julie Coleman, and

Gourley. The email exchange, which took place on October 13, 2016, was marked and admitted as Respondent's Exhibit No. 2. In the exchange, Smith forwarded Gourley an email sent by this Court's law clerk to Gourley and Zmroczek on April 8, 2016, in which the clerk informed the parties this Court was denying Applicant's application for post-conviction relief. The clerk's email requested Gourley prepare the order of dismissal and included findings on the allegations raised in the application. Gourley informed Smith in the October 13, 2016 exchange that he no longer worked for the PCR Division at the Attorney General's Office and that Julie Coleman now represented the State. Approximately two hours later, Coleman, who was not present at the September 11, 2015 evidentiary hearing, provided Smith with a proposed order of dismissal.

This Court also had notes it took during the September 11, 2015 evidentiary hearing. The Court's notes were marked and admitted as Court's Exhibit No. 1. This Court explained the content of its notes on the record for the benefit of the parties.

This Court finds Ladson particularly helpful in resolving whether the record in the instant matter has been reconstructed to permit meaningful appellate review. Ladson was convicted of first degree burglary at the conclusion of a three day trial. Ladson, 373 S.C. at 321, 644 S.E.2d at 271. While Ladson's case was pending on appeal, he learned the court reporter could not produce the transcript. Id. Ladson moved for a new trial. Id. The state moved to remand to reconstruct the record. The Court of Appeals denied Ladson's motion and remanded the matter to the trial court to reconstruct the record. Id.

The reconstruction hearing occurred more than a year after Ladson's trial. Id. The Court of Appeals explained "the passage of time clearly dimmed the recall of the participants." Id. at 325, 644 S.E.2d at 274. After reviewing the transcript of the reconstruction hearing, the Court of Appeals emphasized, "It was clear from the outset of this hearing that reconstructing the record

from scratch, after such a substantial delay, would be an uphill struggle.” Id. at 321-322, 644 S.E.2d at 271-272. During the hearing, the State summarized the testimony of the majority of the witnesses and provided affidavits from two witnesses. Id. at 322, 644 S.E.2d at 272. The Court of Appeals determined the “information provided by the State was conclusory.” Id. Additionally, the Court of Appeals noted that the State “had completely forgotten about one witness, whose identity was determined only by reference to Ladson’s trial counsel’s notes.” Id. The parties even disputed whether Ladson testified in his own defense. Id. Finally, the Court of Appeals emphasized that the trial court and the State expressed confidence “that Ladson made timely objections at trial and moved for a directed verdict “based upon the evidence.” Id. at 323, 644 S.E.2d at 272.

On appeal, the Court of Appeals applauded the “diligent effort” by all parties to reconstruct the record. However, it emphasized that “[d]espite these good faith efforts, the reconstructed record [was] largely conclusory, with testimony, objections, and the like recalled only in summary fashion.” Id. The court explained, “It is simply unrealistic and unreasonable to think that a trial judge and counsel can—under these circumstances—reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules.” Id. at 326, 644 S.E.2d at 274. The court further explained, “The continuing dispute as to whether Ladson even testified (much less the content of his purported testimony) is but one example of the trial court and counsel groping in the dark as to what actually happened at trial.” Id.

After the reconstruction hearing, the Court of Appeals was “left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable twenty-five year person term.” Id. at 327, 644 S.E.2d at 274. The record before the court contained only “a few gratuitous references to generic motions

and objections” without any information concerning “the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence.” Id. The Court of Appeals emphasized that it refused to speculate. Id. In concluding the reconstructed record did not permit meaningful appellate review, the Court of Appeals asserted, “To hold this record is sufficient would guarantee the affirmance of Ladson’s conviction and twenty-five-year non-parolable sentence without a genuine review. . . . Moreover, it would effectively foreclose any collateral challenge through post-conviction relief or otherwise.” Id. at 327, 644 S.E.2d at 274-275. Thus, the court concluded Ladson had demonstrated “clear prejudice.” Id. at 327, 644 S.E.2d at 275.

Without question, the parties here were well prepared at the reconstruction hearing and presented the best case possible under the circumstances. Nevertheless, after carefully considering the evidence, testimony, and arguments presented during the hearing, this Court finds the record of the September 11, 2015 evidentiary hearing cannot be adequately reconstructed to allow for meaningful appellate review. None of the witnesses had any independent recollection of the evidentiary hearing, which this Court finds credible given that the hearing occurred over six years ago. Despite the parties’ good faith efforts, the reconstructed record is mostly conclusory, with the testimony from the evidentiary hearing recalled “only in summary fashion.” See Ladson, 373 S.C. at 323, 644 S.E.2d at 272. Significantly, Zmroczek credibly testified that she would have attempted to elicit testimony from the witnesses at the evidentiary hearing on each of the allegations raised in the application. However, there was no mention of several of the allegations raised in Applicant’s application, and ruled upon by this Court in the order of dismissal, during the reconstruction hearing. Consequently, this Court find the record was not reconstructed to permit meaningful appellate review of the denial of Applicant’s first application for post-conviction relief.



CONCLUSION

This Court finds that the record of the September 11, 2015 evidentiary hearing held during Applicant's first PCR action cannot be reconstructed to allow for meaningful appellate review.

AND IT IS SO ORDERED this 29th day of June, 2022.



Edgar W. Dickson
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina



EXHIBIT NO. 2

1 STATE OF SOUTH CAROLINA)

2) IN THE COURT OF

3 COUNTY OF AIKEN) GENERAL SESSIONS

4
5 THE STATE,)

6 Plaintiffs,)

7 Vs.) CASE NO. 2013-GS-02-01153

8 ARTRELL HICKSON,)

9 Defendant.)

10
11 APRIL 28, 2022

12 (VIRTUAL)

13
14 HONORABLE EDGAR W. DICKSON, JUDGE

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

16 BY: MEGAN H. JAMESON, ESQUIRE

17 Attorney for the Plaintiffs

18 BY: LARA M. CAUDY, ESQUIRE

19 Attorney for the Defendant

20
21
22
23
24 KATHERINE A. SPIRES

25 REGISTERED PROFESSIONAL REPORTER

1	<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	AIMEE ZMROCZEK			
4	Ms. Jameson	10		
5	Ms. Caudy		12	
6	KELLEY BROWN			
7	Ms. Jameson	15		
8	Ms. Caudy		52	
9	ARTRELL HICKSON			
10	Ms. Jameson	18		
11	Ms. Caudy		20	
12	DAVID GOURLEY			
13	Ms. Jameson	21		
14	Ms. Caudy		40	
15	JUDGE DICKSON			
16	Ms. Jameson	69		
17				
18	Certificate of Reporter		80	
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E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EX</u>
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3	R-1	Notes		79
4	R-2	Email chain		79
5	C-1	Notes		79
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1 THE COURT: Ms. Jameson, do you have
2 this organized?

3 MS. JAMESON: I do, Your Honor. If I
4 can put the brief procedural background on the
5 record and Ms. Caudy and I have already been able
6 to agree on two exhibits to introduce and kind of
7 the procedures. So hopefully it will stream plan
8 things a little bit for the Court.

9 THE COURT: Okay. And let me just --
10 before we do that, let me harass Ms. Zmroczek for
11 driving and trying to do this. Okay. But now, go
12 ahead, Ms. Jameson.

13 MS. JAMESON: Thank you, Your Honor.
14 Megan Jameson on behalf of the State. This is the
15 matter of Artrell Hickson verses the State of South
16 Carolina and we are here for a reconstruction
17 hearing to attempt to reconstruct the record from
18 Mr. Hickson's first PCR hearing held before Your
19 Honor on September 11, 2015.

20 For a brief procedural background. In
21 June of 2009, Mr. Hickson and his brother Javier
22 were arrested following an investigation into an
23 armed robbery of the Graniteville branch of the
24 Security Federal Bank. In December of 2009, the
25 Aiken County Grand Jury indicted Mr. Hickson for

1 one count of armed robbery. And then in April of
2 2010, the Grand Jury additionally indicted
3 Mr. Hickson and codefendants for one count of
4 possession of firearm during the commission of a
5 violent crime.

6 On September 20, 2010, Mr. Hickson and
7 his brother Javier proceeded to a jury trial before
8 Judge Early. Mr. Hickson was represented by Kelly
9 Perkins Brown and Solicitor Thurmond and Assistant
10 Solicitor Susanna Ringler prosecuted the case. At
11 the conclusion of the trial, the jury convicted
12 Mr. Hickson and his brother as indicted and Judge
13 Early sentenced Mr. Hickson and his brother to
14 concurrent terms of imprisonment of 28 years for
15 the armed robbery and five years concurrently for
16 the firearm conviction.

17 He subsequently had a direct appeal and
18 his convictions were affirmed on appeal. He then
19 commenced to ten week PCR action on May 21, 2013.
20 The State made its return and requested an
21 evidentiary hearing. As I mentioned before, an
22 evidentiary hearing was convened before Your Honor
23 on September 11, 2015. He was represented by
24 Counsel Aimee Zmroczek and the State was
25 represented by Assistant Attorney General Daniel

1 Gourley.

2 At this hearing, trial counsel
3 testified and Mr. Hickson testified. Following the
4 hearing, Your Honor took the matter under
5 advisement and then subsequently denied relief. A
6 written order was signed by Your Honor on December
7 21, 2016 and filed on January 9th of 2017.

8 Mr. Hickson through Counsel Zmroczek
9 filed and served a timely motion to reconsider.
10 Respondent filed a return in opposition. And on
11 March 14th of 2017, Your Honor summarily denied the
12 motions for reconsideration. An order was signed
13 on March 17 of 2017. He did not file an appeal
14 following that denial of relief.

15 However, he did seek belated appellate
16 review through the filing of two subsequent PCR
17 actions seeking relief pursuant to *Austin v. State*.
18 One filed in 2019 and one filed in 2020. The State
19 filed a return requesting these two actions be
20 merged into one. And we have a hearing to
21 determine whether he was entitled to belated
22 appellate review of the first PCR pursuant to
23 *Austin*. That hearing was conducted in September of
24 last year and Judge Clyburn Pope granted *Austin*
25 relief. Mr. Hickson then initiated an appeal. And

1 he is currently represented by Appellate Defender
2 Laura Caudy.

3 Mr. Hickson moved to reconstruct the
4 record once it was discovered that the transcript
5 from his first PCR hearing from September 11, 2015
6 before Your Honor could not be transcribed. And on
7 April 5th of this year, the Supreme Court issued an
8 order remanding the matter back to Your Honor for a
9 reconstruction hearing within 45 days and we are
10 here today for that reconstruction hearing.

11 Before Your Honor and as part of the
12 record, a judge's packet has been previously
13 provided to the Court with the entire record for
14 Mr. Hickson's first PCR, his second and third PCR
15 proceedings, and his current appeal.

16 And at this time, there are two
17 exhibits that I believe we either like to jointly
18 move in as Court's exhibits or Respondent exhibits,
19 however the Court would prefer to do. These were
20 provided yesterday by email to the Court. The
21 first is a nine page document which is handwritten
22 and typed notes from Former Assistant Attorney
23 General Daniel Gourley that were taken during the
24 hearing and we'll have some testimony regarding
25 those notes from Mr. Gourley. And the second

1 document that we would like to introduce is a chain
2 of emails starting with an email from your law
3 clerk at the time on Friday, April 8th to Ms.
4 Zmroczek and Mr. Gourley with Your Honor's ruling
5 in the case followed by an exchange with Mr.
6 Gourley. And then eventually, Ms. Coleman from our
7 office who took over Mr. Gourley's position when he
8 moved for the post-conviction relief unit of our
9 office. So we would like to introduce those two
10 documents and I'll defer to Ms. Caudy, I don't
11 believe she has any objection to either.

12 THE COURT: Ms. Caudy, any objection?

13 MS. CAUDY: No Judge.

14 THE COURT: How do -- you want to
15 designate those as Court's exhibits or how did
16 y'all want to have them marked?

17 MS. JAMESON: However Your Honor would
18 prefer, we can either do them as Respondent's or
19 Court's exhibits.

20 THE COURT: Well, if there's no
21 objection, let's do them as Respondent's. Okay.
22 And were those exhibits forwarded -- they probably
23 haven't been, they've not been forwarded to
24 Katherine the court reporter, have they?

25 MS. JAMESON: No, and I can do that

1 right after this hearing if that's agreeable with
2 the Court and our court reporter.

3 THE COURT: And, Ms. Caudy, is that
4 agreeable with you? We'll have them marked as
5 Respondent's -- you said they're two exhibits? So
6 that would be Respondent's 1 and 2?

7 MS. JAMESON: Yes, Your Honor.
8 Respondent's 1 is nine pages of notes from Mr.
9 Gourley. And Respondent's Exhibit 2 is an email
10 chain that is four pages in total.

11 THE COURT: Okay. All right. Okay.
12 Those are in evidence. And what now, Ms. Jameson?
13 Do you have this organized?

14 MS. JAMESON: I do, Your Honor. We
15 discussed, although it is technically Mr. Hickson's
16 motion just for ease of everyone that the State
17 would call witnesses. So if agreeable with the
18 Court, at this time, we'll call Ms. Zmroczek first
19 so we could hopefully get her taken care of.

20 THE COURT: I want to make sure Ms.
21 Zmroczek is not driving right now.

22 MS. ZMROCZEK: I am not driving, Your
23 Honor. As you can see, I'm not even in the
24 driver's seat. I cut my leg, Your Honor, of
25 course, you know me, and I had 22 stitches or

1 | excuse me, 22 staples.

2 | THE COURT: Okay. I'm sorry. Ms.
3 | Zmroczek, you're at your office and you want to go
4 | inside or are you good from there?

5 | MS. ZMROCZEK: I'm good.

6 | THE COURT: Okay.

7 | AIMEE ZMROCZEK,
8 | being first duly sworn, was examined and testified
9 | as follows:

10 | THE COURT: All right. Thank you,
11 | ma'am. Now, Ms. Jameson, do you want -- since you
12 | called her, I'll let you go first. Ms. Jameson,
13 | are you going to ask her questions?

14 | MS. JAMESON: Yeah, I did. Was I muted
15 | before?

16 | THE COURT: You were muted. I didn't
17 | know.

18 | MS. JAMESON: Sorry, Your Honor.

19 | THE COURT: The fun thing about doing
20 | this like this, we can't often hear each other.
21 | Okay. Go ahead.

22 | DIRECT EXAMINATION BY MS. JAMESON:

23 | Q. Ms. Zmroczek, where are you currently
24 | employed?

25 | A. Still at AJZ Law Firm.

1 Q. Are you a solo practitioner?

2 A. I am.

3 Q. Okay. Did you ever represent
4 Mr. Artrell Hickson?

5 A. I did.

6 Q. In what capacity did you represent him?

7 A. I was appointed to his PCR.

8 Q. Do you recall approximately when you
9 represented Mr. Hickson?

10 A. I don't recall much of anything from
11 this case, unfortunately.

12 Q. Did you represent him at his 2015 PCR
13 hearing that we're here to reconstruct?

14 A. Yes. I was going to say sometime
15 around 2013. I thought so, yeah, 2015 the hearing
16 would be, yes.

17 Q. Do you have any notes from this
18 hearing?

19 A. I don't. I actually went from archives
20 and had my file pulled. I do have notes, but not
21 from the hearing. All my notes are in preparation
22 for the hearing, but not from the hearing.

23 Q. Do you have any independent
24 recollection of this hearing?

25 A. I have no independent recollection.

1 I'm so sorry.

2 Q. Do you recall what witnesses testified?

3 A. I believe that Ms. Brown did testify.
4 I do remember her. I can't remember or not if my
5 client testified, but I do remember that she did.

6 Q. Have you had an opportunity to review
7 the order of dismissal that Judge Dickson issued in
8 this case?

9 A. I did. I did, yes.

10 Q. Do you believe this accurately reflects
11 the issues that were presented at the PCR hearing?

12 A. It's just -- it's impossible for me to
13 say. I feel like there were a lot of issues in
14 this case. I went back and looked at the order
15 verses the -- verses the application and I'm just
16 -- I'm just -- I'm not comfortable saying yes or
17 no, I just don't know.

18 Q. All right. Thank you.

19 MS. JAMESON: The State has no
20 additional questions for Ms. Zmroczek.

21 THE COURT: All right. Ms. Caudy, any
22 questions?

23 MS. CAUDY: Yes, Your Honor.

24 CROSS EXAMINATION BY MS. CAUDY:

25 Q. Ms. Zmroczek, how long have you been

1 doing PCR?

2 A. So, when I first started my own company
3 in 2010, that's when they started the contract
4 system, and so I signed up for that. I'm no longer
5 on it now. Thank you, Judge Dickson. Just
6 kidding. But I am no longer on it now. I have
7 enough just personal, you know, outside business so
8 that I don't do the contracts anymore. But when I
9 was on it, I was on SBP contracts, PCR's, and
10 criminal contracts, so I was helping them with a
11 lot of stuff which meant a lot of appointments.
12 So, a lot.

13 Q. And given that you don't recall the
14 specific PCR hearing, I just want to ask you one
15 question about what you would typically do in
16 preparation for a hearing and during and actual
17 hearing. Would you normally attempt to elicit
18 testimony from the trial attorney about the
19 allegations listed in the PCR location or the
20 amended PCR conviction?

21 A. Yes.

22 Q. So typically you would want to
23 establish testimony to either support or refute
24 your allegations?

25 A. True.

1 Q. So, in this case, it looks like there
2 was seven claims that were ruled upon in an Order
3 of Dismissal and seven claims that you alleged in
4 the Motion to Reconsider that was filed on January
5 19, 2017. So would you have attempted to elicit
6 testimony from trial counsel on each of those seven
7 allegations?

8 A. Yes.

9 MS. CAUDY: That's all I have, Your
10 Honor.

11 THE COURT: Okay. All right. Ms.
12 Jameson, anything on redirect?

13 MS. JAMESON: No additional questions
14 and we'd ask that Ms. Zmroczek be excused.

15 THE COURT: Ms. Zmroczek, you're
16 excused. Good seeing you. I hope your leg gets
17 better.

18 MS. ZMROCZEK: Thank you. I hope I get
19 invited to the party.

20 THE COURT: Okay. Ms. Jameson, are you
21 ready to call on your next witness?

22 MS. JAMESON: Yes, Your Honor. At this
23 time the State would call Mr. Hickson's former
24 trial counsel, Kelly Perkins Brown.

25 THE COURT: Ms. Brown, how are you?

1 MS. BROWN: I'm good, Judge. How are
2 you?

3 THE COURT: I'm doing well. I need to
4 swear you in, please, ma'am.

5 KELLEY BROWN,
6 being first duly sworn, was examined and testified
7 as follows:

8 THE COURT: All right. Ms. Jameson,
9 Ms. Brown is your witness.

10 MS. JAMESON: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MS. JAMESON:

12 Q. Ms. Brown, where do you currently
13 practice law?

14 A. I'm an attorney with the Second Circuit
15 Public Defender's Office.

16 Q. And in that capacity, did you have an
17 opportunity to represent Mr. Hickson?

18 A. Yes.

19 Q. Do you recall approximately when you
20 represented Mr. Hickson?

21 A. I don't recall and did not look up when
22 I began my representation, but I represented him
23 through his trial in 2010.

24 Q. And he was convicted at the conclusion
25 of that trial; correct?

1 A. That's correct.

2 Q. Were you present at his September 11,
3 2015 post-conviction relief hearing?

4 A. Yes, I was.

5 Q. Did you testify?

6 A. I did.

7 Q. Do you have any notes from this
8 hearing?

9 A. I do not.

10 Q. Is this the first time you've been
11 called as a witness in a post-conviction relief
12 proceeding?

13 A. No, it was not.

14 Q. When you are a witness at a PCR
15 hearing, do you typically take notes?

16 A. No, I do not generally take notes as a
17 witness. At a hearing, I'm prepared. I bring my
18 file to the hearing. I'm prepared to testify as to
19 my representation. But as I am not a party to the
20 action, I do not make it a practice to take notes.

21 Q. And, again, here you did not take
22 notes; correct?

23 A. That's correct.

24 Q. Do you have any independent
25 recollection of this hearing?

1 A. I do not.

2 Q. You don't recall any of the issues that
3 were raised independent from the record you
4 reviewed?

5 A. No. As I have my file I have the
6 order. I reviewed the Order of Dismissal, so --
7 and I had prior to reviewing the Order of
8 Dismissal, I had zero recollection of the issues in
9 this case. So I cannot testify of any certainty
10 that I have specific recollection of that hearing.

11 Q. And do you have any recollection of
12 issues that were raised that are not encompassed in
13 that Order of Dismissal you've reviewed?

14 A. No.

15 Q. Do you recall who else testified at the
16 hearing?

17 A. I believe the only testimony came from
18 myself and from Mr. Hickson.

19 MS. JAMESON: No further questions at
20 this time, Your Honor.

21 THE COURT: All right. Ms. Caudy,
22 anything on cross?

23 MS. CAUDY: I have no questions, Your
24 Honor. Ms. Jameson covered it all.

25 THE COURT: All right. Thank you, Ms.

1 Brown. May she be excused?

2 MS. JAMESON: Yes, Your Honor. Thank
3 you.

4 THE COURT: All right. Ms. Jameson,
5 who is your next witness? Are you prepared to call
6 your next witness?

7 MS. JAMESON: Yes, Your Honor. The
8 State would call Mr. Hickson.

9 THE COURT: All right. Mr. Hickson,
10 can you hear me?

11 MR. HICKSON: Yes, sir.

12 ARTRELL HICKSON,
13 being first duly sworn, was examined and testified
14 as follows:

15 THE COURT: All right. Thank you, sir.
16 Mr. Hickson, if you wouldn't mind, if you'd just
17 answer any questions that you're asked, okay? All
18 right. Ms. Jameson?

19 MS. JAMESON: Thank you, Your Honor.

20 DIRECT EXAMINATION BY MS. JAMESON:

21 Q. Good morning, Mr. Hickson. Were you
22 present at your first PCR hearing on September 11,
23 2015?

24 A. Yes, ma'am.

25 Q. Did you testify at that hearing?

1 A. Yes, ma'am.

2 Q. Do you recall who else testified?

3 A. Ms. Kelley, Ms. Brown.

4 Q. Were there any other witnesses called?

5 A. No, ma'am.

6 Q. So it was just yourself and Ms. Brown;
7 correct?

8 A. Yes, ma'am.

9 Q. Okay. And you were represented by Ms.
10 Aimee Zmroczek who testified earlier today?

11 A. Yes, ma'am.

12 Q. Okay. Do you have any notes from this
13 hearing?

14 A. No.

15 Q. Do you have any memory of this hearing
16 and what specific issues were raised?

17 A. Honestly, no.

18 Q. Have you had an opportunity to review
19 the Order of Dismissal that Judge Dickson issued
20 following the hearing?

21 A. Yes.

22 Q. Does it cover the issues that you
23 recall being raised in your application and at the
24 hearing?

25 A. Yes.

1 Q. Are there any issues you can recall
2 raising to the Court that are not in that Order of
3 Dismissal?

4 A. I can't remember.

5 Q. Is there anything else you recall about
6 that hearing that you'd like to tell the Court?

7 A. No, ma'am. It's been --

8 Q. Thank you very -- oh, sorry. Go ahead.

9 A. It's been so long. It's been so long
10 ago, I don't remember.

11 Q. I understand, Mr. Hickson. Thank you
12 very much.

13 A. You're welcome.

14 THE COURT: All right. Ms. Caudy,
15 anything on cross?

16 MS. CAUDY: Just one, Your Honor.

17 CROSS EXAMINATION BY MS. CAUDY:

18 Q. Mr. Hickson, do you recall whether any
19 exhibits were marked and admitted into evidence
20 during the course of the hearing?

21 A. I can't recall.

22 Q. Okay.

23 MS. CAUDY: That's all, Your Honor.

24 THE COURT: Okay. Anything on
25 redirect, Ms. Jameson?

1 MS. JAMESON: No, Your Honor. Thank
2 you.

3 THE COURT: All right. Thank you,
4 Mr. Hickson. All right. Is the State prepared to
5 call its next witness?

6 MS. JAMESON: Yes. The final witness
7 the State will call is Daniel Gourley.

8 DANIEL GOURLEY,
9 being first duly sworn, was examined and testified
10 as follows:

11 THE COURT: Thank you, sir. Ms.
12 Jameson, he is your witness.

13 MS. JAMESON: Thank you, Your Honor.
14 DIRECT EXAMINATION BY MS. JAMESON:

15 Q. Good morning, Mr. Gourley. You served
16 as an assistant attorney general at the South
17 Carolina Attorney General's Office; correct?

18 A. I did.

19 Q. What timeframe were you employed by the
20 AG's office?

21 A. From 2012 to around 2015.

22 Q. And during those years at the AG's
23 office, did you work in the post-conviction relief
24 division?

25 A. I did.

1 Q. How long were you in the
2 post-conviction relief division?

3 A. From about 2012 to 2015, so roughly
4 three, three and a half years.

5 Q. Do you recall what circuits you handled
6 when you were at the AG's office?

7 A. I was assigned to the Second Circuit
8 and the Third Circuit.

9 Q. In this capacity, did you represent the
10 State at post-conviction relief hearings arising
11 out of the Second Circuit?

12 A. Yes.

13 Q. Did you represent the State in the
14 post-conviction relief hearing for Artrell Hickson?

15 A. Yes.

16 Q. So you were counsel for the State at
17 the September 11, 2015 hearing?

18 A. Yes.

19 Q. Can you describe your standard process
20 for preparing for a post-conviction relief hearing?

21 A. Certainly. So I would have reviewed
22 the trial transcript and take notes of any issues
23 that I saw in my review and just kind of outlined
24 just some basic understanding of the trial
25 transcript. I also speak with defense counsel and

1 review the allegations in the post-conviction
2 relief application. That could be in person or
3 over the phone.

4 Q. Do you prepare any outline or notes to
5 use at the hearing?

6 A. I did. I always did some boiler plate
7 questions that we would always ask every PCR
8 applicant and defense counsel in a PCR hearing just
9 to kind of have foundational questions to ask. And
10 then, of course, any additional questions that may
11 arise from the direct or cross examination
12 questions that were asked during the hearing.

13 Q. Would that include any sort of
14 procedural history or call of the case?

15 A. Yes. I would always just kind of do
16 our standard script so that we could get the ball
17 rolling. Just a PCR application number, who the
18 witnesses were going to be, who PCR counsel was,
19 procedural history of the case. When the
20 post-conviction relief was filed, the allegations
21 alleged, and then when the State did its return.

22 Q. And have you had an opportunity to look
23 at any notes that you may have taken in preparation
24 for and during this hearing?

25 A. Yes.

1 Q. Have you been -- you were previously
2 provided with a copy of Respondent's Exhibit Number
3 1, nine pages of notes; correct?

4 A. I was.

5 Q. Okay. Do these appear to be notes that
6 you took in preparation for and during the hearing?

7 A. Yes, that's absolutely my handwriting.

8 Q. And the first three pages which are
9 typed pages, is this the kind of outline call of
10 the case with the allegations that you just
11 discussed?

12 A. It is.

13 Q. Does that include the specific
14 allegations that were being raised by Mr. Hickson
15 and through his counsel Ms. Zmroczek at the
16 hearing?

17 A. Yes. So those allegations are in that
18 script are the allegations that were pled in the
19 post-conviction relief application. Any additional
20 allegations that were raised, I would have written
21 down in my notes if those were raised during the
22 course of the PCR hearing or alleged at the start
23 of a PCR hearing. But the ones in the script were
24 pulled from his PCR application.

25 Q. And so based on your standard practice,

1 if new allegations arose at the start of or during
2 the hearing, you would indicate this on your
3 outline?

4 A. Yes. I outline just in my legal pad
5 writing down notes to follow-up with questions.

6 Q. Does it appear that any additional
7 allegations were raised in this case?

8 A. I didn't see any in my review of my
9 notes. I don't have a specific recollection of
10 this hearing given at the time between it. But
11 based off my notes and when I would have typically
12 done post-conviction relief hearings, I didn't see
13 any additional allegations that were raised.

14 Q. Okay. If you'll turn now to page 4 of
15 Respondents Exhibit Number 1 which appears to be
16 some typed notes or typed questions and then
17 written responses underneath and kind of can we go
18 over that written portion?

19 MS. JAMESON: And, Your Honor, at least
20 for me it's a little bit hard to read some of these
21 and so I'm going to have Mr. Gourley interpret his
22 handwriting for the record if agreeable with the
23 Court.

24 THE COURT: Mr. Gourley was going to be
25 a doctor and then decided to go to law school.

1 A. Got to write quick, Judge. So page 4
2 it starts with the how many times did you meet with
3 your attorney; is that correct, Ms. Jameson?

4 Q. Yes. And can you tell the Court what,
5 where, whose questions these would be for? Whose
6 testimony is this reflective of?

7 A. So what I -- again, what I typically
8 did, my standard practice was to write kind of
9 boiler plate questions that we'd always ask every
10 PCR applicant and every defense counsel and any
11 additional witnesses that we anticipated being
12 called, I would have some scripted questions just
13 to kind of get started.

14 This first page or page 4 of State's
15 Exhibit Number 1 is the questions that I would
16 typically ask a PCR applicant. So how many times
17 did you meet with your attorney before going to
18 trial? I had one time, one time. Do you recall
19 reviewing discovery with your attorney? I would
20 assume -- I had written down alibi witnesses. And
21 then alibi witnesses were based off my review of
22 the notes of discussion during the PCR hearing.

23 Did you recall discussing any possible
24 defenses with your attorney? I have Charles Smalls
25 and Tommy somebody later on in my notes. I guess

1 Tommy is identified as Tommy Parker having reviewed
2 my notes and actually talking with Ms. Caudy. The
3 Charles Smalls and Tommy Parker were the alibi
4 witnesses that were alleged to have been
5 investigated or discussed during the course of Ms.
6 Brown's representation of Mr. Hickson.

7 And then, did you give your attorney
8 any leads or potential witnesses to investigate?
9 He said, no. I do have a note down again on the
10 bottom of this page about David Kearse's
11 testifying. I don't have any specific independent
12 recollection about any significance of that
13 information.

14 Q. You mentioned that this is kind of your
15 script for questions that you want to cover with
16 the applicant. Is there a separate area where you
17 would take notes of direct examination or cross
18 examination from PCR counsel?

19 A. Yes. So I would also script out
20 questions for PCR counsel that I would ask.
21 Depending on Ms. Zmroczek calling Ms. Brown or if I
22 called Ms. Brown, I don't have a recollection of
23 who called her, but I would always have questions
24 that I would ask her as well.

25 Q. Before we get to there, sorry, maybe I

1 did not phrase myself clearly. Do you have
2 handwritten notes or anywhere else where you would
3 take notes of the questions that Ms. Zmroczek was
4 asking her client or witnesses independent from
5 your pre-prepared questions?

6 A. Yes. So we'd always have a legal pad
7 and we'd take handwritten notes of any questions
8 that were asked by either Ms. Zmroczek or any
9 additional questions I would ask as a result of
10 questions being asked. So we'd always carry a
11 legal pad and take handwritten notes as well.

12 Q. And the back three pages of
13 Respondent's Exhibit Number 1, pages 6, 7 -- excuse
14 me, 7, 8, and 9, does that appear to be the
15 handwritten notes you would have taken
16 contemporaneous during the hearing?

17 A. Yes, that is my handwriting.

18 Q. Okay. And page number 7 which does not
19 have any sort of heading on it, but the first thing
20 written on there appears to be only met with TC one
21 time?

22 A. Right.

23 Q. Are these the notes that you would have
24 taken during the direct of Mr. Hickson?

25 A. Yes.

1 Q. Okay. If you could kind of walk us
2 through those a little bit.

3 A. Yeah. So at the start as you stated, I
4 only met with TC one time. TC being shorthand for
5 "trial counsel." And, again, these would be the
6 questions and of the responses that Mr. Hickson was
7 giving Ms. Zmroczek during, I guess, her direct
8 examination of him.

9 Talked about defenses at that time.
10 Alibi witnesses advised not to put alibi. Alibi
11 were not credible. Alibi gave off, I would assume,
12 off, I'm not quite sure, statements there at trial.
13 Routzong, Mr. Routzong I believe was Mr. Hickson's
14 brother's counsel and codefendant or cocounsel in
15 this case. He had affidavits. No mention of
16 alibis because no one testified for him.

17 And then I have a note here on expert
18 of dogs and fingerprints. Underneath that, I have
19 Charles Small and Tommy Parker. Then I have
20 defendant and codefendant had the same defense
21 involved, and I'm sorry, Judge, I don't know what
22 that word is. Off something. And didn't testify
23 because of her. I would assume that was a
24 discussion. Again, I'm speculating, but I would
25 assume that's a discussion between Ms. Brown and

1 Mr. Hickson as whether or not he would be
2 testifying at trial.

3 Q. Okay. Does this appear to be all of
4 the notes you took regarding Mr. Hickson's direct
5 and cross examination?

6 A. Yes. In every PCR hearing I would take
7 contemporaneous notes. Obviously, we have to wrote
8 a proposed final Order or Order of Dismissal
9 following the hearing. Ninety-five percent of the
10 time we would never order the transcript, so it
11 really was important to take contemporaneous notes.
12 So, you know, obviously back in the day it was a
13 little bit more fresh in my memory at the time that
14 we would be writing proposed orders, so shorthand
15 was the way to go.

16 Q. And you would be taking these notes
17 while you were questioning the witnesses or
18 listening to opposing counsel question witnesses;
19 correct?

20 A. Yes.

21 Q. Okay. Other than Mr. Hickson
22 testifying, do you recall whether Ms. Perkins Brown
23 testified?

24 A. She did.

25 Q. Do you have any of your pre-typed

1 questions that we are discussing that you would
2 draft before for her?

3 A. Yes.

4 Q. Okay. And, specifically, is that page
5 5 and 6 of Respondent's Exhibit Number 1?

6 A. It is.

7 Q. And if you could kind of walk us
8 through those notes.

9 A. All right. So I would have asked Ms.
10 Brown how long she had been practicing law which
11 was from 1998. Whether she was appointed or
12 retained, and I had circled appointed. I asked her
13 how many times did she meet with the applicant
14 prior to his trial. She said she met with him on
15 two occasions. That he was not in jail. He did
16 post bond on October 14th of 2009.

17 The original file she had -- I have
18 something under here originally file opened
19 unrelated charges and that JS represented him at
20 the bond hearing. And later learned that, I think
21 Ms. Caudy refreshed my recollection that it was
22 Jerry Screen represented him at some point in time.
23 I have dates down that she met with him on April
24 21st of 2010 and in September. They were office
25 visits. She did not file. I don't have anything,

1 I have an X here that did not file Rule 5 for
2 Brady. She did not have one in her file at the
3 time. She did -- I have check marked that she did
4 review the discovery with him. Prior to, that they
5 discussed the evidence, the State's witness -- the
6 evidence against him. They discussed alibi
7 witnesses. With one of these witnesses was Tommy
8 Parker which was led to believe that the
9 surveillance pics -- pictures from Walmart would
10 have negated alibi testimony. Did have disk of,
11 again, I'm sorry, I can read that word. Did have
12 disk of alibi testimony.

13 For "trial strategy," I have TS. Heard
14 from last. Trial strategy was to npt put any
15 evidence in and save for last closing argument.
16 Would you briefly describe the State's evidence
17 against the applicant? Contradiction and witness
18 statements, there were no eyewitnesss. Codefendant
19 implicated him and another individual. There was
20 some snitch testimony somewhat corroborative from
21 the other witnesses.

22 I asked what kind of investigation she
23 did. She said she had gone through the case and
24 having conversations with cocounsel. She had ample
25 time to prepare for trial. And then I also have my

1 handwritten notes from Ms. Brown's either direct or
2 cross examination of by Ms. Zmroczek.

3 Q. Okay. And is that page 8 and 9 of
4 Respondent's Exhibit Number 1?

5 A. It is.

6 Q. Okay. And if you'll briefly kind of
7 review and interpret those for the Court in the
8 record, please.

9 A. So at the beginning I have Kelly Brown
10 - met two times available at anytime. Did not have
11 a private investigator. There were three
12 codefendants. She's aware of those statements
13 provided by Artrell and Javier. The alibi
14 witnesses negated the Walmart video. She did not
15 have it in her file. Will tell you that -- will
16 tell you this course of trial. I have page 124
17 down, so what I'll typically do is you can see down
18 the right side of the page there's a line there,
19 it's any questions that we'd need to ask or
20 follow-up, I'd always put an asterisk by it and
21 would write out the question that we needed to ask.

22 I didn't do that at any point in time
23 here, but I have page 124. I'm not sure what the
24 significance of that is. I went back and reviewed
25 my notes that I took of the trial transcript prior

1 to the PCR hearing and I can't tell you what
2 significance that is again today.

3 Better trial strategy to put witnesses
4 in. I think that would probably be the question
5 that Ms. Zmroczek would have asked her. Ms. Brown
6 says, could have been better trial strategy. Still
7 at better trial strategy or better strategy to go
8 last argument. Then there's a discussion on the
9 true and just verdict. Off to the left. Don't
10 recall if alibi witnesses were there or ready to
11 go. Again, going back to I assume the judge's jury
12 charge of the seek the truth facts.

13 Then there's something on a comment,
14 comment to have off record in page 28 which goes
15 back to, I guess, voir dire during the jury
16 selection. And then I have underneath that, jury
17 charge and possible happened.

18 See if I have anything else. And then
19 going on to the next page, I have a bank robbery.
20 Bases were covered. Again, I have page 42 of the
21 trial transcript, observation. On going back to
22 page 42 of the trial transcript in my notes dealt
23 with some sort of State witness, Tanya Key, who I
24 guess was at the bank at the time it was being
25 robbed. I'm not quite sure.

1 I have Screen represented Artrell at
2 the bond. Don't know if Screen ever made a motion
3 to be relieved. Credibility of State witnesses,
4 there were several inconsistencies. Trial strategy
5 to not call them. Meeting with hit man. Meeting
6 two times. Two investigators employed there. I
7 assume they had two investigators at the public
8 defender's office and testimony caught off guard,
9 but I don't have any context for that.

10 Q. Thank you for reviewing those. To the
11 best of your recollection, do the notes accurately
12 reflect the witnesses who testified at the hearing?

13 A. I don't have any specific recollection
14 of the witnesses' testimony. I will say that I
15 wrote down notes contemporaneously with what they
16 were testifying to, that was always my standard
17 practice. But I don't have any independent
18 recollection of anybody's testimony from that
19 hearing.

20 Q. If there were any other witnesses who
21 testified, what was your standard practice if it
22 was witnesses you hadn't prepared for? Clearly you
23 had prepared for the applicant and trial counsel to
24 testify, if there had been any other witnesses or
25 surprise witnesses, how did you typically handle

1 that in your role?

2 A. So if there would have been any
3 additional witnesses, I would have taken notes. So
4 we would have obviously had to incorporate their
5 testimony from direct and cross examination into
6 the proposed Order of Dismissal if the application
7 was denied.

8 Additionally, I would have had the
9 notes. I would have had questions handwritten out
10 to ask them. And they would probably have been a
11 little bit more detailed in the notes I would have
12 taken because I wouldn't have prepared my script.
13 So I've been trying to think of some questions to
14 ask as well on the fly.

15 Q. Do you recall whether any other
16 witnesses were there and present?

17 A. I don't recall any other witnesses
18 testifying. Again, I don't have the specific
19 recollection of this hearing, but I feel confident
20 in saying under oath that had there been additional
21 witnesses testifying, I would have taken notes on
22 them.

23 Q. I believe we covered this before, but
24 based on your notes and in your review of the
25 record we have, the issues that were raised and the

1 application and are indicated on page 1, 2, and 3
2 of your call of the case from Respondent's Number 1
3 are the issues that were raised at the PCR hearing?

4 A. Yeah. Again, my typical practice
5 during the PCR hearing would have been if any
6 additional issues would have been raised at the
7 start of the hearing or during the course of the
8 hearing by the applicant, we obviously want to
9 incorporate that in the Order of Dismissal or
10 purposed Order of Dismissal to make sure everything
11 is preserved for appellate review. So I would have
12 certainly asterisked any kind of additional
13 allegations and asked additional questions on those
14 allegations that were raised outside of what was
15 already pled in the application.

16 Q. Have you had an opportunity to review
17 the Order of Dismissal from this hearing?

18 A. Yes.

19 Q. Did you draft the Order of Dismissal in
20 this hearing?

21 A. No. That's not my -- I did not.

22 Q. Why not? Since your typical practice
23 was you do the hearing and then you draft the
24 order, can you explain for the record why you did
25 not do so here?

1 A. So Ms. Coleman, I guess, who is now Ms.
2 Hunter she was taking over the Second and Third
3 Circuit, I was transitioning out of post-conviction
4 relief division at this time into the Internet
5 Crimes Against Children Division, so I was juggling
6 both of those jobs and responsibilities was a
7 little bit much, so Ms. Coleman since she was
8 taking over the two circuits was responsible for
9 drafting the order of dismissals. She had my
10 notes. Obviously, I was accessible to her if she
11 had any questions. And she -- based off of reading
12 the Order of Dismissal she -- that's just not my
13 style of writing, so I would assume that she was
14 the one who wrote the Order of Dismissal or
15 proposed Order of Dismissal for Judge Dickson's
16 review.

17 Q. One thing I neglected to ask earlier.
18 Did Judge Dickson -- do you recall whether Judge
19 Dickson ruled at the conclusion of the
20 post-conviction relief hearing on the record?

21 A. I don't have a specific recollection of
22 that, but it was typically Judge Dickson's
23 procedure to take everything under advisement and
24 then issue a ruling at a later date.

25 Q. Do you recall whether you were notified

1 by his chambers of any sort of ruling at a later
2 date?

3 A. You sent me the email from Judge
4 Dickson which refreshed my recollection that he did
5 at a later date rule and denied Mr. Hickson's
6 post-conviction relief application. But absent
7 having refreshed my recollection, I didn't have any
8 sort of independent memory of that.

9 Q. And to the best of your recollection,
10 you were transitioning to another unit at the
11 Attorney General's Office and were not ultimately
12 responsible for drafting and submitting that
13 proposed Order of Dismissal in this case; correct?

14 A. That's correct.

15 Q. Okay. Is there anything else unique
16 about this hearing or that stands out that would be
17 helpful for the Court in attempting to reconstruct
18 this record?

19 A. No, nothing that I can think of that
20 would help the Court.

21 MS. JAMESON: No further questions at
22 this time, Your Honor.

23 THE COURT: All right. Ms. Caudy, any
24 questions of this witness?

25 MS. CAUDY: Yes, Your Honor.

1 CROSS EXAMINATION BY MS. CAUDY:

2 Q. I'd like to kind of pick up where we
3 left off in regards to your Respondent's Exhibit
4 Number 1 which is the email chain between Judge
5 Dickson's clerk and it looks like you as well as
6 Julie Coleman. You said that it wasn't your style
7 of writing the Order of Dismissal?

8 A. Yes.

9 Q. Okay. And the email chain makes clear
10 that, again, you were no longer with the
11 post-conviction relief division of the AG's office,
12 is that correct?

13 A. That's correct.

14 Q. Okay. Do you have that exhibit in
15 front of you by chance?

16 A. Ms. Jameson sent it to me, I can pull
17 it up if you give me a minute.

18 Q. That would be great if you could.

19 A. All right. Give me one second. All
20 right. I've got it up.

21 Q. Okay. It looks like you responded to
22 Ms. Smith on October 14th at 2:18 p.m. and you said
23 that you had left the PCR division, that, you know,
24 you cc' d Julie Coleman and she took over the
25 circuit, basically just letting Ms. Coleman know of

1 the contact from Judge Dickson's clerk; is that
2 correct?

3 A. That's correct.

4 Q. Okay. And then Judge Dickson's clerk
5 responded a few minutes later and said, thank you
6 for the update and she looked forward to hearing
7 from Ms. Coleman?

8 A. Yes.

9 Q. That was at 2:24 p.m. And then that
10 same day on October 14th at 4:27 p.m., did Ms.
11 Coleman respond?

12 A. I don't -- yes, she did. Sorry.

13 Q. So basically within two and a half
14 hours she had given Judge Dickson a proposed Order
15 of Dismissal?

16 A. Yes.

17 Q. Okay. And you indicated earlier that
18 you had reviewed the Order of Dismissal?

19 A. I did.

20 Q. Okay. Based on your review of the
21 Order of Dismissal in comparison to Judge
22 Dickson's, the clerk's email on October -- I'm
23 sorry, on April 8, 2016 at 3:13 p.m., based on that
24 email in which he rules that he's going to deny Mr.
25 Hickson's post-conviction relief, he includes in

1 that email -- or his clerk includes in that email
2 his conclusions of law on the seven allegations
3 that are ruled upon in the Order of Dismissal; is
4 that correct?

5 A. Give me one second. Yes.

6 Q. And does it appear based on that email
7 from Judge Dickson's law clerk, in comparison to
8 the proposed Order of Dismissal submitted by Julie
9 Coleman in October of 2016 that she merrily copied
10 and pasted Judge Dickson's conclusions of law and
11 put them into the Order of Dismissal?

12 A. It does.

13 Q. Okay. Because Ms. Coleman, she was not
14 present at the PCR hearing, was she?

15 A. I don't have a specific recollection
16 whether she was or wasn't. I will say if she was
17 we would have probably had notes from her, so I
18 would be inclined to say, no.

19 Q. Okay. So she prepared a proposed Order
20 of Dismissal based on your notes and Judge
21 Dickson's law clerk's email?

22 A. Yes.

23 Q. Okay. Is there any testimony or
24 summary of testimony that appears in the email from
25 Judge Dickson's law clerk from April of 2016?

1 A. It doesn't appear so, no.

2 Q. Okay. So it's -- his email only -- I'm
3 sorry, the law clerk's email only contains
4 conclusions of law?

5 A. Essentially, yes.

6 Q. Okay. And in your review of the Order
7 of Dismissal, is there any summary of the testimony
8 that was elicited during the PCR hearing?

9 A. No.

10 Q. Okay. So that Order of Dismissal it
11 includes the procedural history similar to what was
12 included in the State's return to the
13 post-conviction relief application as well as the
14 conclusions of law that were written by Judge
15 Dickson in that email; is that correct?

16 A. Yes. Yep, you are correct.

17 Q. Okay. Now going back to the actual PCR
18 hearing, you said that you had a script that you
19 would prepare in advance to have the various
20 witnesses who were going to testify at the hearing;
21 is that correct?

22 A. That is correct.

23 Q. Okay. Do you recall whether Ms.
24 Zmroczek presented the testimony of Mr. Hickson
25 first before Ms. Kelley brown testified?

1 A. I don't have a specific recollection to
2 that, no.

3 Q. Okay. But typically in your
4 experience, the applicant would go first. I guess
5 to clarify, do you recall whether you called Ms.
6 Brown as a witness or whether Ms. Zmroczek called
7 Ms. Brown as a witness?

8 A. I don't have an independent
9 recollection of who called who. Typically Ms.
10 Zmroczek would always call the applicant first to
11 allege any allegations and then we would always
12 follow-up with defense counsel to discuss the
13 allegations that the applicant was alleging. But
14 it varied from counsel to counsel as to who called
15 defense counsel up in the stand. Sometimes I
16 would, sometimes PCR counsel would. But I don't
17 have an independent recollection of who call Ms.
18 Brown.

19 Q. Okay. Or who testified first whether
20 it was Mr. Hickson or Ms. Brown?

21 A. I don't, no, ma'am.

22 Q. Did you only ask Mr. Hickson the four
23 questions that appear? I guess it's on page 4 of
24 Respondent's Exhibit Number 1?

25 A. Yes.

1 Q. Are there only four questions you asked
2 him or would you have asked him follow-up
3 questions?

4 A. I probably would have asked him some
5 follow-up questions. I only say that because I
6 have the David Kearse testifying which wasn't part
7 of my script. I don't know. Obviously, he stated
8 something about David Kearse testifying for me to
9 write it down, but I don't know what question I
10 would have asked him to elicit that response. But,
11 no, I didn't have any additional questions outside
12 of potentially that one question. I --

13 Q. Would you have --

14 A. Go ahead. Sorry.

15 Q. Sorry.

16 A. No, you're all right.

17 Q. Would you have questioned Mr. Hickson
18 essentially to follow-up on questions that Ms.
19 Zmroczek may have questioned him about on direct?
20 Would you have tried to follow-up on some of his
21 responses during your cross examination?

22 A. I could have. I don't have an
23 independent recollection of whether I did or did
24 not. If I would have followed up with questions, I
25 would have taken notes. I don't see any. Usually

1 | what I would -- my typical practice would have been
2 | to draw a line under the questions or the testimony
3 | that he would have presented to indicate, all
4 | right, he's done with say direct examination and
5 | then take any handwritten notes for cross
6 | examination that I would have done. Which I don't
7 | have any. Nothing indicates to me that I see any
8 | follow-up outside of my standard script questions.

9 | Q. So if you would have asked him
10 | additional questions, your notes from his responses
11 | would have appeared on page 4 of Respondent's
12 | Exhibit Number 1 or would they have appeared on
13 | your legal pad? Do you recall?

14 | A. More likely than not on my legal pad.
15 | As I indicated on direct examination, if there were
16 | any questions that I felt needed to be brought out
17 | during cross examination, I would have typically
18 | written them on the right hand of that piece of
19 | paper. I always drew a line down the side to sit
20 | there and put a star and say, all right, we need to
21 | follow-up on this question or that question. So
22 | those would typically be where my cross examination
23 | questions would have been generated from.

24 | Q. Okay. On page 7 of Respondent's
25 | Exhibit Number 1, it looks like your notes from Ms..

1 Zmroczek's examination of Mr. Hickson. A few lines
2 down it says, alibi not credible. Do you recall
3 the specifics of that? Who said they weren't
4 credible? Whether Mr. Hickson said they weren't
5 credible? Whether Ms. Brown had told Mr. Hickson
6 they weren't credible? I mean, do you know where
7 that credibility statement came from?

8 A. I don't. I mean, I can speculate on
9 it, but I don't have an independent recollection of
10 it.

11 Q. Okay. Below that it says, alibi gave
12 off in statements. Can you decipher what it says
13 below that line? Something at --

14 A. There at trial.

15 Q. Okay. So you don't recall whether Mr.
16 Hickson testified that his alibi witnesses were
17 present at the trial?

18 A. I don't.

19 Q. Okay. It state's that Mr. Routzong
20 took affidavits. Do you recall whether any
21 affidavits were presented during the evidentiary
22 hearing, the PCR hearing?

23 A. I don't have any indications that any
24 exhibits or evidence was introduced at the PCR
25 applicant -- PCR application hearing. But I don't

1 have a specific recollection as to whether anything
2 was introduced or not. But it had -- my typical
3 practice would have been had anything been
4 introduced, we would have entered -- I would have
5 taken notes on it, made a notation as to State's
6 Exhibit Number 1 or Defense Exhibit Number 1, such
7 and such.

8 Q. Okay. If the clerk of court's office
9 has exhibits from the PCR hearing, would you
10 conclude that they were, you know, properly
11 admitted during the hearing?

12 A. Yeah, absolutely.

13 Q. Okay. So if the clerk of court's
14 office has two exhibits, essentially statements
15 from a Tommy Parker and a Charles, I want to say
16 their names properly, I'm the one who told you
17 originally, but if they were --

18 A. Charles Smalls.

19 Q. Yeah, Charles Smalls and Tommy Parker.
20 If there were statements that were marked and
21 admitted during the course of the hearing, you're
22 saying you would have had notes reflecting that?

23 A. I should have. It was my typical
24 practice to write down State's Exhibit or Defense
25 Exhibit Number 1 or Number 2 and what they were to

1 be able to incorporate it into the proposed Order
2 of Dismissal if appropriate.

3 Q. Given that you don't have notes about
4 any exhibits, I assume you don't have any
5 recollection about when exhibits may have been
6 admitted, whether it was through Mr. Hickson or
7 through Ms. Brown?

8 A. No.

9 Q. Okay. You don't recall -- we may have
10 been through this. Do you recall whether you
11 called Ms. Brown as a witness or whether Ms.
12 Zmroczek called Ms. Brown as a witness?

13 A. I don't have any independent
14 recollection of who called who.

15 Q. Okay. Now the script that appears on
16 page 5 of Respondent's Exhibit Number 1, your
17 questioning of Ms. Brown, would those have been the
18 only questions that you asked Ms. Brown or would
19 you have followed up not only on her responses
20 during your examination of her as a witness, but as
21 well as what Ms. Zmroczek may have elicited from
22 her during questioning?

23 A. I don't have any independent
24 recollection of any additional questions that I
25 would have asked. Again, that being said, my

1 typical practice if any additional questions were
2 asked as a result of Ms. Zmroczek's direct or cross
3 examination of Ms. Brown, I would have written them
4 off to the side on the right hand side of the legal
5 pad. The information that's incorporated in my
6 script could have resulted from additional
7 questions that were asked outside of the questions
8 that were written down in my script. Obviously,
9 you know, if you're in the flow of things and
10 you're going to follow-up, you know, with
11 questions, but what questions I may or may not have
12 asked Ms. Brown, I don't know.

13 Q. Okay. If Ms. Zmroczek had elicited
14 testimony from Ms. Brown on the allegations that
15 were alleged in the application, would you have
16 tried to refute that testimony while you were or,
17 you know, kind of refute those alligations while
18 you were questioning Ms. Brown, you know, follow-up
19 on the questions that Ms. Zmroczek was asking her?

20 A. Yeah, absolutely.

21 Q. So you normally took really thorough
22 notes that included all of the testimony and all of
23 the allegations, it kind of seems that's what
24 you're indicating?

25 A. Yes.

1 Q. Your notes would be very thorough in
2 order to help draft that Order of Dismissal?

3 A. Yes.

4 Q. Okay.

5 MS. CAUDY: I think that's all I have,
6 Your Honor.

7 THE COURT: Anything on redirect?

8 MS. JAMESON: No, Your Honor.

9 THE COURT: All right. Mr. Gourley,
10 I'm sorry to take you off the stand now.

11 MR. GOURLEY: I appreciate it, Judge.
12 It's good to see you.

13 THE COURT: Good seeing you. Thank
14 you. All right. Is the State ready to call its
15 next witness?

16 MS. JAMESON: The State has no
17 additional witnesses to call. And I neglect, I
18 think I forgot to ask for Ms. Brown to be excused
19 before and Mr. Gourley if they would like to be.

20 THE COURT: Ms. Caudy, any objection?

21 MS. CAUDY: I do. I was hoping to
22 recall Ms. Brown just briefly to ask one question.

23 THE COURT: Okay. All right. Is it
24 okay to excuse Mr. Gourley?

25 MS. CAUDY: Yes, Your Honor.

1 THE COURT: Okay. Thank you, sir.
2 Appreciate it.

3 MR. GOURLEY: Thank y'all.

4 THE COURT: All right. Ms. Brown,
5 you're being recalled. You realize you are still
6 under oath, okay?

7 MS. BROWN: Yes, Your Honor.

8 THE COURT: Okay. Ms. Caudy?

9 RECALL CROSS EXAMINATION BY MS. CAUDY:

10 Q. Ms. Brown, do you remember whether any
11 exhibits were marked and admitted during the course
12 of your testimony?

13 A. I do not remember.

14 MS. CAUDY: That's all, Your Honor.

15 THE COURT: Okay. May she be excused?

16 MS. CAUDY: Yes sir.

17 THE COURT: Well, I forgot, anything --
18 any follow-up on that, Ms. Jameson?

19 MS. JAMESON: No, Your Honor. Thank
20 you.

21 THE COURT: Okay. And no objection to
22 her being excused?

23 MS. JAMESON: No, Your Honor.

24 THE COURT: Thank you, ma'am, Ms.
25 Brown, you are excused.

1 MS. BROWN: Thank you, Judge.

2 THE COURT: All right. What's next,
3 Ms. Jameson?

4 MS. JAMESON: The State has no
5 additional witnesses or exhibits to introduce. I
6 don't know if Your Honor has any notes or
7 recollections to put on the record regarding this
8 hearing.

9 THE COURT: Well, actually, I've got
10 some notes. And going back to the exhibits and
11 y'all don't have a copy of these, do you?

12 MS. JAMESON: No, Your Honor.

13 THE COURT: Okay.

14 MS. CAUDY: I have -- sorry.

15 THE COURT: I'm sorry.

16 MS. CAUDY: I have a copy of the
17 exhibits that were admitted during the PCR hearing.
18 They're just very poor qualities -- poor quality.

19 THE COURT: And I don't have copies of
20 those, but my notes indicated that they proffered
21 Applicant's Number 1 as Tommy Parker and Applicant
22 Number 2 was Charles Smalls. And they had
23 something to do with the alibis, but they did not
24 come and testify. Which was -- well, but we
25 proffered those affidavits to protect the record.

1 I don't know whether that was sufficient or not.

2 Do you want me to email these notes to y'all?

3 MS. JAMESON: That would certainly be
4 helpful, Your Honor.

5 THE COURT: Can y'all bear with me a
6 second and see how we can transfer those to you?

7 MS. JAMESON: Certainly, Your Honor.
8 Thank you.

9 THE COURT: Then y'all can -- I didn't
10 know -- well, okay. Bear with me one second while
11 I -- Mr. Gourley's handwriting looks really good
12 now I start looking at mine, so. No comments.
13 Okay. My admin is scanning them right now and
14 they're going to be emailing them to both of y'all
15 right now. And I guess, Katherine, she needs to
16 send a copy to you too as well, doesn't she? Okay.
17 Let me remind her of that.

18 Is that what we did? Yeah, we'll mark
19 those as, they would be -- would they be Exhibit 3?

20 MS. CAUDY: Or Court's Exhibit 1 if
21 Your Honor would prefer.

22 THE COURT: Whichever. Court's Exhibit
23 1. Okay. Now while we're waiting -- while y'all
24 are waiting to get that, can I just mention
25 something to you? We were trying to find -- y'all

1 had contacted the court reporter and she had
2 already turned everything in. And Cher Young,
3 C-H-E-R Young was the court reporter and I also had
4 Tammie Holmes, you know, at Judicial talk to her.
5 She said the computer that she was using crashed.
6 Okay. She said that she is agreeable to having it
7 fixed at Court Administration's expense and would
8 provide the transcript if it's in there, but she
9 has no idea whether it's in there or not. I had
10 them check the oldest folder that she had and it
11 only went back to 2016 and Ms. Young indicated that
12 she was -- she tried to be very consistent in
13 erasing things after five years, okay. But there's
14 -- there is a chance that the transcript could be
15 on that computer and -- but she's not willing to
16 just turn it over because that computer also has,
17 you know, personal notes and emails and photographs
18 and things like that. But she would agree to have
19 Jason Collins try and see if he could fix it. Now,
20 he is Faith Collins -- he is a court reporter's
21 husband who does computer work. And Faith Collins
22 is in with family court assigned to the First
23 Circuit here. But she said she's not putting her
24 money in it and so y'all would have to decide
25 whether y'all wanted me to try. And I have not had

1 an opportunity to talk to Mr. Collins to get any
2 kind of estimate on how much that would be to do
3 that if it's in there. You know, because if the
4 computer's crashed, I don't know how long. But do
5 y'all want me to follow-up with that and then who
6 would pay for it?

7 MS. JAMESON: The State certainly would
8 like for us to try to do that because the record --
9 the actual transcript is always going to be much be
10 better than anything we can even try to reconstruct
11 in a perfect world. So I think it would be worth
12 it to do that.

13 THE COURT: Okay. Now, is the State
14 willing to pay for it?

15 MS. JAMESON: I might need some
16 clarification on that. Because you said before
17 Court Administration's expense, so this is not
18 something Court Administration is willing to pay
19 for.

20 THE COURT: Okay. Well, they did not
21 indicate that they were willing -- I mean, I have
22 not talked to -- when I was talking with Tammie
23 Holmes, she didn't say anything about, oh, yeah,
24 we'll be glad to pay it. So I'm assuming they are
25 expecting one of these two ladies' groups to pay

1 for this, you know.

2 MS. JAMESON: If we could get
3 clarification on that and then -- that is not an
4 ordinary expense we incur, so I would have to get
5 higher up the chain of command approval for that.
6 But that is certainly something that I would be
7 willing to entertain and then discuss with Your
8 Honor and Ms. Caudy.

9 THE COURT: Okay. What I'll try and do
10 is let me try and get in touch with Mr. Collins and
11 he will then have to, I guess, probably look at the
12 computer to give maybe us a range or something like
13 that. And it could be a waste of time. Because
14 sometimes when computers crash, they are gone.
15 Okay.

16 MS. CAUDY: Well, and especially given
17 that you said that Ms. Young said that she was
18 pretty habitual about deleting everything after the
19 five year period. But she only had files up to
20 2016 where this hearing occurred in 2015.

21 THE COURT: Right. But, I mean, that
22 was for her tapes, I think. You're talking about
23 doing that, so I don't know whether -- she said she
24 could not remember whether she went back through
25 the computer and actually cleaned the computer as

1 well. And I don't know. And, Katherine, didn't
2 you talk to her as well?

3 MS. SPIRES: Yes, sir.

4 THE COURT: Okay. And you're on mute
5 too.

6 MS. SPIRES: Sorry. Yes, sir, I did
7 talk to her.

8 THE COURT: And she wasn't sure about
9 if -- about whether anything would still be on the
10 computer or not; correct, but she did try and get
11 rid of the tapes as I recall?

12 MS. SPIRES: She said she gave
13 everything she had to Court Administration maybe
14 two years ago. I was pretty diligent about
15 destroying records after five years. I have no
16 records and what a joy that is.

17 THE COURT: Okay. All right. So after
18 we finish this today, let's -- and we'll talk about
19 this, I'll talk with Mr. Collins and like that
20 because I agree it would be better -- it would be
21 better for Mr. Hickson if we could get the actual
22 transcript if we can put it together, okay?

23 MS. CAUDY: Yes, Your Honor.

24 THE COURT: Have y'all gotten the email
25 yet?

1 MS. JAMESON: I have not.

2 THE COURT: Okay. It just got sent.

3 So I'll give y'all a second to see how long it
4 takes to walk it --

5 MS. SPIRES: I got mine.

6 THE COURT: Okay.

7 MS. CAUDY: It just came, Your Honor.

8 THE COURT: Do y'all want a minute or
9 two to look over those?

10 MS. JAMESON: Yes, please.

11 THE COURT: Okay. All right. I'm
12 gonna go mute and off video for about five minutes
13 or ten, you know, so y'all can look over it over,
14 okay.

15 MS. JAMESON: Thank you.

16 THE COURT: Have you had a chance to
17 look them over?

18 MS. JAMESON: I have, Your Honor.

19 THE COURT: And, Ms. Caudy?

20 MS. CAUDY: I have, Your Honor. Yes,
21 sir.

22 THE COURT: My question is that's -- do
23 I need to swear myself in?

24 EDGAR DICKSON,

25 being first duly sworn, was examined and testified

THE COURT - SUMMATION BY THE COURT

1 as follows:

2 MS. JAMESON: Yes, Your Honor. I think
3 it might be helpful -- these -- I can read these a
4 lot more clearly than I can read Mr. Gourley's
5 notes. But if you wouldn't mind, kind of
6 representing them a little bit for the record.

7 THE COURT: I have no independent
8 recollection of this hearing and so I'm having to
9 go by these notes as well. And if you want me to
10 just start at the top of the page, page 1 starts
11 off with Mr. Hickson's name at the top, okay. And
12 then the second page, it's Mr. Gourley's cross
13 examination. And the third page starts off with
14 alibi witnesses. Fourth page has the date and
15 testimony that video did not exist or not,
16 something like that. And then the last page starts
17 off with no alibi witness testified. Okay. Just
18 so y'all will note, that's the order of the pages.

19 The one thing I just, as kind of an
20 amusing side note to me is I think this is the
21 first time Ms. Zmroczek ever appeared in front of
22 me, and so I was trying to figure out how to
23 pronounce her name and I was writing that on the
24 upper right hand column.

25 And according to my notes, Mr. Hickson

THE COURT - SUMMATION BY THE COURT

1 testified first and he told me a little background.
2 I think at the time, Mr. Hickson, you were 25 and
3 at Lieber and you had received a 28 year old
4 sentence.

5 He testified that he was -- he had met
6 his attorney one time. I have a note that page 326
7 of the transcript was missing. But then I have --
8 when you see something in brackets at a square, it
9 says all even numbers are left out, usually that's
10 just something that I noticed and not anything that
11 was put in the record. Okay.

12 He testified that he had alibi
13 witnesses who wrote statements and didn't think
14 that she, meaning his attorney, did an
15 investigation. The attorney needed to object to
16 statements that were identified on page 197 of the
17 transcript which I don't have. I don't have a copy
18 of that in my file, so I don't know what that's.
19 He then testified that his attorney advised him not
20 to testify.

21 As to the alibi, he states that he was
22 with his uncle working on cars and would not be
23 strong enough for State and she wanted the last
24 argument. Oh, okay. He was telling me what his
25 attorney did not believe the alibi witnesses were

THE COURT - SUMMATION BY THE COURT

1 strong enough and that she wanted the last
2 argument. And then I have a question about how he
3 was caught and underneath I have expert on
4 fingerprints. But somewhere else in here, I don't
5 think there was any fingerprints used at the trial,
6 so I don't know what that means.

7 Incarcerated prior to trial. His
8 attorney never visited him that time. But
9 apparently out on, I'm assuming he was out on bond
10 by the time we went to trial. And I don't have any
11 independent memory of anything like that. He was
12 denied appellate review. Claimed that his attorney
13 failed to investigate the alibi witnesses, Charles
14 Small and Tommy Parker. And when -- if y'all will
15 remember, Mr. -- on page -- I mean, Exhibit 1 --
16 Respondent's Exhibit 1 on page 7 of Mr. Gourley's
17 notes, down at the bottom, and there was a note,
18 defendant and codefendant's same defense involved
19 and he couldn't read what that was. I think that's
20 alibi. Because my notes indicate there that the
21 brother had the same defense which was an alibi
22 defense. Okay.

23 So, I think that kind of illegible
24 notes seems to be alibi too, but I'm not sure. And
25 he indicated -- Mr. Hickson indicated that what he

THE COURT - SUMMATION BY THE COURT

1 wanted from the PCR was a vacated sentence and a
2 new trial. On cross examination which begins at
3 the top of the next page, the only notes I took
4 were on Mr. -- from Mr. Gourley's cross examination
5 was, alibi witness and took no part in the crime.
6 And David Pierce (verbatim) implicated defendant
7 and brother in bank robbery. So I guess that was
8 the person who testified at the trial.

9 On redirect, Ms. Zmroczek relied on --
10 got him to say that he relied on his attorney about
11 whether to testify. And then you see in the
12 brackets out beside that, just that's a note to
13 myself, to his detriment perhaps to make me think
14 about that a little bit more when I was going over
15 this. And then Mr. Gourley didn't answer -- ask
16 any questions on recross. Do y'all have any
17 questions about that so far?

18 MS. JAMESON: No, Your Honor.

19 THE COURT: Ms. Caudy?

20 MS. CAUDY: No, Your Honor.

21 THE COURT: Okay. This is your best
22 chance to ask a judge what's going on, so. Okay.
23 Then Ms. Kelley Brown testified. She testified
24 that she had been practicing law since April of
25 1988. She was appointed on this case. She

THE COURT - SUMMATION BY THE COURT

1 indicated that they met on two occasions.
2 Defendant was not in jail. Something about had
3 files opened on two earlier charges. Jerry Screen
4 was his attorney and that represented the Defendant
5 at the bond hearing.

6 On April 2010, I don't know what that
7 word is. Something to do with Mr. Screen. And
8 then I believe she's indicating that she met with
9 Mr. Brown on April 21st of 2010. Met -- and met
10 prior to trial in September. You know, Rule 5 and
11 *Brady* material. And she confirms that he --
12 Mr. Hickson, he discussed the alibi. They talk to
13 -- Ms. Kelley indicated that they talked to either
14 she or her investigator, I don't remember who,
15 talked to Tommy Parker, his uncle, about proposed
16 testimony. Did not call Mr. Parker because
17 surveillance from Walmart -- they had surveillance
18 from Walmart that would negate the testimony and
19 potential strength. And then so she made a
20 judgement call between the potential strength of
21 the alibi verses trial strategy to go last in
22 closing.

23 She was led to believe that the State
24 had rebuttal evidence to the alibi. And then as to
25 the snitch testimony, I'm assuming that's

THE COURT - SUMMATION BY THE COURT

1 Mr. Pierce, no one but codefendants implicated the
2 defendant. There were no eyewitnesses and no
3 prints which goes back to the earlier statement.
4 There's no other specific investigations by her.

5 The defense was -- her defense was just
6 simply poking holes in the State's case. She
7 indicated that she was prepared. Ms. Zmroczek
8 reenforced that she only recall meeting Mr. Hickson
9 two times. That she did not hire a private
10 investigator and something about all three
11 codefendants that I have no independent
12 recollection about.

13 Then at the top of page 3 regarding
14 alibi witnesses. There are statements done on
15 forms by public defender's office. I have no idea
16 why I have "can't" there. Something about saw
17 Walmart video. Don't know. LE is usually law
18 enforcement when I make my notes. Law enforcement
19 testified that they did not, but I didn't finish
20 that thought out on that page.

21 There is a reference again to page 124
22 that I saw that Mr. Gourley had made the note also.
23 And she said she did not -- I guess from law
24 enforcement, did not get any surveillance from
25 them. At that point would have -- would it have

THE COURT - SUMMATION BY THE COURT

1 | been better trial strategy. And I think that's
2 | talking about whether or not to put him on the
3 | stand. But she believed it was still best to get
4 | the last argument in. And she had no recollection
5 | of whether the alibi witnesses were ready to go.

6 | There's also a reference to page 14 of
7 | -- and that would be of the trial transcript.
8 | There was a comment statement of, you know, to seek
9 | the truth -- the jury's to seek the true facts.
10 | And why no objection. And I think it was that
11 | maybe the case law did not say that at the time.
12 | And then I've got in brackets, not retroactive.
13 | That would have been nothing that was testified to.
14 | That was just my notes.

15 | And then there's a comment about page
16 | 28 referring to off the record discussions with the
17 | judge which -- and then page 31, true and just
18 | verdict. She didn't object to that. And in her
19 | testimony at the time of the PCR, she's testified
20 | she's just dealing with juveniles. This was a bank
21 | robbery. Faces were covered. Referring to page
22 | 42, I guess of the transcript. Don't know if there
23 | was a motion to relieve after Screen appeared at
24 | the bond hearing.

25 | The -- this was -- her thoughts was

THE COURT - SUMMATION BY THE COURT

1 this is a credibility state -- credibility case and
2 there -- but there were several inconsistencies.
3 Again, there kind of star out to the side was for
4 me to look at that a little harder. And they chose
5 not to use, which I guess she's talking about the
6 alibi witnesses. And then she was crossed. They
7 were -- they do have two investigators. I don't
8 know, apparently there might have been a notary.

9 Ms. Caudy, y'all might know whether the
10 -- alibi things notarized, is that what she's
11 talking about?

12 MS. CAUDY: It is. Yes, Your Honor.

13 THE COURT: Okay. So I think she said
14 the notary was not the investigator and they were
15 using some forms that their PD's -- that the PD's
16 office had, I guess. And she did not know who
17 generated those statements.

18 And then going to page 4. Testimony
19 that video did not exist -- whether the video
20 existed or not. And I'm assuming that's talking
21 about the Walmart video. But she had no disk about
22 it labeled video. But that was a key element in
23 her belief and two other attorneys in the PD's
24 office thought the same thing. They were worried
25 about the -- there was some Walmart surveillance

THE COURT - SUMMATION BY THE COURT

1 that would mess with the alibi.

2 And then I have in my notes that we
3 proffered Applicant's 1, which was Tommy Parker's
4 affidavit and Applicant's 2 which was Charles
5 Smalls. And then on cross, Mr. Gourley was
6 apparently feared something about those videos.
7 And then there was no questions on -- after that.

8 Then I have just my notes from Ms.
9 Zmroczek's arguments. Do you want me to go over
10 those?

11 MS. JAMESON: Yes, please.

12 THE COURT: Okay. She talked about
13 there was an armed robbery. I don't understand
14 fact that the file was closed. Met two times.
15 She's referring to meetings with Ms. Brown. Vague
16 memory. Not calling alibi witness with no video.
17 And to not present evidence meets *Strickland*
18 standard I guess. And she's referring to a couple
19 of statements on page 28 and 31 about true and just
20 verdict where Ms. Zmroczek argues that she should
21 have -- that Ms. Brown should have objected.

22 And there was either apparently no
23 preservation objection on page 28 regarding photo
24 lineup. I don't know what -- there were obviously
25 concerns about the ID and should have been granted

THE COURT - DIRECT EXAMINATION BY MS. JAMESON

1 a new trial. And then on the last page she
2 reminded that no alibi witnesses testified. And
3 the photo lineup mug shots -- oh, that must be Mr.
4 Gourley's arguments, I guess. I actually don't
5 know what that top of the page whose arguments
6 those were.

7 And there's a note Javier Hickson PCR,
8 Judge Gee has it under advisement from May. That
9 must have been referring about another case that
10 Mr. Gourley might have just asked me about after we
11 concluded. I don't have any idea what that means.

12 MS. CAUDY: We're speculating, I assume
13 it's referring to his brother and codefendant
14 Javier Hickson.

15 THE COURT: Oh, that could be. Okay.
16 Well, that would make sense. Okay. Sorry. The
17 mind does not remember all those things. Ms.
18 Jameson, do you want to ask me any questions about
19 the notes?

20 MS. JAMESON: Just a few, Your Honor.

21 DIRECT EXAMINATION BY MS. JAMESON:

22 Q. This was not Your Honor's first
23 post-conviction relief term, was it, that you
24 presided over?

25 A. No, ma'am. I had been on the bench at

THE COURT - DIRECT EXAMINATION BY MS. JAMESON

1 that time, I think I got on the bench in -- well,
2 2009. So -- and when you first get on the bench,
3 since you haven't heard anything, they try and give
4 you as many PCR's as they can because you can't
5 have a conflict. Okay. So it wasn't my first, no.

6 Q. Was your standard practice to take
7 notes during PCR proceedings?

8 A. Yes, ma'am.

9 Q. And was your standard practice for
10 these notes to encompass all testimony and exhibits
11 presented to the Court?

12 A. Yeah, I try to. But, you know, as you
13 can see they're incomplete, so.

14 Q. Do you have any recollection or reason
15 to believe that these notes do not encompass the
16 testimony and evidence presented at this hearing?

17 A. Well, as you can see, I left out some
18 statements, but it's basic outline of what we --
19 the order in what was testified to.

20 MS. JAMESON: No further questions.
21 Thank you, Your Honor.

22 THE COURT: Ms. Caudy, anything you
23 want to ask me?

24 MS. CAUDY: No, Your Honor.

25 THE COURT: Okay. All right. So what

1 -- I mean, I'm going to contact Mr. Collins still.
2 Okay. And I'll get back with y'all to see what we
3 can do. Okay. Is that what y'all want to do or is
4 there something else y'all want me to address right
5 now?

6 MS. JAMESON: No, Your Honor. I think
7 the best course of action would be if there's a way
8 we can potentially get that transcript, that would
9 be the best evidence obviously of the hearing. If
10 not, then I think we will need a ruling at that
11 time from Your Honor as to whether or not the
12 record has been adequately reconstructed for a
13 meaningful appellate review.

14 THE COURT: Okay. All right. Well --
15 okay. Let me contact Ms. Collins and -- I mean,
16 Mr. Collins and let's see what we can do. Okay.
17 Ms. Caudy, anything else you want me to do?

18 MS. CAUDY: Yes. Yes, Your Honor.
19 Would you be agreeable to hearing argument now on
20 whether the record was reconstructed to allow for a
21 meaningful appellate review or would you prefer to
22 hold those arguments at a later date?

23 THE COURT: I'll be glad to do it now
24 if y'all want to do that. That way it will all be
25 in one transcript. Okay.

1 MS. CAUDY: Yes, Your Honor. And all
2 fresh in our minds.

3 THE COURT: Okay.

4 MS. CAUDY: I think based on what took
5 place today it's clear that the record cannot be
6 sufficiently reconstructed to allow for meaningful
7 appellate review. I'll give Your Honor, I sent a
8 few cases. *State verses Lad son* which is 373 S.C.
9 320. *China verses parrot*, 251 S.C. 329. *Adams*
10 *verses HR Allen Incorporated*, 397 S.C. 652. And
11 then *Do live*, D-O-L-I-V-E is how you spell that,
12 *verses JEE Developers* at 308 S.C. 380. Those are
13 just some cases that discuss reconstructions and
14 whether the record allows for meaningful appellate
15 review.

16 For example, in *State verses Lad son*,
17 our Supreme Court held that the record could not be
18 sufficiently reconstructed to allow for meaningful
19 appellate review. Because the record that was
20 reconstructed was, you know, a summary fashion of
21 the witnesses' testimony. It was pretty, you know,
22 conclusory information was given. Which
23 essentially what happened in this case, I mean,
24 we're trying to go off of what Mr. Gourley's notes
25 state and what Your Honor's notes state in a

1 summary fashion.

2 There's been some speculation been
3 going on. You know Mr. Gourley couldn't remember
4 some stuff. It was, you know, unclear to him of
5 what some of his notes said. And the same was true
6 with Your Honor's recollection of his notes. You
7 know, there was some, I guess that she's talking
8 about, those sort of statements. And even Your
9 Honor admitted that your notes were incomplete, I
10 think was the word that you used or kind of a basic
11 summary of what occurred during the hearing.

12 For example, you know, the legal
13 arguments made by counsel. I mean, Mr. Gourley had
14 no notes regarding arguments that were made at the
15 conclusion of the hearing. We wouldn't have even
16 known they existed if it weren't for Your Honor's
17 brief summary of what those arguments were.

18 There were three claims that were ruled
19 upon in the Order of Dismissal -- I'm sorry, seven
20 claims that were ruled upon in the Order of
21 Dismissal. Some of them I didn't hear any
22 testimony at all today discussed, for example,
23 ineffective assistant counsel for failing to move
24 to quash arrest warrants. I don't recall anyone
25 mentioning that allegation. Either to move to

1 strike witness statements. Rendering trial, I
2 don't recall any notes from Mr. Gourley or Your
3 Honor about that allegation which was ruled upon in
4 the Order of Dismissal.

5 Failure to cross examine the
6 codefendant. I'm not sure if that's Mr. Kearse or
7 if, I assume it's Mr. Kearse since Mr. Javier
8 Hickson did not testify. But, again, there's
9 numerous claims in the Order of Dismissal that were
10 ruled upon where we didn't hear any testimony today
11 that even mentioned them.

12 So I think it's clear based on what
13 occurred today that that record is not -- that the
14 record of his evidentiary hearing that occurred in
15 September of 2015 has not been reconstructed to
16 allow for meaningful appellate review. And the
17 standard of review on appeal is whether there's any
18 evidence to support the PCR judge's findings.
19 Without that transcript, without a complete record
20 of what the witnesses testified at the hearing,
21 there's just no way that I can argue on appeal
22 whether there's evidence to support Your Honor's
23 findings or not.

24 The Order of Dismissal gives no
25 guidance in respect to what that testimony may have

1 | been. With all due respect, the conclusions are,
2 | you know, the claims are ruled upon in a conclusory
3 | manner. There's no testimony cited in the Order of
4 | Dismissal to support the rulings. There's no true
5 | findings of fact with all due respect. The
6 | assistant attorney general who drafted the proposed
7 | Order of Dismissal wasn't even present at the
8 | evidentiary hearing. From what I can tell, she did
9 | not even consult Mr. Gourley's notes from that
10 | hearing and tried to draft a proposed Order of
11 | Dismissal that reflected the testimony at the
12 | hearing.

13 | And as clear by the fact that we're
14 | here today, the attorney general's office did not
15 | request a copy of that evidentiary hearing in order
16 | to prepare the Order of Dismissal.

17 | THE COURT: Yeah, I'm glad you getting
18 | off of me and getting on them. Thank you. Go
19 | ahead, Ms. Caudy.

20 | MS. CAUDY: Sorry, Your Honor.

21 | THE COURT: No, you're doing good.
22 | Thank you, ma'am.

23 | MS. CAUDY: So, again, based on the
24 | case law in our state, the cases that I cited at
25 | the beginning of my argument, I think it's clear

1 that this record of the evidentiary hearing has not
2 been sufficiently reconstructed to allow for
3 meaningful appellate review and I would
4 respectfully ask Your Honor to make that finding
5 and ultimately it would be up to the Supreme Court
6 whether to grant him a new post-conviction relief
7 hearing. Thank you.

8 THE COURT: Okay. So they won't
9 automatically do another one if we can't create a
10 meaningful record?

11 MS. CAUDY: I think they would. I
12 think if you rule that the record cannot be
13 sufficiently reconstructed to allow for meaningful
14 appellate review that -- I mean, Ms. Jameson can
15 appeal that decision if she disagreed. If she
16 consents, then -- I mean, my point was that it's up
17 to the Supreme Court whether to grant him a new
18 PCR.

19 THE COURT: Yeah, I understand it's not
20 my call. But that's where the case is right now;
21 correct?

22 MS. CAUDY: Yes, Your Honor.

23 THE COURT: Okay. All right. Ms.
24 Jameson, I'll be glad to hear from you.

25 MS. JAMESON: Yes. Briefly, Your

1 Honor. To start off, there is no requirement that
2 or precedent that there must be a word for word
3 transcription of what happened at any sort of
4 proceeding that is attempting to be reconstructed.
5 I didn't hear Mr. Hickson's counsel cite to
6 anything saying that there's no case law saying
7 that it has to be word for word question answer.
8 And that is not what we have here, but with a
9 combination of Mr. Gourley's notes, the Court's
10 notes, and the testimony from both Your Honor and
11 Mr. Gourley as well as the three other witnesses
12 who testified, we do have enough of a record for
13 meaningful appellate review in this case.

14 It is very clear from reviewing the
15 Order of Dismissal, the Motion to Reconsider, and
16 Respondent's Exhibit Number 2 which is the email
17 from Your Honor regarding the issues that were
18 raised in the findings. We know the seven issues
19 that were raised at the post-conviction relief
20 hearing, so this is not a situation where we're not
21 clear what issues were or were not raised.

22 It's not conclusory testimony that we
23 have here. We have some direct questions. We have
24 some direct testimony that's provided. And the
25 State's position is that it is enough to provide

1 for meaningful appellate review of Your Honor's
2 Order of Dismissal.

3 THE COURT: Okay. Thank you, ma'am.
4 What I'll do is I'll see what I can do about
5 talking with Mr. Collins so we can get a copy of
6 the transcript. And I would -- we're supposed to
7 get this to the Supreme Court by when?

8 MS. JAMESON: I think from the 5th,
9 Your Honor, but I think it was having the hearing
10 and we can probably update the Court that we have
11 had the reconstruction hearing and we are waiting
12 to hear back regarding possibly getting the
13 transcript and that hopefully will be enough to
14 appease the Court.

15 THE COURT: Okay.

16 MS. CAUDY: I would state that Your
17 Honor is supposed to make a ruling within 15 days
18 of the date of the hearing. Just to make you
19 aware.

20 THE COURT: Okay. Thank you for
21 reminding me of that. Okay. Fifteen days. Okay.
22 All right. And what I'll do is I will send an
23 email -- I'll send an email in response to the
24 Order and copy y'all and let them know that we have
25 -- we've had the hearing. Okay.

1 MS. CAUDY: Yes, Your Honor.

2 THE COURT: And what we're doing.
3 We're still trying to find the original tape.
4 Okay. Transcript. Okay. Thank y'all, ladies.
5 Thank you, Mr. Hickson.

6 MS. JAMESON: Thank you very much.

7 MS. CAUDY: Thank you.

8 (WHEREUPON, Respondent's Exhibit
9 Numbers 1 and 2 and Court's Exhibit Number 1 was
10 marked and entered)

11 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

)

COUNTY OF AIKEN)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, via Virtual on the 28th of April, 2022.

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

June 14, 2022

s/Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

EXHIBIT NO. 3

Artrell Hickson (2013-CP-02-1153)

Witness: Kelly Brown

PCR Counsel: Aimee Z.

-May it please the court? This is Artrell Hickson versus the State of South Carolina, docket number 2013-CP-02-1153. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2294) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime (2010-GS-02-0670). Kelley Brown, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On September 22, 2010 Applicant was found guilty. Judge Early sentenced Applicant to twenty-eight years imprisonment for Armed Robbery and five years imprisonment for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

Applicant filed a timely application for post-conviction relief on May 21, 2013 alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of trial counsel.
 - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's

arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.

- b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
- c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
- d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial."
- e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as

guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

The state filed its July 1, 2013. He is represented in this matter by Aimee Z.

How many times did you meet with your attorney before going to trial?

①

Do you recall reviewing discovery with your attorney?

- also w/

Do you recall discussing possible defenses with your attorney?

Charles Smith & Thomas

Did you give your attorney any leads or potential witnesses to investigate?

0

- David Keane & family

How long have you been practicing law?

Do you recall when you were appointed/retained in this case?

How many times did you meet with the Applicant prior to his trial?

- Did the Applicant cooperate during the course of your representation?

Did you file any Brady or Rule 5 motions?

Did you review the discovery material with the Applicant?

Prior to trial, did you discuss with the Applicant the elements of the charges and what the state was required to prove?

Did you discuss the Applicant's version of the facts?

Did you discuss possible defenses with the Applicant?

Would you briefly describe the state's evidence against the Applicant?

- Did the Applicant ever give you any potential witnesses or leads for investigation purposes?

What kind of investigation did you do?

1998

officer VSK

April 21, 2010
Sept one

met @

April 2010
July 10/11

- met @ two occasions ->

- not in jail -> did post bond Oct 14, 2007

- originally file over 2000 lbs drugs

to J.S. rep. 3rd
hearing

X -> don't know
not here

discussed evidence
against state
alibi w's



- w/ one of three
w's -> Tommy
parker.

- led to believe
surveillance pic
from walmart
which would
have negated
alibi testimony

Contradiction
in w's statements
no eye w's
Co - D implicated him + another
individual -> sketch testimony somewhat
corroborated from other w's.

- did have
dtr of strength
of alibi testimony

also strength

f.s. heard from
cost

So y thought core + heavy
convict w/ corroborated.

Did you have ample time to prepare for trial?

What was the trial strategy in Applicant's case?

- only met w/ t.c 1 time
- failed about Δ @ the time
- alibi w's
 - advised not to put alibi
 - alibi $\rightarrow$ not credible
- alibi gave off + statements
 - Thye @ the
- Bouzong
 - took affidavit
- no mention of alibi b/c no one testified for him.

- Expert of dogs + fingerprints

Charles ~~Smith~~ + Tommy Jones

- Δ + Co. Δ $\rightarrow$ same defense
 - involved car

- ~~Outside scope of cross~~
 - Alibi Kirby b/c of her

Kelly Brown

- met 2 times
 - ↳ available @ anytime
- didnt hire priv investigator
- 3-co- Δ
- aware of those statements
 - provided Artrell + Javer
- alibi w/ Negated Wal-Mart video

ps 124

- dont have it in my file
- will tell you the course of the

better T.S. to put W's
↳ could have been better T.S.

- still @ better strategy to go ~~best~~ argument M.

True
+ rush
verdict

- Dont recall if alibi w/ Jure ready to go.
- Judge "seek the truth" facts
- common + half off record Jury Charge.
- possible treppered

ps 28

- Bank robbery
 - fares covered
- Pg 42 of trial transcript.
 - observer
- Screen rep Artrell @ bond
 - ~~never~~ don't know if screen made known to be (cheat).
- Credibility of State W's
 - several inconsistencies.
 - ↳ T.S. to not call them
 - meeting w/ hickman
 - meeting 2
 - ~~As Investigator~~ 2 invs. employed three.
- testimony caught off guard
 - 1

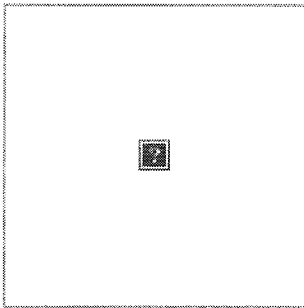
EXHIBIT NO. 4

From: Julie Coleman
To: "Dickson, Edgar W. Secretary (Peggy Smith)"; "ajzlawfirm@gmail.com"
Cc: Dickson, Edgar W. Law Clerk (John Dodds)
Subject: RE: Artrell Hickson v. State of South Carolina; 2013-CP-02-01153
Date: Friday, October 14, 2016 4:26:00 PM
Attachments: Proposed Order of Dismissal- Artrell Hickson (01136720xD2C78).DOCX
image001.jpg

Ms. Smith,

Attached is a proposed Order of Dismissal in Word format for Artrell Hickson.
I will place a hard copy in the mail on Monday, as well.

Thank you, and have a great weekend!



Julie A. Coleman
Assistant Attorney General

S.C. Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211

Office: (803) 734-3737
icoleman@scag.gov

From: Dickson, Edgar W. Secretary (Peggy Smith) [mailto:edicksonsc@sccourts.org]
Sent: Friday, October 14, 2016 2:24 PM
To: Daniel Gourley; 'ajzlawfirm@gmail.com'
Cc: Dickson, Edgar W. Law Clerk (John Dodds); Julie Coleman
Subject: RE: Artrell Hickson v. State of South Carolina; 2013-CP-02-01153

Thank you for the update, Mr. Gourley. I will look to hear from Ms. Coleman.

Sincerely,

Peggy T. Smith

Administrative Assistant
Judge Edgar W. Dickson
P. O. Box 1949
Orangeburg, S. C. 29116
(803) 535-2187 phone
(803) 535-2188 fax

From: Daniel Gourley [<mailto:DGourley@scag.gov>]
Sent: Friday, October 14, 2016 2:18 PM
To: Dickson, Edgar W. Secretary (Peggy Smith); 'ajzlawfirm@gmail.com'
Cc: Dickson, Edgar W. Law Clerk (John Dodds)
Subject: RE: Artrell Hickson v. State of South Carolina; 2013-CP-02-01153

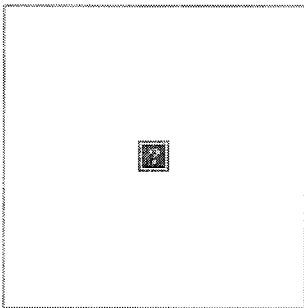
Ms. Smith,

I apologize for the delay in responding. I actually eft PCR back in April. I have cc'd Julie Coleman, who took over the circuits. She should be able to give you an update on the status of the order. Please let me know if I can be of any further assistance!

Hope you have a wonderful weekend!

Best,

Daniel



Daniel F. Gourley
Assistant Attorney General

SC Attorney General's Office
Rembert C. Dennis Building
1000 Assembly St.
Columbia, SC 29201

Office: (803)734-9006
dgourley@scag.gov

From: Dickson, Edgar W. Secretary (Peggy Smith) [<mailto:edicksonsc@sccourts.org>]
Sent: Thursday, October 13, 2016 12:24 PM
To: Daniel Gourley; 'ajzlawfirm@gmail.com'
Cc: Dickson, Edgar W. Law Clerk (John Dodds)
Subject: RE: Artrell Hickson v. State of South Carolina; 2013-CP-02-01153

Dear Mr. Gourley,

I am just checking on the status of your Order in the above referenced PCR. Below is the email Jenny Pittman (Judge Dickson's former Law Clerk) sent to you in April.

Sincerely,

Peggy T. Smith

Administrative Assistant
Judge Edgar W. Dickson
P. O. Box 1949
Orangeburg, S. C. 29116
(803) 535-2187 phone
(803) 535-2188 fax

From: Dickson, Edgar W. Law Clerk (Jenny Pittman)
Sent: Friday, April 08, 2016 3:13 PM
To: Daniel Gourley; 'ajzlawfirm@gmail.com'
Cc: Dickson, Edgar W. Secretary (Peggy Smith)
Subject: Artrell Hickson v. State of South Carolina; 2013-CP-02-01153

Good afternoon:

This letter is in reference to the hearing held before Judge Dickson on September 11th, 2015 in Aiken County.

After due deliberation, review of the memoranda, case law, exhibits and arguments of counsel, Judge Dickson is denying the application for post-conviction relief.

Applicant claims that due to his attorney's sub-standard performance, he has been denied his constitutionally protected right to counsel. In deciding a claim of ineffective assistance of counsel, the focus is on "the fundamental fairness of the proceeding whose result is being challenged." *Strickland v. Washington*, 466 U.S. 668 (1984). Applicant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* The burden of proof is on the applicant to prove the allegations raised in his application. *Brown v. State*, 340 S.C. 590, 593, 533 S.E.2d 308, 309 (2000).

The Court finds that Applicant was not deprived of effective assistance of counsel. Defense counsel's decisions and conduct were appropriate under the circumstances, and did not fall below professional norms of reasonableness. Applicant failed to present his alibi witnesses at the PCR hearing, therefore he cannot claim ineffective assistance of counsel for failing to call said witnesses at the trial. *See Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (an applicant cannot show prejudice due to the failure of trial counsel to call alleged alibi witnesses at trial if the applicant does not present said witnesses at the PCR hearing on his behalf). Trial counsel did object to Ms. Bryant reading her statement into the record and was overruled, so Applicant cannot claim ineffective assistance of counsel for failing to object. However, this Court feels that pursuant to the Rule of Completeness it was proper for Ms. Bryant to read her statement to clarify what was elicited under cross examination. As for Ms. Oakman's statement, while trial counsel did not object, this Court feels that it was proper under the Rule of Completeness due to the information that was elicited under cross examination. Applicant also raised the issue of the trial judge's instructions to the jury, specifically the comment made about a "true and just verdict." Trial counsel was not ineffective for failing to object to the trial judge's jury instructions as the instructions were not objectionable, the use of the phrase "fair and impartial" does not rise to the level of the improper charge in *State v. Daniels* where the jury was instructed to reach a verdict that was just and fair "to all parties." *State v. Daniels*, 401 S.C. 251, 255, 737 S.E.2d 473, 475 (2012). Applicant's argument that trial counsel was ineffective for failing to cross-examine his Co-Defendant about his plea deal is

meritless, trial counsel asked if he was testifying to help himself out and Co-Defendant Kearse admitted as such. Applicant's argument that trial counsel was ineffective for failing to request a *Neil v. Biggers* hearing is also meritless. This was an armed robbery where the three suspects covered their faces, law enforcement did not present the Victims with any photo lineups to identify, nor did the Victims ever identify the suspects. Applicant's final argument concerned the waiver of his right to testify. The trial judge fully discussed Applicant's right to testify on the record, allowed him additional time to speak with his attorney, and Applicant stated that he wished to remain silent. Applicant was aware that this right was his alone to waive and not his trial counsel's decision. For these reasons, Applicant's motion for PCR is denied.

Mr. Gourley, Judge Dickson asks that you prepare the Order. When it has been prepared, please send a copy to opposing counsel and mail or hand deliver the Order to this office with a self-addressed, stamped envelope for its prompt return.

If you have any questions or concerns, please contact this office by email or by phone at (803) 535-2187.

With Kind Regards,
Jenny

Jenny R. Pittman
Law Clerk, Hon. Edgar W. Dickson
First Judicial Circuit
P.O. Box 1949
Orangeburg, SC 29116
803-535-2187 (phone)
803-535-2188 (fax)

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# **EXHIBIT NO. 5**

9/11/15

David  
Donley

Antrell  
Hickson

DECIDE

Zim Also check  
Zm

Antrell Hickson testified

25

@ Lecher

28 year sentence

met with atty 1x

[murray p. 326 of T]

All even # are left out

had alibi witness who wrote statements  
don't think she did any investigation

Attorney needed to object to a statement on

p 197

Attorney addressed hear not to testify.

Alibi — He was with his uncle & was in car  
would not be strong enough for state & the court  
the last argument

How was he caught?  
Fingerprint

incarcerated prior to trial — atty never visited  
out on

Demanded appellate review

Attorney failed to investigate alibi witness: Charles Smalls  
& Tommy ~~Red~~ Parker

Brother had same defense — alibi

wants a vacated sentence and new trial

Story alibi witness + took no part in their crime  
cross David Pierce implicated  $\Delta$  + brother in bank robbery

re-direct Relied on  $\Delta$  ally about testimony [to his detriment, perhaps]

re-cross no Q

Kelly Brown testified —

since April 1998

appointed

met on 2 occasions

$\Delta$  was not in jail

had father opened on 2 earlier charges

Jerry Screen, atty, had represent  $\Delta$  at Bond hearing  
in April 2010, discussed Screen  
met 4/21/10

"  $\Delta$  prior to trial in Sept —

Rule 5 & Brady material

he discussed alibi — talked to Tommy Parker, his uncle,  
about proposed testimony — did not call " b/c surveillance  
from Wal Mart that would negate testimony  
+ potential strength v. trial strategy to go last @ closing

Led to believe State had rebuttal evidence to alibi

Snitch testimony — no one but co-defs implicated  $\Delta$

no eye witnesses

no prints

no other specific investigation

defense — poking holes in State case

was prepared

cross  
Zimorchuk

only recall meeting two times — he

did not hire PI

all 3 co-defs

Witnesses -

These are statements done on forms by P.D. office  
can't

testified that

~~Don't~~ saw Wal Mart video? don't know  
~~under~~

L.E. testified that they did not

T p. 124 - <sup>LE</sup> I did not get any surveillance from them

at that point would have been better trial strategy?

Still better to get last argument

no recollection of whether alibi witnesses were ready to go

p14 - jury is to seek true facts - why no objection  
case law no to say that [not retroactive]

<sup>AD</sup>  
p. 28 ref. to off. the record discussion w/ Judge

p. 31 "true & just verdict" did not object

Now she just deals with juveniles

This was a bank robbery - fees were covered  
p. 42

~~Don't~~ don't know if there was a motion to release after  
Screen appeared at Bond hearing

\*

Credibility case but several inconsistencies

Chose not use

we do have 2 investigators

notary was not the investigator - recognized forms

Don't know who requested those statements

9/11/15

testimony that video did not exist - or not  
have no disc labeled video

that was a key element in her belief - 2 other attys  
in R.D. thought same thing

Proposed A#1 - Tommy Baker

A#2 - Charles Smalley

cross  
examination

learned that video or photo

no Qs.

Argument

Zmorchak

① AR

fact that file was closed  
met. 2x

vague memory

~~she~~ ~~not~~ not calling alibi witness when no video  
to not present meets Strickland 5th

several statements

p. 28 + 31 — "true + just verdict"

~~per~~

should have  
she objected

preservation of objection

p. 38 regarding photo leaving was not make problem

obvious concern about ID

granted a new trial

no alibi witnesses ~~found at state~~ testified  
photo line-up - my shots - + did not abuse discretion.

not been able to locate those the alibi -

Gavin Heclim - PCR - Judge Heclim at under  
advisement from May

# **EXHIBIT NO. 6**

**WITNESSES**

Aiken County Sheriff

J. Sanders

Law Enforcement Case #: 09-035912

SMR

**ARREST WARRANT NUMBER**

**M020089**

FILED *December 10* 2009

*[Signature]*  
Deputy Clerk  
*Shannon D. Rosenkrantz*  
Deputy Clerk

**ACTION OF GRAND JURY**

*TRUE Bill*

*[Signature]*  
Foreperson of Grand Jury

Date: December 10, 2009

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2009GS0202294**

**The State of South Carolina**

**County of Aiken**

**COURT OF GENERAL SESSIONS**

**DECEMBER TERM 2009**

**THE STATE**

**VS.**

**ARTRELL JABAR HICKSON**

**CDR #: 0139**

**Indictment for**

**ARMED ROBBERY**

**§ 16-11-0330(A)**

**J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

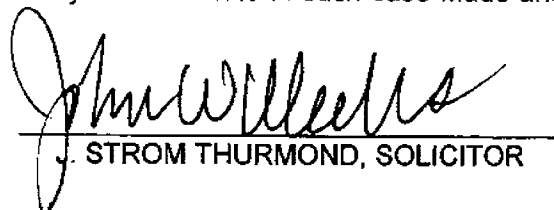
INDICTMENT FOR  
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on December 14, 2009, the Grand Jurors of Aiken County present upon their oath:

That **ARTRELL JABAR HICKSON**, along with others, did in Aiken County, South Carolina on or about June 25, 2009, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, feloniously take from the persons or presence of Gabrielle Hastings and Amanda Wood by means of force or intimidation goods or monies of Security Federal Bank, such goods or monies being described as follows: Four Thousand Nine Hundred Two and No/100 dollars (\$4,902.00), 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.

  
J. STROM THURMOND, SOLICITOR

**WITNESSES**

Aiken County Sheriff

J. Sanders

Law Enforcement Case #: 09-035912

SMR

**ARREST WARRANT NUMBER**

**M020088**

**ACTION OF GRAND JURY**

*True Bill*

*L. A. N.*  
Foreperson of Grand Jury  
Date: April 15, 2010

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2010GS0200670**

**The State of South Carolina**

**County of Aiken**

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2010**

**THE STATE  
vs.**

**ARTRELL JABAR HICKSON**

**CDR #: 0549**

**Indictment for**

**POSSESSION OF FIREARM DURING  
COMMISSION OF OR ATTEMPT TO  
COMMIT A VIOLENT CRIME**

**§ 16-23-0490**

**J. STROM THURMOND, SOLICITOR**

*April 15, 2010*  
*L. A. N.*  
C.C.P. & G.S.  
*Sharon Higgins*  
Deputy Clerk

STATE OF SOUTH CAROLINA )

COUNTY OF AIKEN )

) INDICTMENT FOR  
) POSSESSION OF FIREARM DURING  
) COMMISSION OF OR ATTEMPT TO COMMIT  
) A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on April 19, 2010, the Grand Jurors of Aiken County present upon their oath:

That ARTRELL JABAR HICKSON did in Aiken County on or about June 25, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery, all in violation of Section 16-23-490, 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.

  
J. STROM THURMOND, SOLICITOR

# **EXHIBIT NO. 7**

FORM 5

m020089

m020088

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA )

County of Aiken )Artrell Hickson #343019 )

Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee Corr Inst. 990 wisocky Hwy  
Bishopville SC 29010
2. Name and location of Court which imposed sentence \_\_\_\_\_
3. Name(s) of co-defendant(s) (if any) Javier Hickson and David  
Kearse
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2009-GS-02-2294 Arm Robbery
  - (b) 2010-GS-02-670 Poss. weapon during the commission of  
a violent crime.

~~2015 COURT DATES~~  
~~2009-08-03-28-04~~  
~~2010-08-03-28-04~~  
~~FILED~~  
~~CCCR & CR-13~~  
~~County~~  
~~Deputy Clerk~~  
~~Trial Judge~~  
~~Trial Atty.~~  
~~Court Reporter~~  
~~Sec: PCR Petitioner~~  
~~General Sessions~~  
~~Appointed Atty.~~  
~~Solicitor~~  
~~Atty. Gen.~~

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Sept 22, 2010 ~~28 years~~ 5 years concurrent
- (b) Sept 22, 2010 28 years
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ☒ \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes, I did
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. Dec 19, 2012
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion No 2012-up-667
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) \_\_\_\_\_

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

STATE OF SOUTH CAROLINA }  
COUNTY OF AIKEN }

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Artrell Hickson<sup>#</sup>

Applicant,

- - vs - -

THE STATE OF SOUTH CAROLINA,

Respondent.

CIVIL ACTION NO:

( To be assigned by Clerk )

ATTACHMENT TO APPLICANT'S  
POST-CONVICTION RELIEF  
APPLICATION

GROUND'S FOR RELIEF WITH SUPPORTING FACTS

10(a) - 10(j) through 11(a) - 11(j)

10(a):... The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina Law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.

11(a):.. Affiant J.D. Sanders affidavit in support of the arm robbery arrest warrant stated: upon information and belief, that on June 25, 2009, in the city/county of Aiken, one Artrell Hickson, along with others while armed with handguns did enter the Security Federal Bank, located at 50 Canal Street in Graniteville, Aiken County, demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitute the crime of arm robbery and is in violation of section 16-11-330 of the S.C. Code of Laws, as amended.

ARM ROBBERY - WARRANT NO: M-020089 .

Affiant J.D. Sannders affidavit in support of the possession of a weapon during the commission of a violate crime arrest warrant stated: upon information and belief that on June 25, 2009 in the city/county of Aiken, one Artrell Hickson did knowingly and willfully along with others while armed with handguns did enter the Security Federal bank, located at 50 Canal Street in Graniteville, Aiken County demanding money and did force the tellers at gun point to hand over an amount of cash; all of which constitutes the crime of possession of a weapon during the commission of a violent crime and is in violation of section 16-23-490 of the S.C. Code of Laws, as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME -

WARRANT NO: M-020088.

10(b):... The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina Law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavits in support of each warrant was conclusory and insufficient to establish probable cause.

11(b):... Affiant J.D. Sanders affidavit in support of the arm robbery arrest warrant stated: upon information and belief that on June 25, 2009 in the city/county of Aiken, one Artrell Hickson along with others while armed with handguns did enter the Security Federal Bank located at 50 Canal Street in Graniteville, Aiken County demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitute the crime of arm robbery and is in violation of section 16-11-330 of the S.C. Code of Laws, as amended.

ARMED ROBBERY - WARRANT NO: M-020089

Affiant J.D. Sanders affidavit in support of the possession of a weapon during the commission of a violent crime arrest warrant stated: upon information and belief that on June 25, 2009, in the city/county of Aiken, one Artrell Hickson did knowingly and willfully along with others while armed with handguns did enter the Security Federal Bank located at 50 Canal Street in Graniteville, Aiken County demanding money and did force the tellers at gun point to hand over an amount of cash; all of which constitutes the crime of possession of a weapon during the commission of a violent crime and is in violation of section 16-23-490 of the S.C. Code of Laws, as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME -  
WARRANT No: M-020088 .

|                             |                        |
|-----------------------------|------------------------|
| Sabrina Oakman              | (Voluntary Statement)  |
| Candice Patrice Bryant      | (Voluntary Statement)  |
| Beatrix Tamika Wright       | (Voluntary Statement)  |
| Stanley Leon Galloway       | (Voluntary Statement)  |
| Randolph "Randy" Wilson, Jr | (16 page Investigative |
| Report)                     |                        |
| Gabiela E. Hastings         | (Voluntary Statement)  |
| Amanda Wood                 | (Voluntary Statement)  |
| Tonya Key                   | (Voluntary Statement)  |

Daphae Carrol

(Voluntary Statement)

Investigator Greg Savell

(Investigating Officer's

Summary)

Cad Incident Report

Aiken Bloodhound Tracking

(Call-Out Report)

Supplementary Reports

Incident Report

Supplemental Incident Report

Bank Surveillance - 4 CD's

Aiken County Sheriff's Office (Evidence/Property Sheet)

Javier Hickson

(Miranda Warning)

10(c):... The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina Law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime Indictments, because the affidavits in support of each arrest warrant was conclusory and insufficient to establish probable casue.

11(c):... ARM ROBBERY - INDICTMENT No: 2009 GS 0202294.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A

VIOLENT CRIME - INDICTMENT NO:  
2010 GS 0200670.

Affiant J.D. Sanders affidavit in support of the (Arm Robbery) arrest warrant stated: upon information and belief, that on June 25, 2009 in the city/county of Aiken, one Artrell Hickson along with others while armed with handguns did enter the Security Federal Bank, located at 50 Canal Street in Graniteville, Aiken County, demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitutes the crime of arm robbery and is in violation of section 16-11-330 of the S.C. Code of Laws, as amended.

ARM ROBBERY - WARRANT No: M-020089.

Affiant J.D. Sanders affidavit in support of the (Possession of a Weapon during the Commission of a violent crime) arrest warrant stated: upon information and belief that on June 25, 2009, in the city/county of Aiken, one Artrell Hickson did knowingly and willfully along with others while armed with handguns did enter the Security Federal Bank located at 50 Canal Street, in Graniteville, Aiken County, demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitutes the crime of

possession of a weapon during the commission of a violent crime,  
and is in violation of section 16-23-490 of the S.C. Code of  
Laws, as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME -  
WARRANT NO: M-020088.

10(d):... The applicant's right to effective assistance of  
counsel as guaranteed by the Sixth Amendment and Due Process of  
Law as guaranteed by the Fourteenth Amendment of the United  
States and South Carolina Law was violated by trial counsel's  
failure to provide the State with a written notice of the  
applicant's intent to offer a "Alibi Witness."

11(d):...

10(e):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to call alibi witnesses, Charles Smalls; Tommy Parker; and \_\_\_\_\_, for the defense during applicant's criminal trial.

11(e):... (Crystal Harris) voluntary statement indicated that morning of the Security Federal Bank robbery, Javier was with me at 1070 Ella Circle. I took him to his grandmothers at 137 Woodland Drive Extension, because he had to work with his Uncle Pee Wee on cars. I drove to work at Walmart southside and started work 8:30 - 9:00 a.m. (morning shift). I did not see Javier the rest of the day. Around 2:00 p.m. I left work to take my daughter to a Doctor's appointment. I went by the Circle K store on 118 bypass and went home.

(Charles Smalls), statement written by Michael D. Routzong at 8:35, stated: ... Mr. Tommy Parker picked me up at my residence (71 Moody Street, Aiken S.C.). Mr. Parker and I went for coffee and then went to Mr. Parker's sister house (Ms. Beulah Hickson). We picked up Javier and Artell at approximately 9:00. The date was June 25, 2009.

After we picked up Javier we went to Mr. Parker's place of business (154 Brickley Court). We, Mr. Parker, Javier and

Artell took engines apart and cleaned the parts. We separated the bad parts from the good parts. Javier and Artrell were with me and Mr. Parker until 4:30 p.m. until the time I went home.

(Tommy Parker's) statement indicated on June 25, 2009, I picked up Javier Hickson from my sister's house (Beulah Hickson) Woodland Drive in Aiken at 9:00. Javier wanted to learn Auto Mechanics and I agreed to teach him. After I picked him up I went to 154 Brickley Court, Aiken SC. Also with me was Charles Smalls. I also picked up Artrell Hickson at the same time I picked up Javier. We, Javier, Artrell, Charles and I remained at 154 Brickley Court until 16:30 (4:30 p.m.). Javier, Artrell and I took Charles Smalls to 71 Moody Street, Aiken SC. Mr. Small's wife had an appointment and Mr. Smalls had to go home. After we dropped Mr. Smalls off we went to the BP Store for sodas and then we returned to 154 Brickley Court until 7:00 p.m. Javier Hickson and Artrell were with me the entire day.

10(f):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fifth and Fourteenth Amendments of the United States and South Carolina Law was violated by trial counsel failing to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony

Artrell

would be seriously compromised.

11(f):.. (Crystal Harris's) voluntary statement indicated that morning of the Security Federal Bank robbery Javier was with me at 1070 Ella Circle. I took him to his grandmothers at 137 Woodland Drive Extension because he had to work with his Uncle Pee Wee on cars. I drove to work at Walmart southside and started work 8:30 - 9:00 a.m. (morning shift). I did not see Javier the rest of the day. Around 2:00 p.m. I left work to take my daughter to a Doctor's appointment. I went by the Circle K store on 118 by-pass and went home.

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(Tommy Parker's) statement indicated on June 2009 I

Artrell

picked up Javier Hickson from my sister's house (Bealah Hickson) on Walland Drive in Aiken at 9:00. Javier wanted to learn auto mechanics and I agreed to teach him. After I picked him up we went to 154 Brickley Court, Aiken, SC. Also with me was Charles Smalls. I also picked up Artrell Hickson at the same time as I picked up Javier,, Charles and I remained at 154 Brickley Court until 16:30 . At 16:30 (4:30 pm) Javier, Artrell and I took Charles Smalls to 71 Moody Street, Aiken SC. Mr. Smalls wife had an appointment and Mr. Smalls had to go home. After we dropped Mr. Smalls off we went to the BP Store for sodas and then we returned to 154 Brickley Court until 7:00 pm. Javier Hickson and Artrell were with me the entire day.

10(g):.. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to request a NEIL -vs- BIGGERS Hearing due to the allege victim's bank employees never picked the applicant out of any type of photo array or line-up procedures prior to his arrest.

11(g):.. (Supplementary Report) indicated that bank employee (Daphne Carroll) stated she was sitting in her office when the subjects came into the bank. Carroll stated that one of the subjects told her to come out from her office and open the safe.

Artrell

Carroll stated that she stayed at her desk and pushed the alarm button. Carroll stated that the subject standing at the door kept saying lets go. Carroll stated that she could not get a good look at the subjects because their faces were covered. Carroll stated that all three subjects had guns; bank employee (Amanda Wood) stated that three black male subjects entered the bank with guns. Wood stated that one of the subjects yelled open your drawers and give me the money. Wood stated that the subject pointed a gun at her while she was getting the money out of the drawer. Wood stated that another subject took money from her co-worker while the third subject stood at the door telling them to hurry up. Wood stated that the subjects said something to her manager and customer service representative and left. Wood Stated that the only thing she could remember was they were wearing dark clothing and all three had guns; bank employee (Tonya Key) stated she was sitting in her office when the three black male subjects came into the bank demanding money. Key stated that one of the subjects stood in her doorway and told her to come out and open the vault. Key stated that he was waiving a gun at her and she could not move. Key stated that they appeared to be young with their actions. I/O asked her what she meant with actions and she stated that they were acting very nervous and could not stand still; bank employee (Gariele Hastings) stated that three black male subjects came into the bank and two of the subjects came up to the tellers line demanding the money. Hastings stated that all

Artrell

three subjects were carrying handguns. Hastings stated that they were unorganized running up and down the teller line saying hurry up, all of it and don't press the alarm. Hastings stated that she only gave the subject small bills out of her drawer. Hasting stated that when the subjects left they ran to the rear of the building.

10(h):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statements whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence.

11(h):... State's witness Sabrina Oakman's statement was marked for identification only: Q:... would reading the statement that you wrote refresh your recollection. A:... Yes. Where upon defendants Brown Exhibit No: 2 was marked for identification only. I'm showing you what's been marked for identification defendant's exhibit 2 Brown. Do you recognize what that is? TR. TR. page 161, lines 2-9.

Artrell

On re-direct examination the solicitor Mr. Thurmond advised Sabrina Oakman to read her entire statement. Q:... Ma'am how about read your statement that you gave in its entirety rather than it being parsed. Read very word. A:... On the morning the Security Federal bank in Graniteville got robbed me and David Kearse were at my place in Aiken, SC. David said he needed my car the black tahoe. I told him to be back before 11. He left for a while and came back. He said I am ready to go. He directed me to pick up Artrell Hickson at Artrell's house. I drove there and Artrell and Javier Hickson got in. I drove to David's grandma house on Camel Street, New Ellenton, SC. We stayed in the tahoe but David went inside for a minute and came back. We went to Walmart Southside. I parked by tire and lube. I drove there because Javier wanted to meet -- wanted to talk to his sister Monique and his girlfriend Crystal. Javier walked to the front parking lot out of sight and came back a few minutes later. Artrell and David were giving me directions to drive to the apartments in Graniteville. I drove them to the apartment complex, made the first left, drove to the dead end and dropped them off. I drove away and went to my grandmother's house on Plunkett Street, but never made it. My tahoe broke down on Richland Avenue at the highway 421 exit, by the car lot. A guy at the car lot helped me push it out. It was between 11 and 12 when I dropped them off. I walked to the Circle K and used the store's

Artrell

phone. I called Vonda for a ride. I had Javier's cellphone. It has been on the back seat. I took it when I walked to the store. It was locked so I could not call out. Javier's phone rang and it showed bro or my brother. I answered it. It was David. David asked where you at? I told him my car broke down. He said over and over come get me. I asked where are you at? What have you done. He did not answer, but tried to describe where he was at. I could not understand. Vonda bought me money to get gas. I got gas at Circle K and drove back to the apartments in Graniteville. Monique, Crystal, Devon Jones were at the entrance to the apartment. Phillip and Jelani showed up later. People were accusing me saying I was the getaway driver. I said hell no and got scared. I drove Jelani's cadillac to Dexter Arms and Jelani drove my tahoe to Dexter Arms. I drove my tahoe to David's granmothers and learned what happened to David. In March 2009 my tahoe got hit on the driver's side by Shanta. After the robbery I put the tahoe in Kelly's Paint and Body in Aiken repairs. Her Nationwide Insurance paid for and enterprise rental car a silver Ford Focus, three days after the robbery. TR. TR. page 163, lines 7-2; TR. TR. page 164, lines 1-25 and TR. TR., page 165, lines 1-5.

The Court: clean copy please. Not one that's highlighted. Whereupon defendants (BROWN) exhibit No: 4 was marked for identification only. Q:... I am handing you whats been marked as defendant's exhibit No: 4 Brown. Do you recognize that?

Artrell

A:... Yes. Q:... Is that the statement you signed on March 12, 2010. A:... yes. TR. TR. page 195, lines 4-13. The Court: time out. Walk up here and make sure it's right Mrs Brown you put it in. Mrs Brown your honor I would object. This is the statement as was presented. I would object to the statement being read in its entirety as it does contain inadmissible hearsay. The Court: well Mrs Brown you're the one who put it in the record. Overruled. Mrs Brown your honor I did not introduce it as evidence. The Court: you certainly did. Mrs. Brown, no your honor. I had it marked for identification purposes. I did not introduce it as evidence. The Court, you may read it. Mr. Routzong: I join in that objection. The Court: thank you. Candice Bryany stated on the day of the robbery at Security (TR.TR. page 197, lines 8-25) Federal. The Court: hold on. You have read it more distinct than that. On the day of the robbery at Security Federal Graniteville, Artrell Hickson, Javier Hickson and David Kearse came to my cousins, Beatrix Wright's apartment. They were in a white ford focus. A dark skinned girl was driving. She worked -- she -- it was thought that she worked at Walmart on the southside. They were talking to Beatrix's boyfriend Stanley. After a while they left. Stanley remained. Me and Beatrix took Stanley home to new Ellenton. We came back and saw the police who told us the bank had been robbed. Sabrina Oakman drove her black tahoe and asked if Stanley knew where David was. We told her we had taken him to New Ellenton. Big phil and Deven were at Kalmia apartment saying

Artrell

them boys done robbed the bank I think. I saw a white ford focus. Phil and Deven were at the entrance to Kalmia Apartments. Sabrina kept calling Artrell's cellphone because David had it because big Phil said David had the phone. Sabrina kept saying David is in a storage in the woods. Sabrina was crying and said she was here to find him and pick him up. Sabrina and Artrell

---

Javier along with Deven. Beatrice told me that Artrell, Javier and David were trying to get Stanley to rob the bank with them. Beatrice said Stanley told me this. Artrell dated a girl at Walmart on the southside. The girl was thought to be in the white ford focus. TR. TR. page 198, lines 1-25 and TR. TR. page 199, lines 1-5.

10(i):.. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel failing to fully and completely cross-examine cooperating witness \_\_\_\_\_ concerning charges that were dismissed as part of his plea agreement with the State and the minimum and maximum penalties he would have faced for those offenses.

11(i):..

10(j):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to MOTION FOR RECONSIDERATION of his sentence where cooperating witness \_\_\_\_\_ received a lesser sentence following his testimony against the applicant; thereby, giving rise to the inference that this witness may have been lead to expect far greater potential benefit from his cooperation than the jury could reasonably have anticipated.

11(j):...

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No, They Have not

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

(a) which grounds have been presented:

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

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

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

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

- (a) First time filing PCR (See: Attachment)
- (b) First time filing PCR (See: Attachment)
- (c) First time filing PCR (See: Attachment)

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

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

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

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

- i. Mrs. Brown
- ii. Jerry M. Screen 1337 Gregg St.  
Columbia SC 29201
- iii. \_\_\_\_\_

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

- i. Trial and sentencing
- ii. Direct Appeal Court South Carolina
- iii. \_\_\_\_\_

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

vacate sentence and conviction  
Be Reverse and Remand for a New Trial

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

No, I am not.

STATE OF SOUTH CAROLINA )

County of AIKEN )

VERIFICATION

I, Artrell Hickson # 343019, 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.

Artrell Hickson

SWORN to and subscribed before me this

day of May 16 2013.

[Signature] (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

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

I, Artrell Hickson # 343019, hereby apply for leave to  
proceed in this action without prepayment of fees or costs or security therefor. In support of my  
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give  
security thereof.

Artrell Hickson  
Applicant

SWORN or affirmed to and subscribed before me this

16 day of May 2013.  
Dana J. [Signature]  
Notary Public

My Commission Expires: 11-4-2015

# **EXHIBIT NO. 8**

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS  
) FOR THE SECOND JUDICIAL CIRCUIT  
)  
)

2013-CP-02-1153

)  
) Artrell Hickson, #343019,  
)

) Applicant,  
)

) v.  
)

) State of South Carolina,  
)

) Respondent.  
)  
\_\_\_\_\_

RETURN

FILED 7/3 200. 13

*Rein Hadard*  
K.C.C.P. & G.S.

1:45 *Kelley Brown*  
K.C.C.P. & G.S.

The Respondent, making its Return to the application for post-conviction relief filed May 21, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2294) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime (2010-GS-02-0670). Kelley Brown, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On September 22, 2010 Applicant was found guilty. Judge Early sentenced Applicant to twenty-eight years imprisonment for Armed Robbery and five years imprisonment for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's

conviction and sentence. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Ineffective assistance of trial counsel.
  - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
  - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
  - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."

- d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
- e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

### III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 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 trial 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.

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 this issue. 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.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

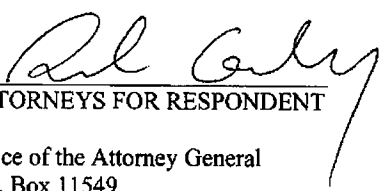
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

DANIEL GOURLEY  
Assistant Attorney General  
Bar No. 100934

By:   
ATTORNEYS FOR RESPONDENT

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

July 1, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2013-CP-02-1153

ARTRELL HICKSON, 343019,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

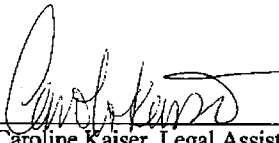
STATE OF SOUTH CAROLINA,

Respondent.

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

Aimee Zmroczek, Esquire  
A.J.Z. Law Firm, LLC  
1001 Washington Street, Ste. 207  
Columbia, SC 29201

DATED this the 1<sup>st</sup> day of July, 2013.

  
Caroline Kaiser, Legal Assistant  
For Respondent

FILED 7/2 200 13  
Ria Hadard  
K.C.P. & G.S.  
1-45  
Kaiser

# **EXHIBIT NO. 9**

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

Artrell Hickson, #343019,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

2013-CP-02-1153

**ORDER OF DISMISSAL**

FILED

1.9.17

*Robert L. White*  
Clerk of Court

*Anita K. Knepper*  
Deputy Clerk

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 21, 2013. Respondent filed its Return on July 1, 2013, requesting an evidentiary hearing be convened on Applicant's ineffective assistance of counsel allegations. A hearing was held on September 11, 2015, at the Aiken County Courthouse. Applicant was present and represented by Aimee Zmroczek, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Kelley Brown, Esquire. This Court had before it the Aiken County Clerk of Court records, the appellate records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the trial transcript.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2294) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime (2010-GS-02-0670). Kelley

Brown, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On September 22, 2010 Applicant was found guilty. Judge Early sentenced Applicant to twenty-eight years imprisonment for Armed Robbery and five years imprisonment for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

#### ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
  - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
  - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
  - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United

States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."

- d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
- e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

### III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

#### **Ineffective Assistance of Counsel**

Applicant asserts several allegations of ineffective assistance of counsel. These allegations are meritless and should be dismissed. This Court finds that Applicant was not deprived of effective assistance of counsel. Trial Counsel's decisions and conduct were appropriate under the circumstances, and did not fall below professional norms of reasonableness.

#### *Arrest Warrants*

Applicant alleges that Trial Counsel is ineffective for failing to move to quash the arrest warrants for Applicant's charges because the warrants were conclusory and insufficient to establish probable cause. Applicant further alleges that Trial Counsel was ineffective for failing to move to suppress evidence stemming from these arrest warrants and for failing to move to dismiss the charges because of the insufficient warrants. These allegations are meritless and should be denied and dismissed with prejudice.

This Court finds that Applicant has failed to present any evidence to prove that his arrest warrants were not supported by probable cause. Furthermore, this Court notes that Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury. Applicant has failed to meet his burden of proof that Trial Counsel was ineffective in any way for failing to object to these warrants or anything stemming from the warrants, and this allegation is denied and dismissed with prejudice.

*Failure to call alibi witnesses*

Applicant failed to present his alibi witnesses at the PCR hearing, therefore he cannot claim ineffective assistance of counsel for failing to call said witnesses at the trial. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (an applicant cannot show prejudice due to the failure of trial counsel to call alleged alibi witnesses at trial if the applicant does not present said witnesses at the PCR hearing on his behalf). Applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Therefore, this allegation is denied and dismissed with prejudice.

*Failure to advise Applicant to testify at trial*

Applicant alleges that Trial Counsel was ineffective for failing to advise him to testify at trial. This allegation is meritless. The trial judge fully discussed Applicant's right to testify on the record, allowed him additional time to speak with his attorney, and Applicant stated that he wished to remain silent. Applicant was aware that this right was his alone to waive and not Trial Counsel's decision. Therefore, this allegation is denied and dismissed with prejudice.

*Failure to request a Neil v. Biggers hearing*

Applicant's argument that Trial Counsel was ineffective for failing to request a Neil v. Biggers hearing is also meritless. This was an armed robbery where the three suspects covered their faces, law enforcement did not present the Victims with any photo lineups to identify, nor did the Victims ever identify the suspects. This Court finds that there was no basis on which to request a Neil v. Biggers hearing, thus Trial Counsel cannot be found ineffective for this reason. Neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

*Failure to move to strike witnesses statements read at trial*

Applicant alleges that Trial Counsel was ineffective for failing to move to strike the statements that were read before the jury at the trial. This allegation is meritless. Trial Counsel did object to the State's witness, Ms. Bryant, reading her statement into the record and was overruled, so Applicant cannot claim ineffective assistance of counsel for failing to object. This Court feels that pursuant to the Rule of Completeness it was proper for Ms. Bryant to read her statement to clarify what was elicited under cross examination.

In regard to the statement of Ms. Oakman, another of the State's witnesses, while Trial Counsel did not object, this Court feels that it was proper under the Rule of Completeness due to the information that was elicited under cross examination, and Trial Counsel did not act below the standards of professional norms. Furthermore, Applicant has failed to meet his burden in proving that he was prejudiced by Trial Counsel's actions. Thus, neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

*Failure to object to jury instructions*

Applicant also raised the issue of the trial judge's instructions to the jury, specifically the comment made about a "true and just verdict." Trial Counsel was not ineffective for failing to object to the trial judge's jury instructions as the instructions were not objectionable. The use of the phrase "fair and impartial" does not rise to the level of the improper charge in State v. Daniels where the jury was instructed to reach a verdict that was just and fair "to all parties." State v. Daniels, 401 S.C. 251, 255, 737 S.E.2d 473, 475 (2012). Therefore, this allegation is denied and dismissed with prejudice.

### *Failure to cross-examine co-defendant*

Applicant's argument that Trial Counsel was ineffective for failing to cross-examine his co-defendant about his plea deal is meritless. Trial Counsel asked if he was testifying to help himself out and co-defendant Kears admitted as such. Trial Counsel was not required under standards of professional norms to do anything more. Furthermore, there is nothing that could have been further elicited from his cross-examination testimony that would have changed the jury's verdict. Since this action would not have changed the outcome of the trial, it cannot be prejudicial. Neither prong of the Strickland test is met, and this allegation must be denied and dismissed with prejudice.

### **All Other Allegations**

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

### **V. CONCLUSION**

This Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Trial Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21<sup>st</sup> day of December, 2016.



EDGAR W. DICKSON  
Presiding Judge  
Second Judicial Circuit

Orangeburg, South Carolina

# **EXHIBIT NO. 10**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
  
Artrell Hickson, #343019 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL DISTRICT

2013CP021153

MOTION TO RECONSIDER

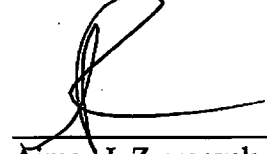
NOW COMES, Applicant, Artrell Hickson, by and through his undersigned counsel, and moves pursuant to Rule 59(e) SCRPC for an order altering or amending the court's prior order filed on January 9, 2017, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 546, 546 (2000). Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Ineffective assistance of counsel – failing to move to quash arrest warrants;
2. Ineffective assistance of counsel – failure to call alibi witnesses;
3. Ineffective assistance of counsel – failure to advise Applicant to testify at trial;
4. Ineffective assistance of counsel – failure to request a Neil v. Biggers hearing;
5. Ineffective assistance of counsel – failure to move to strike witness statements read at trial;
6. Ineffective assistance of counsel – failure to object to jury instructions; and
7. Ineffective assistance of counsel – failure to cross-examine co-defendant.

THEREFORE, counsel requests that Order be reconsidered for the above listed specific

reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,



---

Aimee J. Zmroczek, Esq. #77936

A. J. Z. Law Firm, LLC

2003 Lincoln Street

P.O. Box 11961

Columbia, SC 29211

(803) 400-1918 telephone

(803) 403-8005 fax

ajzlawfirm@gmail.com

Counsel for Applicant

Columbia, South Carolina

Dated: January 12, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

) IN THE COURT OF GENERAL SESSIONS  
) SECOND JUDICIAL CIRCUIT  
)

Artrell Hickson, #343019  
Applicant,

)  
) 2013CP021153  
)

-vs-

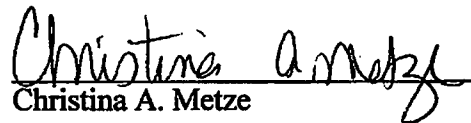
) CERTIFICATE OF SERVICE  
)

State of South Carolina,  
Respondent.

)  
)  
)

I certify that, on this date, I served a copy of the Motion to Reconsider dated  
January 17, 2017 by depositing it in the U.S. Mail in an envelope with  
sufficient postage affixed, addressed as follows:

Daniel Gourley  
Assistant Attorney General  
SC Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

  
Christina A. Metze

Columbia, South Carolina

Dated: 1/17/17

# **EXHIBIT NO. 11**

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

2013-CP-02-1153

Applicant,

**V.**

**RETURN TO APPLICANT'S  
MOTION TO RECONSIDER**

State of South Carolina,

**Respondent.**

This Court denied Applicant's PCR application by Order filed January 9, 2017. On January 18, 2017, Respondent received Applicant's Motion to Reconsider pursuant to Rule 59(e), SCRCP.

Respondent submits that this Court's Order of Dismissal contains the proper findings of facts and conclusions of law as required by S.C. Code Ann. 17-27-80 (1976) and Rule 52(a) SCRCF. Respondent further submits that this Court thoroughly considered all relevant facts, law, and arguments, and properly ruled on and fully addressed all issues presented at the post-conviction relief evidentiary hearing. Therefore, Applicant's motion should be denied.

*[signature page to follow]*

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

February 3, 2017.

# **EXHIBIT NO. 12**

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

Artrell Hickson, #343019,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Case No.: 2013-CP-02-01153

**ORDER DENYING APPLICANT'S  
MOTION TO RECONSIDER**

This matter comes before the Court on Applicant's Motion to Reconsider an Order of this Court pursuant to Rule 59(e), SCRCP, denying Applicant's claim and dismissing it with prejudice. After due deliberation and review of the case law and motion of counsel, this Court finds that there is nothing warranting reconsideration.

THEREFORE, Applicant's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.



Edgar W. Dickson  
Presiding Judge, Second Judicial Circuit

*March*  
February 14, 2017  
Orangeburg, South Carolina

FILED

3.17.2017

*Robert J. White*  
C.C.P. & G.S.

*Anita Knoepfle*  
Deputy Clerk

# **EXHIBIT NO. 13**

# RECEIPT FOR EXHIBITS

Case No. 2013-CP-02-01153  
 Plaintiff: Artrell J. Hickson  
 Defendant: State of SC  
 Date Trial Started: 9-11-2015

Judge E. Dickson  
 Plt's Atty. Aimee Imroczeck  
 Def's. Atty. Daniel Gourley  
 Date Trial Ended: \_\_\_\_\_

Received of Cheri Young, Court Reporter for the above case, these exhibits:  
Applicant

|                               | Clerk of Court Use |
|-------------------------------|--------------------|
| 1 Statement of Tommy Parker   |                    |
| 2 Statement of Charles Smalls | ✓                  |
| 3                             | ✓                  |
| 4                             |                    |
| 5                             |                    |
| 6                             |                    |
| 7                             |                    |
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| 17                            |                    |
| 18                            |                    |
| 19                            |                    |
| 20                            |                    |

This 11th day of September 20 15

Page 1 of 1

By [Signature]

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

FILED September 16, 2015

[Signature]  
2:00 pm



FILED September 15  
2:00 pm

State of South Carolina v. Javier Hickson

Statement of: Tommy Parker

Date: 17 Aug 09

Time: 10:15

Witnessed by: Darrell Hickson

Written at the request of Mr. Parker by Michael  
On June 25, 2009 I picked up Javier Hickson  
from my sister's house (Beulah Hickson) on  
William Drive in Aiken at 09.00. JAVIER  
wanted to learn Auto mechanics and I agreed  
to teach him. AFTER I picked him up we went  
to 154 Brickley Ct, Aiken SC. ALSO with  
me was Charles Smalls. I ALSO picked up  
ARTRELL Hickson at the same time as I picked  
up JAVIER. We (JAVIER, ARTRELL, Charles and I)  
Remained at 154 Brickley Court until 10:30.  
At 10:30 (4:30 pm) JAVIER, ARTRELL, and I  
took Charles Smalls to 71 Moody Street Aiken  
SC. Mr. Smalls wife had an appointment and  
Mr. Smalls had to go home. After we dropped  
Mr. Smalls off we went to the BP store  
for snacks and then we returned to  
154 Brickley Court until 7:00 pm. JAVIER  
and ARTRELL were with me the  
entire day.

Sworn and Subscribed to before me this

1<sup>th</sup> day of August 2009

Jennifer Rutland Bani

Notary Public

My Commission expires: 10-14-18

PLAINTIFF'S  
EXHIBIT

2

I am  
not happy

The inner sentences of  
"d"

State of South Carolina v. Javier Hickson

Statement of: Charles Small

FILED September 16, 2009

Date: 17 Aug. 09

Time: 2:15

Witnessed by: Deetta Pharoah

written by Michael D. Routzong at my request

AT 08:35 MR. TOMMY PARKER PICKED ME UP  
AT MY RESIDENCE (71 MOODY STREET Aiken, SC)  
MR. PARKER AND I WENT FOR COFFEE AND THEN  
WENT TO MR. PARKER'S SISTER'S HOUSE (115  
Beulah Hickson). We picked up JAVIER  
AND ARTRELL AT APPROXIMATELY 09:00. THE  
DATE WAS JUNE 05, 2009. AFTER WE PICKED  
UP JAVIER WE WENT TO MR. PARKER'S PLACE  
OF BUSINESS (154 BRICKLEY COURT). WE (MR.  
PARKER, JAVIER, ARTRELL) TOOK ENGINES APART  
AND CLEANED THE PARTS. WE SEPARATED THE  
BAD PARTS FROM THE GOOD PARTS. JAVIER  
AND ARTRELL WERE WITH ME AND MR. PARKER  
UNTIL 4:30 PM, UNTIL THE TIME I WENT  
HOME.

Sworn and Subscribed before me this 17<sup>th</sup> day of August 2009.

Jennifer Rutland Baur

Notary Public

My Commission expires: 10-14-15

# **EXHIBIT NO. 14**

I, Robert A. Haite, Clerk of Court of Common Pleas and General Sessions for Allen County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

IN THE COURT OF COMMON PLEAS SEP 30 2021  
FOR THE SECOND JUDICIAL CIRCUIT

) Case Nos.: 2019-C  
) 2020-CP-02-00640

ORDER GRANTING MOTION TO MERGE  
PCR ACTIONS AND GRANTING BELATED  
APPELLATE REVIEW OF INITIAL PCR  
ACTION PURSUANT TO AUSTIN v. STATE!

**Respondent.**

A hearing was convened before this Court on September 7, 2021, in this Court's virtual courtroom on the Cisco WebEx platform. Applicant was present and represented by his counsel, Nancy Fennell. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant's prior post-conviction relief counsel, Aimee Zmroczek, was also present. At the start of the hearing,

Page 1 of 9

Robert J. Korte CNP  
CCCP & G.S.  
Charles Griffen Blaufo  
Deputy Clerk

Respondent renewed its motion to merge the two applications, which was granted upon consent of Applicant.

Following the hearing, this Court determines Applicant did not make a knowing, voluntary, and intelligent waiver of his right to appeal his initial post-conviction relief action and grants him the right to seek belated appellate review of this initial post-conviction relief action pursuant to Austin. Pursuant to S.C. Code Ann. § 17-27-80, this formal order follows:

#### **PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. In June of 2009, Applicant Artrell Hickson and his brother, Javier Hickson, were arrested following an investigation into the armed robbery of the Graniteville branch of Security Federal Bank. In December of 2009, the Aiken County grand jury indicted Applicant and his brother for one count each of armed robbery. In April of 2010, the Aiken County grand jury additionally indicted Applicant and his brother for one count each of possession of a firearm during the commission of a violent crime. On September 20, 2010, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. Applicant was represented by Kelley P. Brown, Esquire. Second Circuit Solicitor J. Strom Thurmond, Jr., and Assistant Solicitor Susanna Ringler prosecuted the case. At the conclusion of trial, the jury convicted Applicant and his brother as indicted. The trial judge sentenced Applicant and his brother to concurrent terms of imprisonment of twenty-eight years for the armed robbery convictions and five years for the firearm convictions.

Subsequently, Appellant filed a timely notice of appeal and was represented on appeal by Jerry M. Screen, Esquire. Following briefing, the South Carolina Court of Appeals affirmed

Applicant's convictions and sentences. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

***First Post-Conviction Relief Action (2013-CP-02-1153)***

Applicant filed his first application for post-conviction relief on May 21, 2013, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel.
  - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
  - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
  - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
  - d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
  - e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and

South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."

- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

Respondent made its return to the application and requested and evidentiary hearing be held. An evidentiary hearing was convened before the Honorable Edgar W. Dickson, circuit court judge, on September 11, 2015. Applicant was present alongside counsel Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. Following the hearing, Judge Dickson denied and dismissed the action in full. A written order of dismissal was signed by Judge Dickson on December 21, 2016, and filed with the Aiken County Clerk of Court on January 9, 2017. Applicant filed and served a motion to reconsider. Respondent filed a return in opposition to the motion. On March 14, 2017, Judge Dickson summarily denied the motion to reconsider, and this order was filed on March 17, 2017. Applicant did not file an appeal following the denial of relief. However, he is now seeking belated appellate review in these two subsequent actions.

### **CURRENT ACTIONS BEFORE THE COURT**

Since the denial of his initial post-conviction relief application, Applicant has filed two more post-conviction relief actions, both of which are before this Court. Applicant filed a second post-conviction relief action (2019-CP-02-01521), on June 19, 2019, asserting his first PCR counsel Aimee Zmroczek failed to file an appeal of the denial of his initial PCR action and asserting he was entitled to belated appellate review. Then, while his second action was still pending, Applicant filed a third application (2020-CP-02-00640) on March 16, 2020, again asserting that initial PCR counsel failed to file an appeal from the denial of his initial PCR action and seeking belated appellate review.

In response, Respondent moved to merge these two actions into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action. Respondent also requested a hearing to determine if Applicant was entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin. Attached to this return and before this Court are the records of the Aiken County Clerk of Court regarding Applicant's general sessions matter, the records from Applicant's direct appeal (including the record on appeal which contains a copy of Applicant's trial transcript), the records from Applicant's initial post-conviction relief matter, Applicant's records from the South Carolina Department of Corrections, and the records from the two current actions.

At the start of the evidentiary hearing, Respondent renewed its motion to merge the two applications, which was granted upon consent of Applicant. Accordingly, this Court finds these two actions are to be merged into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action, and instructs the Aiken

County Clerk of Court to file this order in both actions, and promptly close the 2020 action (2020-CP-02-00640).

At the evidentiary hearing, prior PCR counsel Zmroczek testified that she discussed an appeal with Applicant several times, including before and after the hearing. She elaborated that Applicant repeatedly stated he wanted to pursue an appeal from the denial of his post-conviction relief action. She stated that due to a miscommunication with her office staff, a notice of appeal was inadvertently not filed on Applicant's behalf.

Applicant next testified on his own behalf. He also testified he wanted to pursue an appeal from the denial of his post-conviction relief action and asked prior PCR counsel Zmroczek several times to file an appeal on his behalf. He stated he is seeking permission to pursue belated appellate review of the denial of his first post-conviction relief action pursuant to Austin.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court reviewed the record in its entirety and listened to the testimony provided at the evidentiary hearing. After this thorough review of the record and testimony, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

#### ***MOTION TO MERGE APPLICATIONS GRANTED***

As discussed above, Applicant has filed two nearly identical applications for post-conviction relief seeking belated appellate review of the denial of his initial post-conviction relief proceeding: a second post-conviction relief action (2019-CP-02-01521), on June 19, 2019, and then, while his second action was still pending, Applicant filed a third application (2020-CP-02-00640) on March 16, 2020.

An applicant is not generally allowed to have multiple post-conviction relief proceedings in regard to the same conviction. See Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (PCR rules "contemplate adjudication on the merits of the original petition, one bite at the apple as it were."); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (successive applications for post-conviction relief strongly disfavored); S.C. Code Ann. § 17-27-90 ("All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application."). Respondent moved to have the two proceedings merged and that the application for post-conviction relief filed on March 16, 2020 be considered an amendment to the application for post-conviction relief filed on June 19, 2019.

This Court grants this motion to merge the two cases, with the action filed on June 19, 2019 (docket number 2019-CP-02-01521) being the surviving case. Accordingly, this Court further orders that the application filed on March 16, 2020 (docket number 2020-CP-02-00640) be dismissed and that the filings associated therewith be considered as amendments to the 2019 application.

#### ***GRANT OF BELATED APPELLATE REVIEW***

Successive applications such as the one before this court are disfavored. See S.C. Code Ann. § 17-27-90. However, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.] § 17-27-90." Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin provides for a belated appellate review of an initial post-conviction relief action where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But Austin "is limited to its particular factual situation." Aice, 305 S.C. at 452, 409 S.E.2d at 394.<sup>2</sup> Pursuant to Austin, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application "on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." Austin, 305 S.C. at 454, 409 S.E.2d at 396. "If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." Id. at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, Applicant asserts prior post-conviction relief counsel failed to file an appeal on his behalf. As summarized above, the evidence before this Court establishes Applicant did not make a knowing, voluntary, and intelligent waiver of his right to seek appellate review from the denial of his first post-conviction relief action. Accordingly, this Court finds Applicant is entitled petition the South Carolina Supreme Court for belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

---

<sup>2</sup> Aice was issued in conjunction with Austin, limiting the reach of Austin and holding "that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel." 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

### CONCLUSION

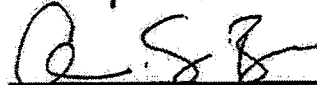
Based on the foregoing, this Court finds Applicant is entitled to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

### **IT IS THEREFORE ORDERED:**

1. Applicant's two pending PCR actions be merged, with the action filed on June 19, 2019 (docket number 2019-CP-02-01521) being the surviving case and the application filed on March 16, 2020 (docket number 2020-CP-02-00640) be dismissed and that the filings associated therewith be considered as amendments to the 2019 application;
2. Applicant remain in the custody of the South Carolina Department of Corrections; and
3. Applicant is granted the right to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

AND IT IS SO ORDERED this 10<sup>th</sup> day of September, 2021.

  
COURTNEY CLYBURN POPE  
Presiding Judge  
Second Judicial Circuit

 South Carolina

# **EXHIBIT NO. 15**

## Caudy, Lara

---

**From:** Joshua Osborne <joshuaosborne@scag.gov>  
**Sent:** Wednesday, December 29, 2021 10:42 AM  
**To:** Flynn, Sean  
**Subject:** [External] RE: Artrell Hickson  
**Attachments:** RE: Transcript Request Form for Artrell Hickson v. State ( 2013-CP-02-1153)

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good Morning Mr. Flynn,

Unfortunately, we were unable to obtain the transcript for the referenced hearing, as when we requested it past the 5-year limit for court reporters to retain records. I've attached the transcript request and the court reporters' response to this email for your convenience.

Sincerely,  
Joshua Osborne

---

**From:** Flynn, Sean <sflynn@sccid.sc.gov>  
**Sent:** Wednesday, December 29, 2021 10:14 AM  
**To:** Joshua Osborne <joshuaosborne@scag.gov>  
**Subject:** Artrell Hickson

Good morning,

Can you please forward me the PCR Hearing Transcript dated September 11, 2015? Thank you so much. I look forward to hearing back from you.

Sean Flynn  
Administrative Coordinator  
SCCID/Appellate Division  
(803) 734-1330

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## Caudy, Lara

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**From:** Transcripts <transcripts@sccourts.org>  
**Sent:** Wednesday, June 23, 2021 10:11 AM  
**To:** Kaitlyn Slice  
**Subject:** RE: Transcript Request Form for Artrell Hickson v. State ( 2013-CP-02-1153)

Unfortunately, pursuant to rule 607, court reporters are not required to retain records after five-years. The date you provided is over the five-year limit.

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**From:** Kaitlyn Slice <KSlice@scag.gov>  
**Sent:** Wednesday, June 23, 2021 9:31 AM  
**To:** RetiredCR <Retiredcr@sccourts.org>  
**Cc:** Transcripts <transcripts@sccourts.org>  
**Subject:** RE: Transcript Request Form for Artrell Hickson v. State ( 2013-CP-02-1153)

Sorry, forgot to attach the request form!

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**From:** Kaitlyn Slice  
**Sent:** Wednesday, June 23, 2021 9:30 AM  
**To:** [retiredcr@sccourts.org](mailto:retiredcr@sccourts.org)  
**Cc:** Transcripts <[transcripts@sccourts.org](mailto:transcripts@sccourts.org)>  
**Subject:** Transcript Request Form for Artrell Hickson v. State ( 2013-CP-02-1153)

Good morning!

Please find the attached transcript request form for the above-referenced hearing. If the transcription amount is over \$500, please let me know prior to preparing.

**\*\*Please note that we would like it expedited\*\***

Thanks!



**Kaitlyn S. Slice**  
**Legal Assistant**  
**SC Attorney General's Office**  
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Columbia, SC 29201  
Office: 803-734-3737  
[kslice@scag.gov](mailto:kslice@scag.gov)

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