

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Kershaw County

Honorable Diane Schafer Goodstein, Circuit Court Judge

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JAMACIA SIMON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000086

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APPENDIX

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1 State of South Carolina ) Court of General Sessions  
 2 County of Sumter ) Third Judicial Circuit

3  
 4 State of South Carolina, ) Transcript of Record  
 )  
 5 vs. ) 2019-GS-43-0713  
 )  
 6 Jamacia Simon, )  
 )  
 7 \_\_\_\_\_ Defendant.\_\_\_\_\_)

8 State of South Carolina, ) Transcript of Record  
 )  
 9 vs. ) 2019-GS-43-1184  
 )  
 10 Davnus Toney, )  
 )  
 11 \_\_\_\_\_ Defendant.\_\_\_\_\_)

12  
 13 February 19, 2020  
 Sumter, South Carolina

14  
 15 B E F O R E:

16 The Honorable George M. McFaddin, Jr., Judge

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

18 William Jason Corbett, Assistant Solicitor  
 On behalf of the State of South Carolina

19 Katarzyna K. Timmons, Esquire  
 20 On behalf of Defendant Jamacia Simon

21 Philip D. Little, Jr., Esquire  
 On behalf of Defendant Davnus Toney

22  
 23 Proceedings recorded by DCRP

24 Transcribed by: Stacy S. Johnson,  
 25 Circuit Court Reporter

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I N D E X

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E X H I B I T S

\*\*NO EXHIBITS WERE INTRODUCED\*\*

1           (The following proceedings were held February 19,  
2           2020, beginning at 10:15 AM.)

3           MR. CORBETT: Your Honor, we are currently before  
4           the Court on the matter of State of South Carolina vs.  
5           Davnus Toney, Jamacia Simon, and also Curtis Pearson.

6           Your Honor, it's two separate numbers.  
7           2019-GS-43-1184 and Indictment 2019-GS-43-713.

8           Your Honor, this -- the current status of the case  
9           is that defendants Toney and -- excuse me -- defendant  
10          Toney and defendant Simon have indicated that they would  
11          like to tender a plea of guilty to the charge of armed  
12          robbery.

13          Judge, if I may, I will hand up the sentence sheets  
14          regarding --

15          THE COURT: Yes, sir.

16          MR. CORBETT: -- those two.

17          THE BAILIFF: All right. Raise your right hand.  
18          State your name.

19          DEFENDANT TONEY: Davnus Toney.

20          (Whereupon, Davnus Toney was duly sworn by the  
21          bailiff.)

22          MR. CORBETT: Your Honor, would you like to do both  
23          pleas at the same time?

24          THE COURT: Yes, sir.

25          THE BAILIFF: Raise your right hand. State your

1 name.

2 DEFENDANT SIMON: Jamacia Simon.

3 (Whereupon, Jamacia Simon was duly sworn by the  
4 bailiff.)

5 THE COURT: All right, Mr. -- Mr. Toney and  
6 Mr. Simon. Well, first let me back up. Is the -- is  
7 this correct, Ms. Timmons, about the plea?

8 MS. TIMMONS: Yes, Your Honor. Mr. Simon is  
9 pleading guilty to -- wanting to plead guilty to armed  
10 robbery.

11 THE COURT: Okay. Mr. -- Mr. Little, is that  
12 correct, sir, about your client?

13 MR. LITTLE: Yes, Your Honor.

14 THE COURT: All right. Mr. Toney?  
15 Mr. Simon, Mr. Toney, left to right.

16 I have something to read to you that's real  
17 important and I want you to listen to me carefully  
18 because I will perhaps quiz you after I'm finished.

19 Each of you has the right to a trial by jury where  
20 the judge would tell the jury that you are presumed  
21 innocent. The State or the prosecution must prove to  
22 the jury that you are guilty beyond a reasonable doubt.

23 You would be present to select your jury. In a  
24 jury trial, your lawyer can question any person who  
25 testifies against you and your lawyer could call

1 witnesses to testify for you.

2 At a jury trial no one could make you testify and  
3 the judge would tell the jury that you have the right  
4 to not testify and that the jury could not hold that  
5 against you. You have the right to remain silent at  
6 trial.

7 Your lawyer can present your defenses to the  
8 charge or charges. The jury could find you guilty or  
9 not guilty on one or both charges or all charges,  
10 however many there might be. To find you guilty of any  
11 charge, the jury verdict would have to be unanimous and  
12 the jury would have to find that you're guilty beyond a  
13 reasonable doubt.

14 By offering a guilty plea, you give up your  
15 constitutional right to a jury trial. By your plea  
16 today you waive and surrender the right to remain silent.  
17 You have ten days to appeal your plea and the sentence  
18 once it's been entered by the Court. If you are on  
19 probation or parole, a plea might adversely affect that  
20 status.

21 Are these straight-up pleas?

22 MS. TIMMONS: Your Honor, Mr. Simon's pleas are  
23 straight up.

24 THE COURT: Mr. Little?

25 MR. LITTLE: Yes, Your Honor.

1 THE COURT: All right. So you know, gentlemen,  
2 I'm not bound to recommendations from the State or your  
3 attorneys. I can sentence you to the maximum time for  
4 each charge -- or the charge.

5 Now that having been said, Mr. Simon --

6 DEFENDANT SIMON: Yes, sir.

7 THE COURT: -- how do you plead to the charge, sir?

8 DEFENDANT SIMON: Guilty.

9 THE COURT: Mr. Toney, how do you plead, sir?

10 DEFENDANT TONEY: Guilty.

11 THE COURT: Mr. Simon, I just read two pages of the  
12 information about guilty pleas, trials, the right to  
13 remain silent and burden of proof. Did you understand  
14 everything I said?

15 DEFENDANT SIMON: Yes, sir.

16 THE COURT: Did you hear what I said?

17 DEFENDANT SIMON: Yes, sir.

18 THE COURT: Do you have any questions about what I  
19 said?

20 DEFENDANT SIMON: No, sir.

21 THE COURT: Mr. Toney, did you hear what I read to  
22 you just now?

23 DEFENDANT TONEY: Yes, sir.

24 THE COURT: Do you have any questions about what I  
25 said?

1 DEFENDANT TONEY: No, sir.

2 THE COURT: Do you understand what I said?

3 DEFENDANT TONEY: Yes, sir.

4 THE COURT: Mr. Toney, how do you plead to the  
5 charge?

6 DEFENDANT TONEY: Guilty.

7 THE COURT: Mr. Simon, are you satisfied with your  
8 attorney?

9 DEFENDANT SIMON: Yes, sir.

10 THE COURT: Has your attorney answered all your  
11 questions that you had to her?

12 DEFENDANT SIMON: Yes, sir.

13 THE COURT: Mr. Toney, are you satisfied with your  
14 attorney?

15 DEFENDANT TONEY: No, sir.

16 THE COURT: All right.

17 Okay. Well, then I guess you're not offering to  
18 plead then, right?

19 DEFENDANT TONEY: Sir?

20 THE COURT: I guess you don't want to offer a guilty  
21 plea --

22 DEFENDANT TONEY: Yeah, I'll take a --

23 THE COURT: -- if -- if you're not happy with your  
24 attorney?

25 DEFENDANT TONEY: Well, I -- I wanted time to get a

1 private attorney, but he told me it's not a good, you  
2 know, reason to -- right now to do it --

3 THE COURT: Okay.

4 DEFENDANT TONEY: -- so I have no choice but to  
5 take a guilty plea today.

6 THE COURT: Yeah, but then see what's gonna happen,  
7 you're gonna have a PCR coming back off of this, so.

8 DEFENDANT TONEY: Okay. Well --

9 THE COURT: Mr. Little, do you-all want to go ahead  
10 and prepare for trial, sir?

11 DEFENDANT TONEY: No, I don't want to go to trial.

12 THE COURT: No, no. I'm talking to Mr. Little now.  
13 Mr. Little.

14 MR. LITTLE: Your Honor, if that -- if Mr. Toney  
15 wishes to proceed to trial --

16 THE COURT: Mr. Toney, you need to talk to your  
17 lawyer about what you want to do, sir, okay?

18 DEFENDANT TONEY: Yes, sir.

19 MR. LITTLE: I beg the Court's indulgence.

20 THE COURT: All right. I'll go forward with you,  
21 Ms. Timmons.

22 Let me start over so I keep my place, Mr. Simon.

23 Are you satisfied with your lawyer, Mr. Simon?

24 DEFENDANT SIMON: Yes, sir.

25 THE COURT: Has your lawyer answered your questions

1 to your satisfaction?

2 DEFENDANT SIMON: Yes, sir.

3 THE COURT: Did you tell your lawyer all you know  
4 about what happened in this matter?

5 DEFENDANT SIMON: No, sir.

6 THE COURT: You haven't?

7 DEFENDANT SIMON: (No verbal response.)

8 THE COURT: Do you need more time to talk to your  
9 lawyer? You can certainly have it.

10 DEFENDANT SIMON: No, sir.

11 THE COURT: Well, do you think it's best that you  
12 talk to your lawyer about what you say happened here?  
13 Because I don't want this coming back either.

14 DEFENDANT SIMON: I --

15 THE COURT: Have you had enough time to talk to your  
16 lawyer, Mr. Simon?

17 DEFENDANT SIMON: I've had enough time.

18 THE COURT: You have?

19 DEFENDANT SIMON: I have.

20 THE COURT: All right. To your knowledge, has she  
21 shared with you all of the information and evidence and  
22 discovery that she has or knows about your case?

23 DEFENDANT SIMON: Yes, sir.

24 THE COURT: All right. Have you understood all of  
25 your conversations with her?

1           DEFENDANT SIMON:  Yes, sir.

2           THE COURT:  Has she done all you've asked her to do?

3           DEFENDANT SIMON:  Yes, sir.

4           THE COURT:  Do you have any complaints about your  
5 lawyer?

6           DEFENDANT SIMON:  No, sir.

7           THE COURT:  Now you said you haven't told her  
8 everything.  Perhaps it's to your advantage to tell her  
9 everything you know, but I can't make you tell her that.  
10 That's up to you.

11           Did you want some time to talk to her to tell her  
12 what you know about the case?

13           DEFENDANT SIMON:  No, sir.

14           THE COURT:  All right.

15           Has anybody promised you anything to plead,  
16 Mr. Simon?

17           I'm not talking about a sentence, I'm talking about  
18 anything else like money or gifts or --

19           DEFENDANT SIMON:  No, sir.

20           THE COURT:  -- trips or anything like that.

21           Is anybody forcing you or making you come in here  
22 and plead guilty, sir?

23           DEFENDANT SIMON:  No, sir.

24           THE COURT:  Are you then pleading guilty today  
25 freely and voluntarily?

1 DEFENDANT SIMON: Yes, sir.

2 THE COURT: Are you today using or under the  
3 influence of medications, drugs or alcohol?

4 DEFENDANT SIMON: No, sir.

5 THE COURT: Sir, do you have any type of illness,  
6 mental or physical, now or in the past that makes it  
7 hard for you to understand what you're doing today?

8 DEFENDANT SIMON: No, sir.

9 THE COURT: Mr. Corbett, the maximum's thirty; is  
10 that right?

11 MR. CORBETT: That is correct, Your Honor.

12 THE COURT: Mr. Simon, the maximum sentence that  
13 this Court can impose upon you is thirty years and I'm  
14 not bound by recommendations as I said earlier.

15 Do you understand that?

16 DEFENDANT SIMON: Yes, sir.

17 THE COURT: Mr. Corbett, so -- some facts, sir?

18 MR. CORBETT: Yes, sir, Your Honor.

19 Your Honor, this incident took place here in Sumter  
20 County on or about November 29th of 2018. Specifically,  
21 at the Speedway gas station and convenience store located  
22 on Broad Street.

23 In the nighttime hours, Mr. Simon, along with two  
24 other co-defendants, did enter that store. At that  
25 point in time -- the clerk that night was Ms. McDonald.

1 She was present in the store. All three individuals  
2 produced handguns. Two of the individuals approached  
3 the counter, ultimately either coming over or around  
4 the counter, and taking from the cash register by force  
5 or intimidation while armed with a deadly weapon the  
6 property of Speedway.

7 Your Honor, we believe that constitutes the offense  
8 of armed robbery.

9 THE COURT: All right, sir.

10 Mr. Simon, did you hear what he said, sir?

11 DEFENDANT SIMON: Yes, sir.

12 THE COURT: Is what he said substantially correct?

13 DEFENDANT SIMON: Yes, sir.

14 THE COURT: Mr. Simon, do you still wish to plead  
15 guilty?

16 DEFENDANT SIMON: Yes, sir.

17 THE COURT: And, Mr. Corbett, any enhancement  
18 factors on this case?

19 MR. CORBETT: Your Honor, I would like the record  
20 to reflect that under South Carolina law this is a  
21 violent offense, as well as a most serious.

22 THE COURT: And the ramifications for him would be  
23 what, sir?

24 MR. CORBETT: Judge, if he had any future most  
25 serious charges, he could potentially be looking at a

1 life sentence.

2 THE COURT: Okay.

3 Did you hear that, Mr. Simon?

4 DEFENDANT SIMON: Yes, sir.

5 THE COURT: All right. Now I'll ask you one more  
6 time. Do you still wish to plead guilty?

7 DEFENDANT SIMON: Yes, sir.

8 THE COURT: Is that a "yes" or "no"?

9 DEFENDANT SIMON: Yes, sir.

10 THE COURT: Okay.

11 All right. I couldn't hear you, sir. I'm sorry.

12 Now, finally, are you pleading guilty, Mr. Simon,  
13 because you are guilty as charged?

14 DEFENDANT SIMON: Yes, sir.

15 THE COURT: Ms. Timmons, any concerns or problems  
16 with this plea that's been offered?

17 MS. TIMMONS: No, sir, Your Honor.

18 THE COURT: I find he is well-represented by an  
19 experienced attorney, that he's offered this plea freely,  
20 knowingly, voluntarily and intent -- intelligently. I  
21 find that it's substantially supported by the facts and  
22 he's had advice of his attorney, so I do accept his plea.

23 MR. CORBETT: Your Honor, prior to the Court's  
24 imposition of sentence, may the State make a request?

25 THE COURT: Yes, sir.

1 MR. CORBETT: Your Honor, at this time the State  
2 would ask that the Court withhold sentencing until such  
3 time as the trial in its entirety is concluded.

4 In addition, the State would also request that  
5 the Court allow the State to ask the defendant some  
6 questions concerning the matter.

7 THE COURT: Ms. Timmons?

8 MS. TIMMONS: Your Honor, I guess the State is  
9 asking -- may we -- may we approach?

10 THE COURT: Sure.

11 (Proceedings held at the bench; not reported.)

12 THE COURT: Mr. Corbett, your request is to hold  
13 the sentence in abeyance; is that right, sir?

14 MR. CORBETT: This is correct, Judge.

15 THE COURT: Any -- anything you want to say about  
16 that, Ms. Timmons?

17 MS. TIMMONS: Your Honor, the defense would object  
18 to that.

19 THE COURT: I'll -- I'll withhold the sentence.

20 MS. TIMMONS: Thank you, Your Honor.

21 THE COURT: Thank you, ma'am.

22 Now, Mr. Little, have you-all had a chance to --

23 MR. CORBETT: Your Honor, if I -- at this time, may  
24 I ask that Mr. Simon be taken into custody?

25 THE COURT: Yes.

1 I know you object to that, Ms. Timmons, but we're  
2 not done yet.

3 Do you-all need to talk to me?

4 MR. LITTLE: Yes, Your Honor.

5 THE COURT: Come on up.

6 MR. LITTLE: Mr. Corbett.

7 MR. CORBETT: And, Judge, could I just put a couple  
8 more matters on the record regarding Mr. Simon?

9 THE COURT: One second.

10 MS. TIMMONS: Mr. --

11 MR. CORBETT: Hold up with Mr. Simon for just a  
12 moment.

13 THE COURT: I did. I did. It's green. It's down  
14 there. It's green.

15 Okay. I'm sorry.

16 Ma'am, please correct me, okay?

17 MR. CORBETT: Your Honor, may I address one more  
18 matter with Mr. Simon --

19 THE COURT: Yes, sir.

20 MR. CORBETT: -- prior to?

21 THE COURT: Yes, sir.

22 MR. CORBETT: Judge, Mr. Simon has now entered his  
23 guilty plea and has been taken into custody. It was the  
24 State's intention to ask him some questions regarding  
25 the events of that day. By -- through his counsel he

1 has indicated that he declines to answer any questions.

2 THE COURT: Yes, sir.

3 MR. CORBETT: Judge, just so everything is out in  
4 the open, at the appropriate time when -- when sentencing  
5 takes place the State will ask the Court to consider that  
6 at the time of sentencing.

7 THE COURT: Yes, sir.

8 Ms. Timmons, anything in response?

9 MS. TIMMONS: Your Honor, I guess I would ask for a  
10 few minutes to discuss this case further with my client.

11 THE COURT: Well, when I sentence I'll consider all  
12 factors that are relevant, okay?

13 MS. TIMMONS: Thank you, Your Honor.

14 THE COURT: Mr. Corbett, we're back to Mr. Toney.  
15 Mr. Toney, how are you, sir, again?

16 DEFENDANT TONEY: I'm doing -- I'm doing all right.

17 THE COURT: Now, Mr. Toney, let me -- let me hear  
18 from your lawyer first.

19 Mr. Little.

20 MR. LITTLE: Your Honor, after having spoken with  
21 Mr. Toney, I think that there was some misunderstanding  
22 about the question and he does -- has indicated that he  
23 is satisfied with my representation and I think he'd like  
24 to represent to the Court -- like to go forward with his  
25 guilty plea.

1 THE COURT: Okay.

2 Mr. Toney, is that right, sir?

3 DEFENDANT TONEY: Yes, sir.

4 THE COURT: Mr. Toney, I understand people are  
5 nervous when they come in this courtroom. I come in  
6 here a lot, so it doesn't bother me, but I understand;  
7 all right, sir?

8 DEFENDANT TONEY: Yes, sir.

9 THE COURT: Now, Mr. Toney, to be sure, did you hear  
10 what I said earlier about your right to a trial, your  
11 right to remain silent, the burden of proof by the State,  
12 the use of a lawyer in your trial and so forth? Did you  
13 hear all of that?

14 DEFENDANT TONEY: Yes, sir.

15 THE COURT: Did you understand what I said?

16 DEFENDANT TONEY: Yes, sir.

17 THE COURT: Do you have any questions about what I  
18 said?

19 DEFENDANT TONEY: No, sir.

20 THE COURT: Now to this charge you wish to do what?  
21 Are you pleading guilty?

22 DEFENDANT TONEY: Yes, sir.

23 THE COURT: All right.

24 Now I'll ask you again after your moment of  
25 reflection that this Court allowed you to have, are

1 you satisfied with your lawyer, Mr. Little?

2 DEFENDANT TONEY: Yes, sir.

3 THE COURT: All right. Has Mr. Little answered  
4 your questions to your satisfaction?

5 DEFENDANT TONEY: Yes, sir.

6 THE COURT: Have you told Mr. Little all you know  
7 about what happened in this episode?

8 DEFENDANT TONEY: Yes, sir.

9 THE COURT: Have you had enough time to talk to  
10 your lawyer about what you're doing today?

11 DEFENDANT TONEY: Yes, sir.

12 THE COURT: Have you understood all of your  
13 conversations with Mr. Little?

14 DEFENDANT TONEY: Yes, sir.

15 THE COURT: Has Mr. Little shared with you whatever  
16 information, evidence or discovery that he might have,  
17 sir?

18 DEFENDANT TONEY: Yes, sir.

19 THE COURT: Do you, sir, have any complaints about  
20 your lawyer?

21 DEFENDANT TONEY: No, sir.

22 THE COURT: Now has anybody promised you anything  
23 to plead guilty today?

24 DEFENDANT TONEY: No, sir.

25 THE COURT: Is anyone making you come in here and

1 do this or forcing you to do this?

2 DEFENDANT TONEY: No, sir.

3 THE COURT: Are you then pleading guilty freely and  
4 voluntarily?

5 DEFENDANT TONEY: Yes, sir.

6 THE COURT: Today are you using any medications,  
7 drugs or alcohol or are you under the influence of any  
8 of those things at this moment?

9 DEFENDANT TONEY: I take medication, sir.

10 THE COURT: All right. Is it doctor-prescribed?

11 DEFENDANT TONEY: Yes, sir.

12 THE COURT: And do you take it like you're supposed  
13 to?

14 DEFENDANT TONEY: Yes, sir. It's for my  
15 bipolar/schizophrenic.

16 THE COURT: All right. Did you take it today?

17 DEFENDANT TONEY: Yes. Or I took it this morning.

18 THE COURT: All right. Now that you take that  
19 medicine for that situation, does that give you any  
20 concerns about going forward today?

21 DEFENDANT TONEY: No, sir.

22 THE COURT: That ties into the next question, but  
23 I'll ask it anyway.

24 Do you have today any mental or physical illness or  
25 condition --

1           DEFENDANT TONEY:  I --

2           THE COURT:  -- that makes it difficult for you to  
3 understand what you're doing today?

4           DEFENDANT TONEY:  I have a mental illness.

5           THE COURT:  For what you're taking the medication  
6 for?

7           DEFENDANT TONEY:  Yes, sir.

8           THE COURT:  All right.  One more time, does that  
9 give you any concerns about going forward today?

10          DEFENDANT TONEY:  No, sir.

11          THE COURT:  All right.

12          MR. LITTLE:  And, Your Honor, can I add something  
13 to the record on that matter?

14          THE COURT:  Yes, sir.

15          MR. LITTLE:  Mr. Toney and I have discussed his  
16 mental illness and it is my understanding from talking  
17 to him that he's under medication for it, is treated,  
18 and Mr. Toney and I have never had any difficulty  
19 communicating.

20          THE COURT:  Okay.

21          Now Mr. -- Mr. Toney, the maximum sentence I can  
22 give you, and I could, is thirty -- thirty years in  
23 jail, do you understand, prison?

24          DEFENDANT TONEY:  Yes, sir.

25          THE COURT:  All right, sir.

1           Mr. Corbett -- well, let -- would your recitation  
2 be the same as it was a while ago, Mr. Corbett?

3           MR. CORBETT: That is correct, Your Honor.

4           THE COURT: All right.

5           Now, Mr. Toney, were you in here a few minutes ago  
6 when the solicitor, Mr. Corbett, described what happened  
7 at the episode at the scene?

8           DEFENDANT TONEY: Can you repeat that?

9           THE COURT: Were you present when Mr. Corbett told  
10 us a while ago about what happened at this crime?

11          DEFENDANT TONEY: Yes, I was present.

12          THE COURT: Now but you were talking to your lawyer,  
13 right?

14          MR. LITTLE: Your Honor, I think he -- I think we  
15 were back in the courtroom for the recitation of facts,  
16 but you can inquire on whether that's -- whether he was  
17 listening and -- and --

18          THE COURT: Yeah.

19          Did -- did you hear that Mr. Cor -- Mr. --

20          DEFENDANT TONEY: Yes, sir.

21          THE COURT: That's when Mr. Corbett told us about  
22 the -- what's the name of the place?

23          MR. CORBETT: Speedway on Broad Street.

24          THE COURT: Speedway.

25          Did you hear everything he said?

1 DEFENDANT TONEY: Yes, sir.

2 THE COURT: All right.

3 Based on what he said that you told me you heard,  
4 right --

5 DEFENDANT TONEY: Yes, sir.

6 THE COURT: -- do you still wish to plead guilty?

7 DEFENDANT TONEY: Yes, sir.

8 THE COURT: Are you pleading guilty because you are  
9 guilty?

10 DEFENDANT TONEY: Yes, sir.

11 THE COURT: And is what he said happened  
12 substantially correct?

13 DEFENDANT TONEY: Yes, sir.

14 THE COURT: All right.

15 Mr. Little, do you have any questions or concerns  
16 about his plea?

17 MR. LITTLE: None, Your Honor.

18 THE COURT: Once more I find an attorney in  
19 front of me who is experienced and competent who is  
20 representing Mr. Toney. I find that Mr. Toney has  
21 offered his plea freely, knowingly, voluntarily and  
22 intelligently. He was engaged in the process, responsive  
23 to the questions and is clearly orientated today times  
24 four, had advice of counsel to do this today, and I find  
25 that the facts support it and I will accept his plea of

1 guilty.

2 Mr. Corbett, anything you wish to say?

3 MR. CORBETT: Yes, sir, Your Honor.

4 Your Honor, the State would request that the Court  
5 withhold sentencing until the conclusion of the case.

6 Judge, we would also like to ask Mr. Toney some  
7 questions on the record concerning the events of that  
8 evening.

9 THE COURT: Mr. Little?

10 MR. LITTLE: No objection, Your Honor.

11 MR. CORBETT: Your Honor, in this -- would it  
12 be appropriate if I traded places with Mr. Toney and  
13 Mr. Little so that I could get to the computer screen?

14 THE COURT: Yes, sir. Yes, sir.

15 Since Mr. Little did -- did not object to your  
16 request, it's granted, sir.

17 Now -- go ahead, sir.

18 (Indistinct conversation.)

19 THE COURT: May I speak to the lawyers, please?

20 MR. LITTLE: Put yourself right here. Right here.

21 THE COURT: Mr. Little, Mr. Corbett, can I talk to  
22 you-all?

23 UNIDENTIFIED FEMALE SPEAKER: Philip.

24 MR. LITTLE: Yes.

25 MR. CORBETT: Yes, Your Honor. I'm sorry.

1 THE COURT: That's all right.

2 (Proceedings held at the bench; not reported.)

3 MR. CORBETT: And, Your Honor, it's my understanding  
4 that the de -- defendant, Mr. Toney, is under oath; is  
5 that correct?

6 THE COURT: He -- he remains under oath. Yes, sir.

7 MR. CORBETT: Thank you, sir.

8 Mr. Toney, good afternoon.

9 DEFENDANT TONEY: Good afternoon.

10 MR. CORBETT: Mr. Toney, you have pled guilty  
11 concerning an ar -- armed robbery which took place on or  
12 about November 29th of 2018 at the Speedway gas station  
13 on Broad Street; is that correct?

14 DEFENDANT TONEY: Yes, sir.

15 MR. CORBETT: Okay. I'm gonna show you a portion  
16 of a video.

17 (Video played.)

18 MR. CORBETT: Okay.

19 Now, Mr. Toney, are you able to see the screen there  
20 in front of you?

21 DEFENDANT TONEY: Yes, sir.

22 MR. CORBETT: All right. Do you see the individual  
23 in the black hoodie?

24 DEFENDANT TONEY: Yes, sir.

25 MR. CORBETT: Okay. That's you; is that correct?

1 DEFENDANT TONEY: Yes, sir.

2 MR. CORBETT: All right. You were not wearing a  
3 mask?

4 DEFENDANT TONEY: No, sir.

5 MR. CORBETT: And I'm gonna start it again in just  
6 a moment and then pause it.

7 (Video played.)

8 MR. CORBETT: Okay. Now, Mr. Toney, from this  
9 picture we see you at the cash register. You're holding  
10 a firearm; is that correct?

11 DEFENDANT TONEY: It's not a firearm.

12 MR. CORBETT: Okay.

13 (Video played.)

14 MR. CORBETT: Here in your hand?

15 DEFENDANT TONEY: Yeah, that's not a firearm.

16 MR. CORBETT: That's not a firearm?

17 DEFENDANT TONEY: No, sir. It's a BB gun, pellet  
18 gun.

19 MR. CORBETT: Okay. A representation of a weapon?

20 DEFENDANT TONEY: Yes, sir.

21 MR. CORBETT: Okay. Now we see an individual on  
22 the screen that would be to your left also holding what  
23 appears to at least be a representation of a firearm; is  
24 that correct?

25 DEFENDANT TONEY: Yes, sir.

1 MR. CORBETT: Okay. Now do you know who this  
2 individual is?

3 DEFENDANT TONEY: Yes, sir.

4 MR. CORBETT: Okay. I'm gonna let it play for just  
5 a moment.

6 (Video played.)

7 MR. CORBETT: Okay. Now is that Jamacia Simon?

8 DEFENDANT TONEY: Yes, sir.

9 MR. CORBETT: Now bear with me one moment. I want  
10 to change camera angles.

11 (Video played.)

12 MR. CORBETT: All right. Now do you see here by  
13 the door on your screen?

14 DEFENDANT TONEY: Yes, sir.

15 MR. CORBETT: That's a third individual that was  
16 there; is that correct?

17 DEFENDANT TONEY: Yes, sir.

18 MR. CORBETT: And who is that individual?

19 DEFENDANT TONEY: Curtis Pearson.

20 MR. CORBETT: That's Curtis Pearson there in the --  
21 what I would describe as a black and gray jacket?

22 DEFENDANT TONEY: Yes, sir.

23 MR. CORBETT: Okay.

24 And the three of you went to that location together;  
25 is that correct?

1 DEFENDANT TONEY: Yes, sir.

2 MR. CORBETT: And the three of you left together?

3 DEFENDANT TONEY: Yes, sir.

4 MR. CORBETT: Okay.

5 And Curtis Pearson from what I was able to observe  
6 in the vehicle had at least what was a representation  
7 of a deadly weapon; is that correct?

8 DEFENDANT TONEY: Yes, sir.

9 MR. CORBETT: Judge, if you would, please, bear  
10 with me a moment. My -- okay. There we go. It's --

11 THE COURT: Yes, sir. Take your time.

12 MR. CORBETT: -- it's running now.

13 (Video played.)

14 MR. CORBETT: Now, Mr. Toney, I have rever -- I  
15 have gone back to the beginning of the video because  
16 there was a portion I needed to stop on. You've already  
17 advised us that that's you?

18 DEFENDANT TONEY: (No verbal response.)

19 MR. CORBETT: That that is Jamacia Simon; is that  
20 correct?

21 DEFENDANT TONEY: Yes, sir.

22 (Video played.)

23 MR. CORBETT: Now from this particular camera view,  
24 are you able to see the -- my cursor on the screen, the  
25 arrow?

1           DEFENDANT TONEY:  Yeah.

2           MR. CORBETT:  Okay.  I'm pointing to what I believe  
3 to be a dark jacket with gray sleeves that we previously  
4 saw by the entrance door; is that correct?

5           DEFENDANT TONEY:  Yes, sir.

6           MR. CORBETT:  Okay.  And who did you identify that  
7 as?

8           DEFENDANT TONEY:  Curtis Pearson.

9           MR. CORBETT:  Okay.  Now prior to going to the  
10 store that evening, where were the three of you?

11          DEFENDANT TONEY:  Well, I was on Crosswell at a  
12 spot chillin', so.

13          MR. CORBETT:  Okay.  How -- how did you meet up  
14 with Mr. Simon and Mr. Pearson that evening?

15          DEFENDANT TONEY:  They came over there.

16          MR. CORBETT:  Okay.  And did the three of you  
17 come up with an agreement and a plan to go and rob the  
18 Speedway store?

19          DEFENDANT TONEY:  No, sir.

20          MR. CORBETT:  How did you-all get to the Speedway  
21 store with what appears to be weapons?

22          DEFENDANT TONEY:  We walked.

23          MR. CORBETT:  Okay.  Did you -- what was your plan  
24 going there?

25          DEFENDANT TONEY:  It wasn't my idea that night that.

1 MR. CORBETT: Who's idea was it?

2 DEFENDANT TONEY: It was Curtis.

3 MR. CORBETT: Mr. Pearson's idea?

4 DEFENDANT TONEY: It's his girlfriend -- his  
5 girlfriend mom's store.

6 MR. CORBETT: Okay. His girlfriend's mother works  
7 there?

8 DEFENDANT TONEY: Yeah. Manager.

9 MR. CORBETT: All right. But that's not her that  
10 was there that night?

11 DEFENDANT TONEY: No, sir.

12 MR. CORBETT: Okay.

13 Bear with me one moment, please.

14 THE COURT: Yes, sir.

15 MR. CORBETT: Your Honor, thank you. That's all  
16 the questions that I have.

17 THE COURT: Yes, sir.

18 MR. CORBETT: Thank you, Mr. Toney.

19 Your Honor, I -- I think given the status of the  
20 case at this point I believe it's a -- a requirement  
21 that he be taken into custody --

22 THE COURT: Yes, sir.

23 MR. CORBETT: -- until such time he's called as a  
24 witness.

25 THE COURT: I understand.

1 All right. Mr. Solicitor, do you need a few  
2 minutes to -- to -- do you need any more time before we  
3 strike a jury?

4 MR. CORBETT: Judge, I believe if we go ahead and  
5 start bringing the jury up, I'll be ready by the time  
6 they get here.

7 THE COURT: Okay.

8 MR. CORBETT: And I'm just gonna -- I'm gonna --

9 THE COURT: All right.

10 MR. CORBETT: -- notify the Solicitor --

11 THE COURT: All right.

12 MR. CORBETT: -- to assist with jury selection.

13 THE COURT: Well, hold on. Before you bring them  
14 up, ask these -- let me -- I want to speak to you for...

15 (Whereupon, the proceedings were concluded at  
16 10:45 AM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 19th day of February, 2020, recorded by the Digital Court Reporter Program, and transcribed by me to the best of my ability.

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

April 26, 2021

1s/ Stacy S. Johnson  
STACY S. JOHNSON  
CIRCUIT COURT REPORTER

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STATE OF SOUTH CAROLINA

GENERAL SESSIONS

COUNTY OF SUMTER

-----x

STATE OF SOUTH CAROLINA, )

Plaintiff, )

vs. )

JAMACIA SIMON, )

Defendant. )

Transcript of Record  
2019-GS-43-0713

-----x

February 20, 2020

SENTENCING

B E F O R E:

The Honorable George M. McFaddin, Jr., Presiding Judge

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

Jason Corbett, Esq.  
Attorney for the State

Katarzyna K. Timmons, Esq.  
Attorney for the Defendant

Transcribed by Bobbi Fisher, RPR, for DCRP, Digital  
Courtroom Project

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<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
SENTENCING	3

## E X H I B I T S

None.

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 10:26 a.m.)

THE COURT: Mr. Corbett?

MR. CORBETT: Thank you, Your Honor. This is State of South Carolina versus Jamacia R. Simon. True-billed indictment 2019-GS-43-713. Your Honor, on February 19th, some two days ago, you accepted the plea from Mr. Simon on his single charge of armed robbery. Mr. Simon is back before the Court today with his attorney, Ms. Timmons, for sentencing on this matter, Judge.

The factual basis was put on the record back on Wednesday.

THE COURT: Yes, sir.

Ms. Timmons?

MS. TIMMONS: Yes. Thank you, Your Honor. Mr. Simon is 27 years old. He has two kids, ages two and one. He -- well, prior to his plea, he lived with them here in Sumter County and their mother. He has been working full time.

Judge, we would ask you to take into consideration and find that Mr. Simon pled guilty. He admitted his guilt. He took responsibility for his actions without any promises, any recommendations from the State. He's owned up to his actions. He's very well aware of that he's looking at at least ten years in prison, so we would ask for you to take this into consideration.

1 THE COURT: Any comment, Mr. Corbett?

2 MR. CORBETT: Your Honor, thank you. With regard to  
3 Mr. Simon, this being a three co-defendant case, Mr. Simon was  
4 arrested after statements provided to law enforcement.

5 Judge, in addition to statements, the video surveillance  
6 camera, once they began to hone in on it, they were able to  
7 see some -- what they believed to be distinctive tattoos  
8 consistent between Mr. Simon's arrest photos and the videos  
9 from the convenience store.

10 Your Honor had the opportunity to see the videos. Your  
11 Honor had the opportunity to hear from the victim. Judge,  
12 what struck me was there's a particular moment in that video  
13 where she is behind the counter on her knees, and she told the  
14 Court, "I thought they were going to shoot me."

15 And, Judge, this is a serious crime. Mr. Simon had the  
16 opportunity to cooperate, to assist law enforcement. He chose  
17 not to do so. He declined to answer any questions at the time  
18 of acceptance of his guilty plea. Judge, we acknowledge that  
19 a person pleading guilty should receive some consideration and  
20 benefit for that, but we also think that true remorse in  
21 trying to make things right also involves cooperating, and  
22 Mr. Simon chose not to do that.

23 THE COURT: Okay. Well, I don't -- I don't punish for  
24 people not testifying. I think they have a right to not if  
25 they don't want to. But I also have a right to discount those

1 who help us or help the cause or help the State when they know  
2 they're wrong.

3 The sentence of the Court is 15 years.

4 MS. TIMMONS: Thank you, Your Honor.

5 MR. CORBETT: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 (At 10:30 a.m., the above hearing concluded.)

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## 1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: State v. Jamacia Simon

3 2019-GS-43-0713

4 DATE OF PROCEEDING: February 20, 2020

5

6 I, Bobbi J. Fisher, do hereby certify that the  
7 foregoing transcript is a true and correct record of the  
8 recorded proceedings; **that said proceedings were transcribed**  
9 **to the best of my ability from the audio recording and**  
10 **supporting information**, and that I am neither counsel for,  
11 related to, nor employed by any of the parties to this case,  
12 and I have no interest, financial or otherwise, in its  
13 outcome.

14



16

17 \_\_\_\_\_  
Bobbi J. Fisher, RPR

18 NCRA Registered Professional Reporter (RPR)

19 Prepared: September 21, 2021

20

21

22 **NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT**  
23 **REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR**  
24 **FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL**  
25 **REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM 800) FROM**  
**OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT**  
**BFISHER@SCCOURTS.ORG.**

STATE OF SOUTH CAROLINA

RECEIVED

IN THE COURT OF COMMON PLEAS

County of Sumter

2021 FEB - 11 PM 3:37

Jamacia Simon #383069  
Full name and prison number (if any) of Applicant

JAMES C. HUBBELL  
CLERK  
COURT  
SUMTER COUNTY  
S.C.

2021-CP-43-168

v.

State of South Carolina

APPLICATION FOR  
CERTIFIED TRUE COPY  
OF ORIGINAL FILE

POST-CONVICTION RELIEF

Barbara S. Cooper  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

**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.

- Place of detention Kershaw county/ department of corrections
- Name and location of Court which imposed sentence Sumter county clerk of court 215 N. Harvin St. Rm. 303
- Name(s) of co-defendant(s) (if any) Darius Toney, Curtis Pearson
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- 2018A 4320100854
- 2018A 4320100855

RECEIVED

FEB 11 2021

Referred to PCR  
Answered \_\_\_\_\_

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) February 19 2020

(b) Plea guilty

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I was to If you take a plea for a case

(b) you can't do an appeal

(c) \_\_\_\_\_

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

- (a) I don't feel like a statement and tattoo is enough to convict a person
- (b) There were multiple statements in the case that didn't add up
- (c) I wasn't read my maranda rights

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

- (a) I don't feel like a statement and tattoo is enough to convict a person
- (b) there were multiple statements in the case that didn't add up
- (c) I wasn't read my maranda rights

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

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

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

(a) the specific nature thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. NA
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. NA
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) I didn't have no ideal how to proceed to do so
- (b) From what I figure in south carolina the hands of one is the hands of all
- (c) I don't feel like I should be charge with the crime

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. Kofar Z/na K Timmons sumter county public defender  
215 N. Harvin St RM 151 sumter, SC 29150
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. \_\_\_\_\_
  - ii. N A
  - iii. \_\_\_\_\_

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

I seek to ~~see~~ get at least 5 years off my sentence I feel like was over sentenced. I seek to at least have another look at my case.

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

NO

STATE OF SOUTH CAROLINA )  
County of Sumter )

VERIFICATION

I, Jamacia Simon, 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.

Jamacia Simon

SWORN to and subscribed before me this 01/29/20 day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public* (L.S.)

My Commission Expires: \_\_\_\_\_

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

I, Tamacia Simon, 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.

Tamacia Simon  
*Applicant*

SWORN or affirmed to and subscribed before me this  
01 day of 29, 20.

\_\_\_\_\_  
*Notary Public*

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
Jamacia Simon, # 383069,	)	Case No.: 2021-CP-43-0168
	)	
Applicant,	)	<b>RETURN AND MOTION TO DISMISS</b>
	)	<b>OR MOTION FOR A MORE</b>
	)	<b>DEFINITE STATEMENT</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

---

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed by Jamacia Simon (Applicant) on February 4, 2021,<sup>1</sup> would respectfully show this Court:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. The Sumter County Grand Jury indicted Applicant armed robbery (2019-GS-43-0713). Applicant was represented by Katarzyna Timmons, Esquire. Assistant Attorney General William Jason Corbett represented the State. The charges arose from an incident that occurred at the Speedway gas station on November 29, 2018. Applicant and his two codefendants entered the store and pointed guns at

---

<sup>1</sup> The State’s return was originally due on April 12, 2021; however, the State did not receive a copy of the plea transcript until April 26, 2021. Upon reviewing the plea transcript, it became apparent sentencing took place on a later date after the plea, and the sentencing transcript was also needed. The State received the sentencing transcript on September 23, 2021. Now, having completed the return required in this matter, and in light of there being no demonstrable prejudice to Applicant as a consequence of the delay, the State requests the Court accept its return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

the clerk, then took money from cash register.

Applicant pleaded guilty before the Honorable George M. McFaddin on February 19, 2020. On February 20, 2020, Judge McFaddin sentenced Applicant to fifteen years' imprisonment. Applicant did not appeal.

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

## II. ALLEGATIONS

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

1. "I don't feel like a statement and tattoo is enough to convict a person."
2. "There were multiple statements in the case that didn't add up."
3. "I wasn't read my maranda (sic) rights."

As relief, Applicant requests "at least 5 years off [his] sentence" and to "have another look at my case."

## III. MOTION TO DISMISS

Respondent moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code on the basis that the application fails to state a claim upon which relief can be granted and no purpose would be served by any further proceedings. See Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing); see also S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications);

Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Sutton v. State, 361 S.C. 644, 647, 606 S.E.2d 779, 780 (2004) (“A PCR action is a civil action generally subject to rules and statutes that apply in civil proceedings”), abrogated on other grounds by Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005). In making its return in support of the motion for summary judgment, the State would respectfully show this Court:

***Failure to State a Claim***

The application should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act. The transcript reflects Applicant entered his guilty plea knowingly and voluntarily with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant’s] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses. State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985). The plea admits all elements of the offense charged, “leaves open for review only the sufficiency of the indictment, and waives all other defenses.” Id. at 314, 338 S.E.2d at 330; cf. United States v. Broce, 488 U.S. 563, 569, (1989). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985). Applicant has presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

Post-conviction relief is only proper when the application collaterally attacks the validity

of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). “In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party’s motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel.” Id. at 363-64, 527 S.E.2d at 747. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993).

Pursuant to section 17-27-20 of the South Carolina Code of Laws, an applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

The PCR Act expressly forbids applications, such as this one, which attempt to attack the conviction based on Applicant’s perceived lack of evidence against him. Further, section 17-27-20(B) expressly states PCR “is not a substitute for. . . direct review of the sentence or conviction.”

Before the circuit court will hold an evidentiary hearing, Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Because Applicant has failed to make such a showing, these allegations should be dismissed.

#### **IV. MOTION FOR A MORE DEFINITE STATEMENT**

Recognizing this application was filed by Applicant without the benefit of counsel, if the Court denies Respondent's motion to dismiss, Respondent hereby moves in the alternative for a more definite statement of Applicant's claims. Applicant has failed to set forth sufficient information for Respondent to determine the facts on which his claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (emphasis added). Therefore, Respondent requests Applicant be required to amend his application to set forth sufficient information for Respondent to determine the conviction in question and respond to Applicant's claims.

#### **V. DENIAL OF ALL OTHER ALLEGATIONS**

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

**VI. REQUEST FOR RELIEF**

WHEREFORE, Respondent moves for this application to be summarily dismissed because Applicant has failed to state a claim upon which relief can be granted in PCR, or in the alternative, to require Applicant to file a more definite statement of his claims prior to any evidentiary hearing being held.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER  
Assistant Deputy Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

10/5, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Jamacia Simon, #383069	)	
	)	Case No.: 2021-CP-43-168
Applicant,	)	
	)	
v.	)	Certificate 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 to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Timothy L. Griffith, Esquire  
 Timothy L. Griffith, Attorney at Law  
 2338 Mount Vernon Drive  
 Sumter, South Carolina 29154

DATED this 5<sup>th</sup> day of October, 2021.

  
 Kaitlyn Slice, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
 COUNTY OF SUMTER )  
 )  
 Jamacia Simon 383069 )  
 Applicant, )  
 )  
 v. )  
 )  
 STATE OF SOUTH CAROLINA, )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

RECORDED  
 IN THE COURT OF COMMON PLEAS  
 2021 NOV -8 PM 3:48  
 2021-CP-43-0168  
 JAMES C. CAMPBELL  
 CLERK OF COURT  
 SUMTER COUNTY, S.C.  
 AMENDED APPLICATION

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended TO INCLUDE as follows:

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

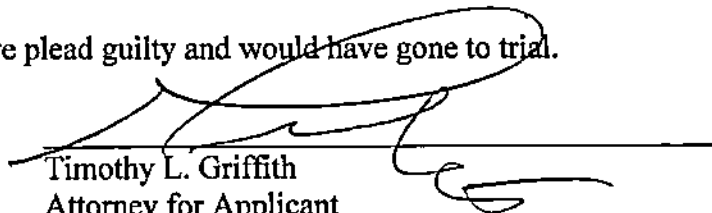
(AS TO HIS PLEA AND PLEA ATTORNEY #1-4)

1. Mr. Simon did not have time to talk to his attorney and before plea and only spoke to her 3 times in her office .

Had he had more time and information, he would not have plead guilty and would have gone to trial.

2. Mr. Simon was Coerced into pleading guilty by his attorney and told he would be found guilty at trial. (He did admit that his attorney did tell him he had a right to a trial but did not really understand that).

Had he understood that, he would not have plead guilty and would have gone to trial.

  
 Timothy L. Griffith  
 Attorney for Applicant  
 2338 Mount Vernon Drive  
 Sumter SC 29154  
 803 499-2012  
 tlgriffith@tlgriffith.com

Sumter, South Carolina  
 This 4<sup>th</sup> day of November 2021


STATE OF SOUTH CAROLINA )  
 COUNTY OF SUMTER )  
 )  
 Jamacia Simon 383069 )  
 Applicant, )  
 )  
 v. )  
 )  
 STATE OF SOUTH CAROLINA, )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 2021-CP-43-0168

RECORDED  
 2021 NOV -8 PM 3:18  
 JAMES C. CAMPBELL  
 CLERK OF COURT  
 SUMTER COUNTY, S.C.

CERTIFICATE OF SERVICE

I Lora Singleton, an employee for Timothy L. Griffith, Attorney at Law, Attorney for the Plaintiff in the above captioned case, do swear and affirm that I did cause the Amended Application for PCR to be served upon the State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549 AND BY email to Ms. Schill of the AG office, this 4<sup>th</sup> day of November, 2021.

  
 Lora Singleton, Paralegal  
 Notary for the State of SC

My commission expires April 9, 2023





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

(Whereupon, the following proceedings commenced as follows:)

THE COURT: Okay. Ms. Newberry, are you ready?

MR. RAY: Well, it's William Ray, Your Honor, on behalf of the State.

THE COURT: Oh, Mr. Ray. Okay. It sounds great. Sure. Is this -- and this is Mr. Simon?

THE APPLICANT: Yes.

THE COURT: Good afternoon. All right. Mr. Ray, if you'll introduce the case for me, please.

MR. RAY: Thank you, Your Honor. May it please the Court?

THE COURT: Yes.

MR. RAY: This is the matter of Jamacia Simon versus the State of South Carolina. We're here under Case No. 2021-CP-43-0168. Mr. Simon is currently incarcerated in the Department of Corrections. He was indicted for armed robbery by the Sumter County Grand Jury. It's a case that arises out of the robbery of a Speedway gas station, committed by Mr. Simon and two other co-defendants.

He was represented on the charge by Katarzyna Timmons, who is here present today. And, on February 19th of 2020, Mr. Simon appeared before Judge McFaddin and entered a guilty plea without any negotiations or recommendations. He then came back the next day and was sentenced, on February 20th of

1 2020. He received 15 years. He did not file a direct appeal.  
2 Instead, he chose to file this application on February 4th of  
3 2021.

4 In his initial application, he made some vague  
5 allegations, and the State moved for a more definite  
6 statement. We did receive an amended application from his  
7 counsel, Mr. Griffith, where -- I'll just read these  
8 allegations into the record.

9 The first allegation is that Mr. Simon did not have time  
10 to talk with his attorney before the plea and only spoke with  
11 her about three times in her office, and had he had more time  
12 and information, and he would not have entered his guilty plea  
13 and, instead, would have gone to trial.

14 The second allegation is that Mr. Simon was coerced into  
15 pleading guilty by his attorney and was told that he would be  
16 found guilty at trial. And he acknowledges that he told --  
17 that his attorney told him he had a right to go to trial, but  
18 he did not understand, and that, had he understood, he would  
19 not have entered his plea, and he would have gone to trial.

20 And before we dive into the testimony, Your Honor, in  
21 Mr. Simon's initial application, he requested a time cut as  
22 the relief requested, and given that the State's unaware of  
23 any case that authorizes a time cut on post-conviction relief,  
24 we would just ask that the Court engage Mr. Simon in a brief  
25 colloquy to ensure that he's well advised of his rights in

1 these proceedings.

2 THE COURT: All right, Mr. Ray.

3 First of all, good afternoon, everyone. Mr. Griffith is  
4 here.

5 And, Mr. Griffith, does your client -- does Mr. Simon  
6 agree to proceed in this format and would you examine him  
7 regarding that?

8 MR. GRIFFITH: Let me talk to him briefly, Your Honor,  
9 question him. You might put him under oath but --

10 THE COURT: Sure. Thank you.

11 And raise your right hand for me, Mr. Simon. Thank you.

12 JAMACIA SIMON,

13 after having been duly sworn, was examined and testified  
14 to as follows:

15 THE COURT: Thank you so much. You can put your hand  
16 down, Mr. Simon. Mr. Griffith is just going to ask you some  
17 preliminary questions, Mr. Simon, about just this format, make  
18 sure you're cool with that. Okay?

19 THE APPLICANT: All right.

20 THE COURT: Thank you.

21 MR. GRIFFITH: Mr. Simon, as you can see, we're not all  
22 standing in a courtroom together. We're what's call virtual.  
23 We're doing it by computer. And you have a right to wait for  
24 a time and be in front of everyone, in front of a judge in  
25 person and to have your witnesses there in person as much as

1 possible. And we're doing this in order to -- because of the  
2 COVID and other reasons, it makes it so that we can all go  
3 ahead with the hearings rather than sometimes causing some  
4 delay.

5 But do you agree to us having this hearing virtually,  
6 that is, over the computer, instead of having a hearing in  
7 person?

8 THE APPLICANT: Yes.

9 MR. GRIFFITH: Do you understand everything I talked to  
10 you about just now?

11 THE APPLICANT: Yes.

12 MR. GRIFFITH: Okay. Thank you, Your Honor.

13 THE COURT: Thank you so much, Mr. Griffith.

14 And Mr. Ray just wants to be sure -- and I am confident  
15 Mr. Griffith has been over this with you a lot, and I'm just  
16 confirming -- I have been asked to do it, so I'm going to do  
17 it very quickly. And I want you to be absolutely clear and  
18 certain that this is -- I am doing no more than imparting  
19 information. Okay? If you have any questions about what  
20 we're going to talk about, I want you to feel very free to  
21 say, "What was that? What are you talking about?" And I'll  
22 do my very, very best to answer any questions that you have.

23 This, of course, is a post-conviction relief proceeding.  
24 You are an applicant. And what is important for folks to know  
25 is that the remedy that is available is a remedy that is a new

1 trial. And a lot of people understandably -- let me say  
2 understandably, what they ask -- for many different reasons.  
3 They ask that the time that they received upon their  
4 conviction, that they want that time to be less. Sometimes  
5 it's because a co-defendant got less. Sometimes -- it could  
6 be many different reasons.

7 And so it's just very important that all folks that file  
8 PCRs -- but, today, Mr. Simon, I'm most concerned about you,  
9 because you're here right now -- that you understand that the  
10 remedy that I have available under the law is a new trial, if  
11 you will thumbs it up, thumbs it down. In other words, if you  
12 approve the two elements, if there was ineffective assistance  
13 of counsel and that you were prejudiced as a result thereof,  
14 that you would be granted a new trial.

15 I can't cut anybody's time. Even if I wanted to, I  
16 can't. It's just not -- the law doesn't allow me to do that.  
17 Mr. Ray just wanted to be sure that you understand that. I  
18 have been around with Mr. Griffith now -- this is day two.  
19 And so I'm confident that he has let you know that. I just  
20 want to be sure that you know that. And if you have any  
21 questions, I certainly want you to be able to -- you're  
22 welcome to ask me, but it's probably more appropriate that you  
23 have a colloquy with Mr. Griffith, and we'll make that happen.  
24 Okay?

25 THE APPLICANT: All right.

1 THE COURT: Got it? Got it.

2 Any questions about that?

3 THE APPLICANT: No.

4 THE COURT: Thank you.

5 Mr. Griffith, if you would call your first witness.

6 MR. RAY: We have one more brief matter, just for the  
7 record.

8 THE COURT: Okay.

9 MR. RAY: In our preparation for this case, I believe  
10 Mr. Griffith was appointed, and he came to the realization  
11 that he represented one of Mr. Simon's co-defendants at the  
12 General Sessions trial level, and I just want to put that on  
13 the record just to make sure that everyone was aware of that,  
14 just to avoid any possible conflicts.

15 THE COURT: Thank you for that, Mr. Ray.

16 Mr. Griffith, have you had a chance to talk to Mr. Simon  
17 about that?

18 MR. GRIFFITH: I did inform him that I represented one of  
19 his co-defendants, Mr. Hunter. I believe it was Mr. Hunter.

20 THE COURT: Okay. Okay. And -- all right. And did you  
21 know that, Mr. Simon?

22 THE APPLICANT: No.

23 THE COURT: Okay. Well, I want you to think about that.  
24 Okay? Because if you have concerns about that, I want you to  
25 let me know. Okay?

1 THE APPLICANT: Who is Mr. Hunter?

2 MR. GRIFFITH: Wait a minute. Maybe it wasn't Hunter.

3 THE COURT: Mr. Simon, that's -- you're wonderful. I  
4 don't know. Mr. Simon, you know, I just got here. I just got  
5 to your case.

6 MR. RAY: I believe it was Mr. Pearson, Your Honor.

7 THE COURT: Okay. Mr. Pearson.

8 MR. GRIFFITH: Pearson, okay.

9 THE COURT: Priceless, Mr. Simon. Thank you for that  
10 clarification.

11 Did you have a co-defendant, a Mr. Pearson?

12 THE APPLICANT: Yes.

13 THE COURT: Okay. Was it Mr. Pearson, Mr. Griffith?

14 MR. GRIFFITH: Evidently, it was.

15 THE COURT: Okay. All right. And I want you to -- were  
16 you aware, Mr. Simon, that Mr. Griffith had represented  
17 Mr. Pearson?

18 THE APPLICANT: No.

19 THE COURT: You were not aware of that. Okay. All  
20 right. You have got to think about that. Okay? You know,  
21 you have to be comfortable. Whether I'm comfortable, whether  
22 Mr. Griffith is comfortable -- while they might be  
23 interesting, it's how you feel about that, Mr. Simon, that  
24 matters. Do you understand that?

25 THE APPLICANT: I got it.

1 THE COURT: And you got to be 100 percent comfortable.  
2 If you are not, then we got to back up and regroup. Do you  
3 understand that?

4 THE APPLICANT: I understand.

5 THE COURT: Okay. So do you need a little bit of time to  
6 think about it? Do you need to talk with Mr. Griffith about  
7 it? Tell me how you want to proceed, what you want to do.

8 THE APPLICANT: We can proceed.

9 THE COURT: Okay. Very well.

10 Understanding that Mr. Griffith represented your  
11 co-defendant, you understand that. And do you understand that  
12 that may prove to be a conflict, and you waive any conflict  
13 and you wish to proceed?

14 MR. GRIFFITH: Is that correct, Mr. Simon?

15 THE APPLICANT: Yeah.

16 THE COURT: Okay. All right. Is there hesitancy in your  
17 voice?

18 THE APPLICANT: No.

19 THE COURT: Okay. All right. Very well. Thank you for  
20 that then. We will then be proceeding. Thank you, sir,  
21 Mr. Simon.

22 All right, Mr. Griffith.

23 And thank you for that, Mr. Ray.

24 And, Mr. Griffith, call your first witness.

25 MR. GRIFFITH: Your Honor, I would call Mr. Simon.

1 THE COURT: All right. Mr. Simon, I have already sworn  
2 you in, so you're ready to go. Thank you.

3 JAMACIA SIMON,

4 after having been previously duly sworn, was examined and  
5 testified to as follows:

6 DIRECT EXAMINATION

7 BY MR. GRIFFITH:

8 Q Okay. I'm sorry about the confusion, Mr. Simon. I was  
9 pretty sure that I had mentioned that I sent a letter to the  
10 Attorney General to that effect. But, in the meantime, you  
11 didn't have trials together, did you?

12 A No.

13 Q Your trials were separate, and you had your own attorney  
14 at your own trial, which was not with Mr. Pearson; isn't that  
15 correct?

16 A No.

17 Q I mean, you had an attorney -- you had your own plea that  
18 Mr. Pearson was not there; isn't that correct?

19 A He wasn't there.

20 Q Okay. All right. Or involved. Okay.

21 Now, Mr. Simon, first of all, if you'll state your full  
22 name.

23 A Jamacia Rakeem (ph) Simon.

24 Q Okay. And when were you incarcerated, Mr. Simon?

25 A February two-thousand -- 19, 2020.

1 Q Okay. And --

2 A February 19 of 2020.

3 Q Okay. And so when you were -- when you pled guilty, who  
4 was your attorney?

5 A Ms. Timmons.

6 Q And you see her here with us?

7 A Yes.

8 Q Okay. And you recognize her?

9 A Yes.

10 Q And, so, you and I talked on the phone, and -- about this  
11 case, and we talked about what kind of things that you felt  
12 like went wrong with her representation. Excuse me. And so I  
13 wrote an amended complaint, writing down what you had said.

14 Did you hear the Attorney General speak about those  
15 allegations?

16 A Say that again.

17 Q Did you hear what the Attorney General said that was in  
18 your complaint?

19 A Yes.

20 Q Okay. And I'll go over them again. Mr. Simon did not  
21 have time to talk to his attorney before the plea and only  
22 spoke to her three times in her office.

23 Now, let's talk about that one first. So when did you  
24 first talk to Ms. Timmons? I don't need a particular date. I  
25 mean, like, right after you were arrested or the week after?

1    **A**     I think it was two or three months after I bonded out.

2    **Q**     Okay.  So did you apply for an attorney while you were in  
3    the jail?

4    **A**     It was given to me.

5    **Q**     Okay.  All right.  And so you got a public defender; is  
6    that correct?

7    **A**     Yes.

8    **Q**     So you didn't hire your own attorney?

9    **A**     No.

10   **Q**     And so when Ms. Timmons was appointed to you, how did  
11   she -- did she call you or did you call her or what happened?

12   **A**     I get a letter.

13   **Q**     Okay.  And when you got the letter, what did you do then?

14   **A**     Her office.

15   **Q**     Okay.  So you went to her office and you talked to her.  
16   How long did you get to talk to her?

17   **A**     15 to 20 minutes.

18   **Q**     Okay.  And when you talked to her, was she able to get  
19   you to understand?  I mean, she may have talked about all  
20   kinds of things you didn't understand or whatever, but was she  
21   able to get you to understand what you were charged with and  
22   exactly what might happen as far as a trial, what your rights  
23   were?

24   **A**     No.

25   **Q**     Okay.  So did she tell you that you had a right to a

1 trial by 12 people and that they'd all have to find you  
2 guilty? Did she tell you?

3 **A** No.

4 **Q** Okay. And -- but, in the meantime, did she explain to  
5 you that you could plead guilty?

6 **A** Yes.

7 **Q** Okay. Do you want to tell us a little about -- kind of  
8 in detail of how that happened? How did she talk to you about  
9 it; do you remember?

10 **A** Telling me to plead guilty because my co-defendant tell  
11 on me.

12 **Q** And so --

13 **A** How -- with it going to trial.

14 **Q** So -- but the decision to go to trial, was that her  
15 decision or your -- I mean, not to go to trial. The decision  
16 to plead, was that her decision or your decision?

17 **A** Mine.

18 **Q** Yours?

19 **A** Yes.

20 **Q** Did she tell you that you had an option, that you had to  
21 make the decision or....

22 **A** Yes.

23 **Q** But did you really understand what she was talking about?  
24 Did you really have time to think about it and understand it?

25 **A** I had time to think about it.

1 Q Okay. Well, in our complaint, you say you only got to  
2 talk to her three times in her office. And so you were  
3 telling me that you didn't really get enough information from  
4 her to make a good decision. Is that correct?

5 A Yes.

6 Q Can you tell us a little bit about that?

7 A I feel that she ain't help represent me right.

8 Q Okay. And by that -- you were going to say something?

9 A Every time we had talked, she was telling me to plea.

10 Q Okay. So, basically, she was telling you to plea. And  
11 so have you ever been in trouble before?

12 A Not for no major crime.

13 Q Okay. And so when she was telling you to plea, what did  
14 you think about that? Did you have time to think about  
15 whether you wanted to plea or go to trial?

16 A Yes.

17 Q Okay. But why did you decide to plea instead of going to  
18 trial?

19 A Because if I had to lose, more time.

20 Q Okay. So you're saying you really didn't have time to  
21 think about it. Is that what you're saying? Or were you  
22 afraid you were going to get more time if you went to trial?

23 A Yes.

24 Q Okay. All right. I get you. All right.

25 And so do you think, if you had more time to think about

1 it, that you would have decided to go to trial?

2 **A** No.

3 **Q** Well, when you and I were talking, we talked about this  
4 and we talked about what kind of things that you could use in  
5 your PCR, and one of the things we talked about was that you  
6 felt like you just didn't get enough time with your attorney.

7 Is that correct?

8 **A** Yes.

9 **Q** Okay. So do you think if you had had more time with your  
10 attorney, you might have made a different decision? Or just  
11 hard to tell? Hard to tell?

12 **A** Hard to tell.

13 **Q** Did she ever tell you, for instance, how much time you  
14 might get if you went and did a guilty plea?

15 **A** Yes.

16 **Q** She did? Did she -- did you ask her to try and get you  
17 some less time?

18 **A** Yes.

19 **Q** Okay. And what was her reply to that? Do you remember  
20 what she said about that?

21 **A** She said they was only offering me 15.

22 **Q** Okay. All right. And so did you feel like you were  
23 under pressure to plea at all?

24 **A** Yes.

25 **Q** Is there anything that would have made you change your

1 mind and not plea?

2 **A** If I was represented better.

3 **Q** All right. Is there anything else you can tell us to  
4 help us understand why you feel like you were not represented  
5 correctly?

6 **A** Because we never did really discuss the case.

7 **Q** So she didn't really discuss the case with you? Is that  
8 what you're saying?

9 **A** Yes.

10 **Q** Did she go over the -- you know, your motion, the  
11 discovery, the evidence that the State had against you? Did  
12 she go over that with you carefully?

13 **A** We went through it.

14 **Q** Did you understand it all?

15 **A** Yes.

16 **Q** And what did you think were your chances if you went to  
17 trial? Good or not good?

18 **A** I think I had a good chance.

19 **Q** All right. And so if you had had more time to think  
20 about it and if you didn't feel pressured, you might have gone  
21 to trial; is that correct? Is that what you're telling us?

22 **A** I ain't going to say that.

23 **Q** Okay. All right. Well, do you think that she could have  
24 represented you better if she had maybe tried harder to get  
25 you less time or something?

1   **A**    Yes.

2   **Q**    Okay.  So that's really what -- what your hope was; is  
3   that correct?

4   **A**    Yeah.

5   **Q**    Okay.  Can you tell us anything else that you think would  
6   have made a difference in whether or not you did a guilty plea  
7   and accepted this guilty plea with this much time?

8   **A**    Say that again.

9   **Q**    Can you tell us if there's anything else that you think  
10  maybe she did wrong, if you can think of anything?  Can you?

11  **A**    No.

12  **Q**    Okay.  So -- but our main things are you don't think you  
13  had enough time to talk to your attorney.  That's number one.  
14  Is that correct?

15  **A**    Yes.

16  **Q**    And, number two, you felt like you were kind of pushed  
17  into taking a guilty plea; is that correct?

18  **A**    Yes.

19  **Q**    And if you had had more time, you might have made  
20  different decisions; is that correct?

21  **A**    Yes.

22           MR. GRIFFITH:  Okay.  I have no further questions, Your  
23  Honor.

24           THE COURT:  There we go.

25           Mr. Ray, cross-examination?

1 MR. RAY: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. RAY:

4 Q Mr. Simon, can you hear me all right?

5 A I can hear you.

6 Q Okay. Do you have a copy of your transcript with you  
7 from your guilty plea hearing?

8 A I don't.

9 Q Okay. Do you recall when you told the judge that you  
10 were satisfied with your lawyer?

11 A Yes.

12 Q You do? And do you recall when you told your lawyer --  
13 or you told the judge that you didn't need any more time to  
14 speak with your attorney?

15 A Yes.

16 Q Okay. Now, was Ms. Timmons, was she the only attorney  
17 that you had on this case?

18 A No.

19 Q Who was your previous attorney before Ms. Timmons came on  
20 to the case?

21 A Jason Bridges.

22 Q Okay. And about how many times did you meet with him?

23 A About five or six.

24 Q Okay. So about five or six times plus the three times  
25 you met with Ms. Timmons. Give or take about nine times you

1 met with an attorney on this case; is that correct?

2 **A** Yes.

3 **Q** Okay. And during those discussions with either one of  
4 those attorneys, did they review the evidence with you?

5 **A** Ms. Timmons did.

6 **Q** Okay. Ms. Timmons did; is that correct?

7 **A** Yes.

8 **Q** Okay. And they told you that you had a right to go to  
9 trial; correct?

10 **A** Yes.

11 **Q** And do you recall the judge at your plea hearing telling  
12 you the same thing, that you had a right to go to trial?

13 **A** Yes.

14 **Q** Okay. Now, you stated that you felt pressured to enter  
15 your plea. Why did you feel pressured?

16 **A** Because how I was told to plea. Ms. Timmons kept telling  
17 me to plea, take the plea.

18 **Q** Okay. She just advised you that you should enter your  
19 guilty plea?

20 **A** Yes.

21 **Q** Did she tell you why?

22 **A** She said my co-defendants, with them telling on me.

23 **Q** Okay. So you just felt pressured because you felt  
24 that -- and your attorney told you that you would likely be  
25 convicted if you went to trial?

1   **A**    Yes.

2   **Q**    Okay.  And did she tell you that that might be better for  
3 you or worse for you than pleading guilty?

4   **A**    No.

5   **Q**    Okay.  So why were you willing to plead guilty instead of  
6 going to trial based upon your attorney telling you that you  
7 could be convicted at trial?

8   **A**    Because I didn't want to go to trial and lose.

9   **Q**    Okay.  And so you decided that it was in your best  
10 interest to enter the plea and avoid going to trial?

11   **A**    Yes.

12   **Q**    Okay.  And that was your decision?

13   **A**    Yes.

14        MR. RAY:  Okay.  No further questions, Your Honor.

15        THE COURT:  Thank you.  All right.  Yes.

16        And, Mr. Griffith, any redirect?  You're muted.

17        MR. GRIFFITH:  Yes, just a little redirect, Your Honor,  
18 please.

19        THE COURT:  Sure.  Of course.

20                                    REDIRECT EXAMINATION

21    BY MR. GRIFFITH:

22   **Q**    Okay.  Mr. Simon, just to clarify to give the Court an  
23 idea of where you were when you were -- all this was going on,  
24 how far did you go through school?

25   **A**    Couple courses in college.

1 Q Okay. So you made it through high school?

2 A I dropped out, but I went back and got a GED.

3 Q Okay. So you dropped out. And what grade did you drop  
4 out in?

5 A Ninth.

6 Q Ninth grade. Okay. That's what I was thinking. You and  
7 I talked about it a little bit. Okay.

8 MR. GRIFFITH: And, so, I have no further questions, Your  
9 Honor.

10 THE COURT: Thank you, Mr. Griffith.

11 All right. Call your next witness, please.

12 And thank you, Mr. Simon.

13 All right. Mr. Griffith, call your next witness, please.

14 MR. GRIFFITH: No further witnesses. I would rest, Your  
15 Honor.

16 THE COURT: All right. Thank you.

17 And Mr. Ray?

18 MR. RAY: Your Honor, the State would call Ms. Timmons.

19 THE COURT: All right. Ms. Timmons, if you would raise  
20 your right hand.

21 KATARZYNA TIMMONS,

22 after having been duly sworn, was examined and testified  
23 to as follows:

24 THE COURT: Thank you so much.

25 All right. Mr. Ray, Ms. Timmons is your witness.

1 MR. RAY: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. RAY:

4 Q Ms. Timmons, how are you?

5 A I'm good. How are you?

6 Q I am good.

7 How long have you been practicing law?

8 A Eight years. Eight years now.

9 Q Okay. And when did you first come to meet Mr. Jamacia  
10 Simon?

11 A I was assigned as an attorney for Mr. Simon sometime  
12 between August and November of 2019.

13 Q Okay. How many times did you meet with him?

14 A I believe Mr. Simon was correct when he stated that I met  
15 with him three times. I had several phone conversations with  
16 him, but I think -- I believe the actual physical meetings  
17 were three times.

18 Q Okay. And were you the first attorney to handle this  
19 case or did you take over for someone?

20 A I took over from Jason Bridges.

21 Q Okay. And do you have any notes or anything about his  
22 representation that were in the file?

23 A Yes, I do.

24 Q Are you aware of how many times he may have met with  
25 Mr. Simon?

1 **A** According to our -- our defender data, the system that we  
2 use in our office, Mr. Bridges met with Mr. Simon at least, I  
3 believe, six times.

4 **Q** Okay.

5 **A** And then Mr. Simon was scheduled for a guilty plea in  
6 July of 2019, but I'm not sure what happened. It didn't go.

7 **Q** Okay. So, during your representation of Mr. Simon, was  
8 his right to go to trial or enter a plea discussed with him?

9 **A** I'm not sure whether Mr. Bridges did it, but I discussed  
10 it with Mr. Simon.

11 **Q** Okay. And did you discuss the evidence against him?

12 **A** Yes. I actually was able to find a specific note that I  
13 was discussing with Mr. Simon guilty plea versus trial  
14 chances, and the note said that there was a chance for  
15 acquittal because, I guess, the only evidence that the State  
16 had was co-defendant's statement, and Mr. Simon has distinct  
17 tattoos on his hand, and there was a video that showed one of  
18 the perpetrators of the armed robbery that had tattoos on his  
19 hand. So that was discussed with Mr. Simon.

20 **Q** Okay. And did you have reason to believe that these  
21 co-defendants would testify against Mr. Simon at trial?

22 **A** Yes. They gave a statement against Mr. Simon, I guess,  
23 during the course of investigation, and one of the  
24 co-defendants actually testified against Mr. Pearson, and, as  
25 a result, Mr. Pearson was convicted and received a sentence of

1 35 years in prison.

2 Q Okay. Did you believe that a conviction was likely at  
3 trial, based upon your understanding of the evidence?

4 A I mean, I thought there was enough evidence for the jury  
5 to possibly find Mr. Simon guilty. As you know in trials, you  
6 just never know what the jury will do. But I believe that  
7 there was some evidence for -- that would -- that a jury could  
8 possibly find Mr. Simon guilty.

9 Q Okay. And did you tell Mr. Simon that?

10 A Yes. Yes, sir.

11 Q Okay. Did you promise him anything in exchange for a  
12 guilty plea?

13 A No, I did not. And Mr. Simon pled guilty without any  
14 recommendation from the State.

15 Q Okay. And did you threaten him or coerce him in any way?

16 A No, I did not.

17 Q Okay.

18 MR. RAY: Court's indulgence for just one moment, please.

19 THE COURT: Sure.

20 BY MR. RAY:

21 Q Ms. Timmons, whose decision was it to enter a guilty  
22 plea?

23 A It was Mr. Simon's decision.

24 MR. RAY: Thank you. No further questions.

25 THE COURT: All right. Cross-examination, Mr. Griffith?

1 THE WITNESS: Mr. Griffith, I cannot hear you.

2 MR. GRIFFITH: I mute myself in between. Anyway...

3 CROSS-EXAMINATION

4 BY MR. GRIFFITH:

5 Q Ms. Timmons, so how long a period of time did you  
6 actually represent him? Was it, like, three months? Four  
7 months? What was it?

8 A I guess it could be anything between five months to three  
9 months. I'm not exactly sure when I was appointed as his  
10 attorney, but it was sometime between August and November of  
11 2019.

12 Q And you had mentioned in your testimony that Mr. Bridges  
13 had scheduled a plea for Mr. Simon; is that correct?

14 A I mean, I say that only solely based on the information  
15 and defender data. I did not have any discussion with  
16 Mr. Bridges, so I don't know if that information was placed  
17 over there by accident or whether Mr. Simon was relieved by  
18 schedule to guilty plea but then decided not to go forward.

19 Q So was there any kind of offer at all by the State?

20 A Whenever I represented Mr. Simon, the only plea offer was  
21 15 years' prison time. I know that the -- and I discussed it  
22 with Mr. Simon. The State was really interested in  
23 Mr. Simon's cooperation against co-defendant, and the  
24 solicitor did not make any promises, but there was an  
25 understanding that it will be taken under consideration if

1 Mr. Simon cooperated against co-defendant.

2 **Q** Did Mr. Simon cooperate?

3 **A** No. Mr. Simon did not cooperate. His co-defendant --  
4 there are three co-defendants. The other co-defendant  
5 cooperated, and he received a sentence of ten years' prison  
6 time.

7 **Q** Okay. So did you attempt to get Mr. Simon a little bit  
8 less time or did you try to argue about it?

9 **A** Yes, of course. I tried to get a better deal for  
10 Mr. Simon, and the solicitor was not willing to do it, and  
11 Mr. Simon decided to plead guilty without the recommendation.  
12 I was encouraging him to testify against the co-defendant so  
13 at least he could get a benefit of that, but Mr. Simon was not  
14 willing to testify against his co-defendant.

15 **Q** Okay. And did you feel like he was hesitant as far as  
16 deciding to have a guilty plea -- to plead guilty?

17 **A** I believe so, and understandably so. I mean, he was  
18 pleading guilty to armed robbery without any recommendation  
19 from the State, with the minimum sentence of ten years and  
20 maximum sentence of 30 years. So anybody should be hesitant  
21 about making this kind of decision. So I don't blame  
22 Mr. Simon for -- I totally understand that.

23 **Q** Did you ask to have Mr. Simon evaluated?

24 **A** No, I don't believe so. I don't believe that -- I have  
25 never had any suspicions or any grounds to believe that

1 Mr. Simon needed evaluation.

2 **Q** So when he talked to you, did he seem vague at times?

3 **A** I mean, Mr. Simon seemed hesitant. Like I said,  
4 understandably so, how to proceed, you know. But that's -- I  
5 think that's a very wise thing to do, especially with such an  
6 important decision like pleading guilty to armed robbery.  
7 Plead guilty or go the trial. That's something to be  
8 hesitant.

9 **Q** And so -- but when he was hesitant, did you work to  
10 convince him that he should plead guilty?

11 **A** I discussed with Mr. Simon his -- I guess the evidence  
12 that the State had against him, his options, what may happen  
13 during the trial, what may happen during the guilty plea, but  
14 I always leave the decision to my client just because, at the  
15 end of the day, they will be the one that will have to deal  
16 with the consequences of their decision.

17 **Q** Okay. So what was your -- did you actually make a  
18 recommendation to him at all?

19 **A** I -- the only note that I have in my system is that I  
20 just discussed the chances of trial versus guilty plea; that,  
21 if we go to trial, there's a chance for acquittal based on the  
22 fact that, I guess, the main evidence was co-defendant's  
23 statement and the tattoos on his arms. If we go -- if we  
24 decides -- however, if he loses, there's a chance of serious  
25 prison time and guilty plea, you know, chances of what he may

1 get if he decides to plead guilty or what sentence he may  
2 receive if he decides to plead guilty.

3 Q So when you were talking to him about a trial, did you  
4 give him your opinion as to what his chances were if he went  
5 to a trial?

6 A I told Mr. Simon that, if he decides to go to trial,  
7 there's a chance -- there is some evidence for the jury to  
8 find him guilty, but there's also a chance for acquittal.  
9 However, you just never know with the jury.

10 Q Okay.

11 A If he decided to go to trial, there was something that we  
12 could possibly argue, but there was also evidence for the  
13 State.

14 MR. GRIFFITH: Well, I have no further questions at this  
15 time, Your Honor.

16 THE COURT: All right. Thank you.

17 Redirect, Mr. Ray?

18 MR. RAY: No redirect, Your Honor.

19 THE COURT: Very well.

20 And is Ms. Timmons free to leave, released from her  
21 subpoena?

22 MR. RAY: Yes, Your Honor.

23 THE COURT: Thank you. Thank you, Ms. Timmons, very  
24 much.

25 MS. TIMMONS: Thank you so much, and you have a great

1 day.

2 THE COURT: Yes. Thank you. You as well.

3 All right. Mr. Ray, call your next witness.

4 MR. RAY: The State has no further witnesses.

5 THE COURT: All right. Is there any reply or rebuttal?

6 MR. GRIFFITH: No, Your Honor.

7 THE COURT: Very well.

8 Gentlemen, I will consider all that I have heard today.

9 And, Mr. Ray, do you have any other matters this week?

10 MR. RAY: The only other one I had was the one that got  
11 continued this morning, so...

12 THE COURT: Mr. Ray, I'm going to ask you just to either  
13 jump on at some point or just allow for Mr. Neubauer to  
14 deliver to you who I'm going to ask to draft a proposed order.

15 MR. RAY: Okay.

16 THE COURT: Because I do want to have some time to  
17 consider these matters, but I should be able to ask for  
18 proposed orders by the end of the week.

19 MR. RAY: Okay.

20 THE COURT: Mr. Griffith has been with me yesterday and  
21 today, and I think he's going to continue to hang with me all  
22 week.

23 MR. GRIFFITH: Two more days.

24 THE COURT: Fantastic. Either jump on at some point,  
25 Mr. Ray, or I will share that with Mr. Neubauer and remind

1 Mr. Neubauer to get that word for you. Okay?

2 MR. RAY: Okay. I'll do that.

3 THE COURT: Thank you. All right. Thank you, gentlemen.

4 MR. GRIFFITH: Thank you, Your Honor.

5 THE COURT: And I do believe that your next -- thank you  
6 too, Mr. Simon. You take care of you now. Be safe and well.

7 And thank you. All right.

8 (The above hearing concluded.)

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## 1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: Jamacia Simon v. State

3 2021-CP-43-00168

4 DATE OF PROCEEDING: November 17, 2021

5

6 I, Bobbi J. Fisher, do hereby certify that the  
7 foregoing transcript is a true and correct record of the  
8 recorded proceedings; **that said proceedings were transcribed**  
9 **to the best of my ability from the audio recording and**  
10 **supporting information**, and that I am neither counsel for,  
11 related to, nor employed by any of the parties to this case,  
12 and I have no interest, financial or otherwise, in its  
13 outcome.

14



16

17 \_\_\_\_\_  
Bobbi J. Fisher

18 Prepared: April 21, 2022

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STATE OF SOUTH CAROLINA )  
 COUNTY OF SUMTER )  
 )  
 Jamacia Simon, SCDC No. 383069 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2021-CP-43-0168

**ORDER OF DISMISSAL**

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 SUMTER COUNTY, S.C.

This matter comes before the Court by way of Applicant Jamacia Simon’s February 4, 2021 application for post-conviction relief. Respondent made its return and moved for a more definite statement on October 5, 2021. A virtual evidentiary hearing before the undersigned was convened on Wednesday, November 17 on the WebEx virtual platform. Applicant was present, consented to the virtual hearing, and was represented by Attorney Timothy Griffith. Assistant Attorney General William H. Ray, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf. Applicant’s plea counsel, Attorney Katarzyna Timmons, also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, the records of the Sumter County Clerk of Court, a copy of the original plea transcript, and the pleadings. This Court has reviewed the record and pleadings, heard the testimony and observed the witnesses, and finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently incarcerated in the South Carolina Department of Corrections. Applicant was indicted by the Sumter County Grand Jury for armed robbery at its August 2019 term. (2019-GS-43-0713). Applicant was represented by Attorney Katarzyna Timmons and

Assistant Attorney General William Jason Corbett, of the South Carolina Attorney General's Office, prosecuted the case. On February 19, 2020 Applicant appeared before the Honorable George M. McFaddin and entered a guilty plea. Judge McFaddin sentenced Applicant to fifteen years' imprisonment the next day. Applicant did not pursue a direct appeal of his sentence or conviction.

## II. FACTUAL HISTORY

Applicant agreed at his plea hearing that the following facts, as recited by the Assistant Attorney General, give rise to his conviction:

[T]his incident took place here in Sumter County on or about November 29<sup>th</sup> of 2018. Specifically, at the Speedway gas station and convenience store located on Broad Street.

In the nighttime hours, Mr. Simon, along with two other co-defendants, did enter that store. At that point in time – the clerk that night was Ms. McDonald. She was present in the store. All three individuals produced handguns. Two of the individuals approached the counter, ultimately either coming over or around the counter, and taking from the cash register by force or intimidation while armed with a deadly weapon the property of Speedway.

(Tr. 11, 19 – Tr. 12, 13).

## III. CURRENT APPLICATION

In Applicant's initial, *pro se*, application for post-conviction relief, he alleged that he was being held in custody unlawfully for the following reasons:

1. I don't feel like a statement and tattoo is enough to convict a person.
2. There were multiple statements in the case that didn't add up.
3. I wasn't read my Maranda rights.

In response to the State's motion for a more definite statement, Applicant, through counsel filed an amended application on November 4, 2021 and alleged as follows:

1. Mr. Simon did not have time to talk to his attorney and before plea and only spoke to her 3 times in her office.

Had he had more time and information, he would not have plead guilty and would have gone to trial.

2. Mr. Simon was Coerced into pleading guilty by his attorney and told he would be found guilty at trial. (He did admit that his attorney did tell him he had a right to a trial but did not really understand that).

Had he understood that he would not have plead guilty and would have gone to trial.

Applicant proceeded forward on the allegations raised in his amended application at the evidentiary hearing. Therefore, the allegations raised in his initial application are deemed waived and will not be addressed herein, to the extent that they are not included in the amended application.

#### 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, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

##### *Ineffective Assistance of Counsel*

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his <sup>285</sup>~~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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's 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.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

These standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before

examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

***Failure to adequately consult with Applicant***

Applicant alleges that he did not have adequate opportunities to meet with his attorney prior to entering his guilty plea. This allegation is without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Counsel testified at the evidentiary hearing that she was appointed to represent Applicant after she began working at the public defender's office. He had previously been represented by Attorney Jason Bridges. She noted that the file indicated that Attorney Bridges met with Applicant at least six times during the course of his representation. She stated that she personally met with him three times. During those meetings they discussed his constitutional rights and the discovery in the case. She also discussed the evidence against him and advised him on the likelihood of

conviction should he go to trial. She noted that there was video evidence as well as incriminating statements made by his codefendants, who were expected to testify against him at trial.

Applicant acknowledged that he had met with counsel prior to his plea hearing, but stated that they did not discuss a trial or his constitutional rights. He stated that she did tell him he could plead guilty and that the case was not worth taking to trial. He also stated that they did not discuss the case, but puzzlingly stated that they did review the discovery. He stated that he felt that counsel was not representing him correctly. He had requested that she get him a plea for less time, but she told him that the only offer was for fifteen years. He stated that he felt he was under pressure and would not have pled with better representation. When pressed as to what counsel could have done differently he could not point to anything specific, other than simply not spending enough time on the case.

He acknowledged that he chose to enter the plea and was aware that he could have taken it to trial. He stated that he had enough time to make this decision, and would not have chosen to go to trial if he had more time. He acknowledged that he told the plea court that he was satisfied with his lawyer and that he did not need to spend more time speaking with her. He also acknowledged that he met with her three times, and met with prior counsel approximately six times. He stated that he pled because he did not want to go to trial and lose, and thought it was in his best interest to enter the plea.

This Court finds that Applicant has not met his burden of proving ineffective assistance of counsel for failing to spend adequate time meeting with Applicant and preparing the case for trial. It is undisputed that Applicant met with counsel and his previous attorney a total of nine times, that the discovery was reviewed with him, that he understood the evidence, and that he chose to enter a guilty plea rather than going to trial. The record shows that he told the plea court that he

was satisfied with his attorney, that he had enough time to speak with her, and that he wanted to enter his plea rather than go to trial. Applicant has offered no evidence that could have been discovered or explanation of what benefit would have derived from additional meetings with his attorney. Likewise, he has not shown why additional meetings with his attorney would have compelled him to take his case to trial rather than entering his guilty plea. Counsel's performance therefore cannot be deficient for failing to adequately meet with Applicant, and he has not shown prejudice resulting from the representation. The allegation must be denied and dismissed with prejudice.

### ***Involuntary Guilty Plea***

Applicant alleges that his counsel coerced him into entering a guilty plea. This allegation is without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); *see also Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial

counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

The plea court found that Applicant's plea was entered freely, knowingly, voluntarily, and intelligently. (Tr. 13, 18-20). The court made this finding after a thorough colloquy where Applicant was informed of the charges against him and advised of his constitutional rights. (Tr. 3, 3-12; Tr. 4, 16 – Tr. 5, 20). Applicant stated that he was satisfied with his attorney and specifically stated that nobody had promised him anything and was entering his plea freely and voluntarily. (Tr. 7, 7-12; Tr. 10, 15 – Tr. 11, 1).

As described above, Applicant stated that he felt pressured because his attorney advised him to enter his guilty plea rather than go to trial. He believed that at trial his codefendants would testify against him and he would be convicted. The significant likelihood of defeat at trial is what induced the plea.

Counsel testified that Applicant was initially hesitant to enter a guilty plea because of the severity of the offense, but ultimately made the decision to admit his guilt and avoid a trial. She stated that this decision came after discussions about the evidence against him, the likelihood of conviction, and the possibility of serious prison time. She stated that she did not promise him anything to get him to enter a plea, and it was his decision.

This Court finds no reason to deviate from the plea court's finding that Applicant's plea was freely and voluntarily made based upon the testimony presented at the evidentiary hearing. Applicant stated that he felt the plea was a better option than going to trial. Applicant pled *because*

it was the better option based upon the evidence against him, not because of any action or omission of counsel. The record clearly shows that Applicant's plea was made voluntarily, and the testimony shows that Applicant made the decision after a thorough review of the case and opportunity to consider the best path forward. Applicant has failed to show deficiency or prejudice resulting from counsel's performance in this regard. As such, the application for post-conviction relief must be denied and dismissed with prejudice.

#### V. CONCLUSION

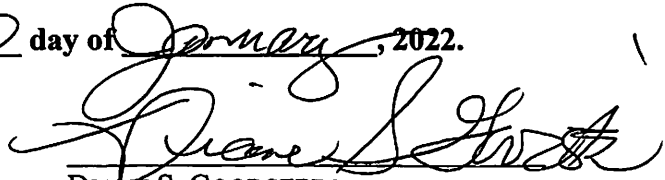
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED** this 10 day of January, 2022.



DIANE S. GOODSTEIN  
Presiding Judge  
Third Judicial Circuit

St. George, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SUMTER )

INDICTMENT FOR

CERTIFIED TRUE COPY  
OF ORIGINAL  
Armed Robbery  
*Barbara Anayen*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

At a Court of General Sessions, convened on August 1, 2019 the Grand Jurors of  
SUMTER County present upon their oath:

COUNT ONE  
ARMED ROBBERY

That on or about November 29, 2018, in Sumter County, South Carolina, the Defendant, Jamacia Rakeem Simon, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Speedway Gas Station, 101 Broad St., Sumter, SC with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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

Solicitor

*Ernest A. Finley III*

**WITNESSES**

Willie J. McFadden  
Police Dept.

Sumter

**DOCKET NO. 2019-GS-43-0713**

**The State of South Carolina**

**County of SUMTER**

**COURT OF GENERAL SESSIONS**

August TERM 2019

**THE STATE**

**vs.**

**JAMACIA RAKEEM SIMON**

**ARREST WARRANT NUMBER**

2018A4320100854

**Indictment for**

**Armed Robbery**

**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date:

*Charles H*

*8/11/19*

*Ernest A Finney III*

**VERDICT**

**TRUE BILL**

**ERNEST A. FINNEY, III, SOLICITOR**

Foreperson of Petit Jury

Date:

99-30

COUNTY OF \_\_\_\_\_ STATE \_\_\_\_\_

Jamacia Rakeem Simon

AKA: \_\_\_\_\_

Race: Black Sex: M Age: 27

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Marilyn Ave

City, State, Zip: Sumter, SC 29153

DL#: [REDACTED] SID#: \_\_\_\_\_

\*CDL Yes [ ] No [ ] CMV Yes [ ] No [ ] Hazmat Yes [ ] No [ ]

In disposition of the said indictment comes now the Defendant who was TO: Armed Robbery

INDICTMENT/CASE#: 2019-GS-43-0713

A/W#: 2018A4320100854

Date of Offense: 11/29/2018

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET DEPUTY CLERK OF COURT SUMTER COUNTY SOUTH CAROLINA

[ ] CONVICTED OF or [X] PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

[ ] NON-VIOLENT [X] VIOLENT [ ] SERIOUS [X] MOST SERIOUS [ ] Mandatory GPS(CSC [ ] §17-25-45

The charge is: [X] As Indicted [ ] Lesser Included Offense. [ ] Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Corbett, Jason W SC Bar# 065340 Jamacia Simon Defendant Timmons, Katarzyna K Attorney for Defendant SCB100955 SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [ ] County Detention Center, for a determinate term of 15 days/months/years or [ ] under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[ ] CONCURRENT or [X] CONSECUTIVE to sentence on: \_\_\_\_\_

[X] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

[ ] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

[ ] Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

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

TOTAL \$128.75

Clerk of Court/ Deputy Clerk James C. Campbell

Court Reporter: DCBP

Presiding Judge \_\_\_\_\_

Judge Code: 2759

Sentence Date: 2/19/20