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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
Edgar W. Dickson, Circuit Court Judge

BENJAMIN DAVIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-206668

APPENDIX

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

BENJAMIN DAVIS, III,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
vs.)	No. 07-GS-18-1018 et al
)	
Benjamin Davis, III,)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing was held on January 24, 2008, before The Honorable G. Edward Welmaker in Dorchester County General Sessions on the 24th day of January, 2008; attended by Counsel, as follows:

APPEARANCES:

Russell Hilton, Assistant Solicitor
1st CIRCUIT SOLICITORS OFFICE
Appearing for State of South Carolina

Kenneth Cooper, Esq.
Appearing for Defendant

Crystal Perez
Spanish to English Interpreter

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

1 MR. HILTON: Your Honor, this is
2 Benjamin Davis, III. He has been charged with
3 three indictments: 07-GS-18-1021, unlawful
4 carrying of a handgun; 07-GS-18-1019, attempted
5 armed robbery; and 07-GS-18-1018, assault and
6 battery with intent to kill. The State has
7 recommended a cap of fifteen years on those
8 charges.

9 The victims are present in the
10 audience. Mr. Thelo Gusto Garcia, who is seated
11 on the court's left and who is here with Ms.
12 Crystal Perez who will be interpreting for him.
13 I told the court that if you hear them
14 whispering out in the audience, she is just
15 interpreting for him what is being said, by
16 agreement, during the court process, Your Honor.
17 We would ask that you excuse them for that.

18 THE COURT: All right. Thank you.
19 Mr. Cooper, do you represent Mr. Davis in this
20 matter?

21 MR. COOPER: I do, Your Honor.

22 THE COURT: Have you had a sufficient
23 opportunity to talk with your client about the
24 charges pending against him the possible
25 punishments that he faces and his Constitutional

1 rights?

2 MR. COOPER: I have.

3 THE COURT: Do you believe that he
4 understands those discussions that you have had
5 with him?

6 MR. COOPER: He does, Your Honor.

7 THE COURT: All right. Does he wish
8 to plead guilty or not guilty to the charges?

9 MR. COOPER: Guilty, Your Honor.

10 THE COURT: Do you agree with him in
11 that decision?

12 MR. COOPER: I do, Your Honor.

13 THE COURT: Have you had an
14 opportunity to review all the State's evidence
15 in these cases?

16 MR. COOPER: I have, Your Honor.

17 THE COURT: Based on your
18 investigation of the facts and circumstances
19 surrounding each of these matters, do you
20 believe that the State could produce sufficient
21 evidence to convince a jury of his guilt beyond
22 any reasonable doubt and that if a trial were to
23 be held that his conviction would be probable?

24 MR. COOPER: I think that it would be,
25 Your Honor.

State of South Carolina v. Benjamin Davis, III

Case No. 07-GS-18-1018 et al

Hearing of January 24, 2008

before The Honorable G. Edward Welmaker

1 THE COURT: Mr. Davis, how old are
2 you, sir?

3 DEFENDANT: Nineteen.

4 THE COURT: Are you married?

5 DEFENDANT: No, sir.

6 THE COURT: Do you have any children?

7 DEFENDANT: No, sir.

8 THE COURT: How far did you go in
9 school?

10 THE COURT: Tenth grade.

11 THE COURT: Where did you attend?

12 DEFENDANT: Fort Dorchester High.

13 THE COURT: Fort Dorchester?

14 DEFENDANT: (Affirmative nod).

15 MR. HILTON: Your Honor, if I may
16 interrupt briefly. The clerk just arrived and
17 if we -- we may need to swear in Mr. Davis.

18 THE COURT: Okay.

19 (WHEREUPON WITNESS SWORN)

20 THE COURT: You had given me some
21 information about your age being nineteen, being
22 single with no children and that you went
23 through the tenth grade in Dorchester; is that
24 all correct?

25 DEFENDANT: Yes, sir.

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Case No. 07-GS-18-1018 et al
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1 THE COURT: Have you had any gainful
2 employment in your adult life? Have you worked
3 anywhere?

4 DEFENDANT: Yes, sir.

5 THE COURT: What kind of work did you
6 do?

7 DEFENDANT: Construction.

8 THE COURT: When did you last work,
9 Mr. Davis.

10 DEFENDANT: Before I came to jail, a
11 few month ago.

12 THE COURT: Have you ever been
13 treated for any alcohol or drug abuse?

14 DEFENDANT: No, sir.

15 THE COURT: Have you ever been
16 treated for any sort of mental illness?

17 DEFENDANT: No, sir.

18 THE COURT: Do you have any
19 medication, prescriptive drugs or
20 nonprescriptive drugs, anything, in your system
21 today?

22 DEFENDANT: No, sir.

23 THE COURT: Do you have any kind of
24 medical problem(s), either physical or mental,
25 emotional, nervous condition, anything at all

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1 that would affect your ability to understand
2 what we are doing here today?

3 DEFENDANT: No, sir.

4 THE COURT: Mr. Davis, I have before
5 me some indictments. The first indictments
6 indicates that here in Dorchester county, on or
7 about April the 27th of last year, 2007, with
8 malice aforethought that you committed an
9 assault and battery upon Theo Gusto Garcia by
10 shooting the victim with the intent to kill,
11 assault and battery with intent to kill. Are
12 you here to plead guilty to that charge?

13 DEFENDANT: Yes, sir.

14 THE COURT: I also have an indictment
15 before me that says on or about that same date,
16 April the 27th, 2007, that you feloniously
17 attempted to take from the person or the
18 presence of the same victim, Mr. Garcia, and/or
19 Lorena Mengle, Dengle (phonetic), by means of
20 force or intimidation, strong armed with a
21 deadly weapon or alleging, either by words or by
22 actions, that you were armed and by using a
23 representation of a deadly weapon, uh, which the
24 persons present reasonably believed to be a
25 deadly weapon you attempted to rob them of U.S.

State of South Carolina v. Benjamin Davis, III
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1 currency, each of them or both of them. Are you
2 here to plead guilty to that, as well?

3 DEFENDANT: Yes, sir.

4 THE COURT: I also have an indictment
5 before me that states on or about April the 27th,
6 2007, that you unlawfully carried upon your
7 person a firearm, being a .22 caliber pistol.
8 All of that taking place here in Dorchester
9 county. Are you here to plead guilty to that,
10 as well?

11 DEFENDANT: Yes, sir.

12 THE COURT: Solicitor, I will be glad
13 to hear about the facts of the case.

14 MR. HILTON: Thank you, Your Honor.
15 This occurred on April the 27th, 2007, about
16 11:38 p.m. in the parking lot of Brenda's Bar,
17 which is located on [REDACTED],
18 [REDACTED], in Dorchester county. On
19 that evening, Mr. Garcia, along with a Ms.
20 Dingle had arrived at Brenda's Bar, had parked
21 their car in the parking lot and were walking up
22 to Brenda's Bar & Restaurant. As they were
23 walking by several of the other businesses, Mr.
24 Davis and several of the other codefendants ran
25 out and at that time, uh, one of the

State of South Carolina v. Benjamin Davis, III
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1 codefendants put a gun in Ms. Dengle's face.

2 Mr. Garcia realized what was going on,
3 and at that time one of the other codefendants
4 grabbed him. When he was grabbed, Mr. Davis
5 then shot Mr. Garcia once in the upper chest
6 region. He then broke loose, turned to run and
7 he shot him again. Mr. Garcia then, of course,
8 left. He was able to get back to his car, Ms.
9 Dengle was able to get loose and come back to
10 where the victim was and at that time Mr. Davis,
11 along with his codefendants, fled the scene.

12 One of the codefendants was ID'ed by
13 Ms. Lorenzo Dengle, who knew him to be a
14 coworker of her sister at a local Burger King,
15 and was able to provide the name of that
16 codefendant, Jonathon Lennon.

17 From there, they were able to talk to
18 Mr. Lennon and he ended up giving a statement
19 implicating Mr. Davis and the other ones, the
20 other codefendants, as well.

21 They were able to talk to several of
22 the other codefendants, one being Octavia
23 Robinson and another one being Akim Grant, and
24 both of them gave statements implicating Mr.
25 Davis as being the trigger man who shot Mr.

State of South Carolina v. Benjamin Davis, III
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before The Honorable G. Edward Welmaker

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11

1 Garcia. In their statements, they described
2 their plan to leave the Hunters Ridge area,
3 Stratton Ridge area, and walk up with the plan
4 of robbing somebody. They walked up to the side
5 of the building and found a piece of wood and
6 used that piece of wood so that they could hide
7 behind it in an effort to disguise themselves so
8 that they could make a surprise attack; which is
9 exactly what happened to Mr. Garcia in this
10 case. Also in their statements there
11 were several other victims that they had
12 attempted to go after, yet they were able to
13 make it to Brenda's at time without discovering
14 Mr. Davis and his codefendants.

15 I don't know if Mr. Garcia wants to
16 address the court. I gave him that opportunity.
17 Does he want to say anything?

18 INTERPRETER: Yes, sir.

19 MR. HILTON: Just stand up.

20 THE COURT: I will give him an
21 opportunity in just a minute. Okay?

22 MR. HILTON: Yes, sir.

23 THE COURT: First of all, Mr. Davis,
24 you heard the facts recited by the solicitor
25 surrounding this particular incident. Are those

1 the facts to which you are here to plead guilty
2 today?

3 DEFENDANT: Yes, sir.

4 THE COURT: I need to explain certain
5 rights that you have as a citizens and I want to
6 make sure that you understand those rights. By
7 pleading guilty, you give up substantial rights
8 that you enjoy. Among those rights is the right
9 to have a trial by jury. A jury could be
10 empaneled. The State of South Carolina would
11 have to prove each and every element of each of
12 these offenses to a jury's satisfaction beyond a
13 reasonable doubt. They would have to convince
14 all twelve jurors, unanimously, of your guilt.
15 Do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that if
18 you had a trial that you would be presumed
19 innocent. You wouldn't have to say anything at
20 all, you have a right to silence. The jury
21 would be instructed that they couldn't hold that
22 against you if you chose to remain silent. Do
23 you understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: If you were to have a

1 trial, you could call witnesses in your own
2 behalf if you wanted to put up a defense; you,
3 obviously, could testify; you could challenge
4 any incriminating statements that you may have
5 made. You'd have a right to confront the
6 witnesses against you and your lawyer could ask
7 questions of the State's witnesses. Do
8 you understand that all these rights that you
9 enjoy as a citizen that you give up by pleading
10 guilty?

11 DEFENDANT: Yes, sir.

12 THE COURT: And you want to give
13 those rights up, plead guilty?

14 DEFENDANT: Yes, sir.

15 THE COURT: Are you satisfied with
16 the representation that your lawyer has given
17 you?

18 DEFENDANT: Yes, sir.

19 THE COURT: Have you met with him as
20 often and as long as you need to?

21 DEFENDANT: Yes, sir.

22 THE COURT: Has he answered all the
23 questions that you've had?

24 DEFENDANT: Uh-huh.

25 THE COURT: Have you understood those

1 discussions that you've had with your lawyer?

2 DEFENDANT: Yes, sir.

3 THE COURT: Is there anything that he
4 hasn't done for you that you've asked him to do?

5 DEFENDANT: No, sir.

6 THE COURT: Do you have any
7 complaints whatsoever about your lawyer in this
8 case?

9 DEFENDANT: No, sir

10 THE COURT: Now you've heard the
11 recommendation of the solicitor for a cap of
12 fifteen years in the sentence. Is that -- for
13 the three charges. Is that what you understood
14 the State was going to recommend? A cap of
15 fifteen years?

16 DEFENDANT: Yes, sir.

17 THE COURT: Except for that promise
18 from the State, have there been any promises of
19 any kind to get you to plead guilty?

20 DEFENDANT: No.

21 THE COURT: Has there any threats or
22 pressure, coercion of any kind been brought to
23 bear upon you to make you plead guilty in this
24 case?

25 DEFENDANT: No.

1 THE COURT: Has anybody connected
2 with the case in the solicitor's office or law
3 enforcement or in any related to this case
4 mistreated you in any way?

5 DEFENDANT: No.

6 THE COURT: Do you understand each of
7 these charges -- that for the assault and
8 battery with intent to kill that you could be
9 sentenced up to twenty years in jail?

10 DEFENDANT: Yes, sir.

11 THE COURT: And do you understand
12 that you could also receive an additional twenty
13 years for the attempted armed robbery?

14 DEFENDANT: Right.

15 THE COURT: And that you could
16 receive up to one year in jail for the unlawful
17 carrying of a pistol; do you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Have you had enough time
20 to decide whether or not you wish to plead
21 guilty?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you need any more time
24 to decide whether or not you want to plead
25 guilty?

1 DEFENDANT: (Negative gesture).

2 THE COURT: Are you ready to plead
3 guilty today?

4 DEFENDANT: (Affirmative nod), they
5 were putting me on trial February 4th.

6 THE COURT: Excuse me?

7 DEFENDANT: they were getting ready
8 to try me on February the 4th.

9 THE COURT: The trial date is next
10 month?

11 DEFENDANT: (Affirmative nod).

12 THE COURT: Are you ready to plead
13 guilty today?

14 DEFENDANT: Yes, sir.

15 THE COURT: Are you pleading guilty
16 voluntarily, of your own freewill?

17 DEFENDANT: Yeah.

18 THE COURT: Are you pleading guilty
19 because you are guilty?

20 DEFENDANT: Yes, sir.

21 THE COURT: Now, Mr. Davis, have you
22 understood all of the questions that I have
23 asked of you?

24 DEFENDANT: Yes.

25 THE COURT: Have you been truthful in

1 all of your answers to me?

2 DEFENDANT: Yes.

3 THE COURT: Do you understand that
4 you have a right under our law, within ten days,
5 to appeal this proceeding and that if you can't
6 afford a lawyer that one would be appointed for
7 you; do you understand that?

8 DEFENDANT: Yes, sir.

9 THE COURT: I find that there is a
10 substantial factual basis for the plea, that it
11 has been freely, voluntarily, knowingly and
12 intelligently made by Mr. Davis with the advice
13 of competent legal counsel with whom he has
14 expressed satisfaction. I will accept your
15 plea, sir.

16 I will be glad to hear from the victim
17 now if he has anything that he wants to tell me.

18 MR. HILTON: Your Honor, I think that
19 there will be a translation through Ms. Perez.

20 THE COURT: All right. You are Mr.
21 Garcia?

22 VICTIM: Yes.

23 THE COURT: Be glad to hear from you,
24 sir. As a precaution, I am going to have her
25 (clerk) swear you (interpreter) in.

1 (WHEREUPON INTERPRETER SWORN)

2 THE COURT: All right, if you would,
3 please give the information that Mr. Garcia gave
4 you?

5 VICTIM/INTERPRETER: Whatever they
6 do, he would like for him to get the maximum
7 that you can give him because he has suffered
8 and his family has suffered. Whatever you give
9 him, nothing will change that. He has suffered
10 so much and ask that you would give him -- he
11 didn't think about the suffering he was causing
12 and he would like for you to give him the
13 maximum.

14 THE COURT: Thank you.

15 MR. HILTON: Your Honor, Mr. Garcia
16 has sustained significant medical bills and I've
17 explained to them that if he goes to jail that
18 restitution would -- they understand that there
19 won't be any Order of restitution based on this
20 jail time.

21 THE COURT: All right. Thank you.
22 You may return to your seat, Mr. Garcia.

23 VICTIM: Thank you.

24 THE COURT: Mr. Cooper, I will be
25 glad to hear from you.

1 MR. COOPER: Thank you, Your Honor.
2 Your Honor, my client is a young man. It is not
3 easy today in today's world for young men to
4 always follow the right path. This situation is
5 a bad situation. He's very sorry for the
6 trouble that he's caused the victim in this
7 case. I would ask -- fifteen years is a long
8 time, Your Honor. His mother is here supporting
9 him today, his older brother is here supporting
10 him today. He has family support. And I think
11 Benjamin -- he's been here a lot and I've seen
12 him a lot and I think that he is rehabilita-
13 tible, Your Honor, I really do. I do not think
14 that he is somebody that we should just throw
15 away and lock the key (sic) on.

16 I would ask the court today for a ten-
17 year sentence for Mr. Benjamin (sic). I know
18 that he knows that he's got to be punished
19 today. Your Honor, I think quite frankly that
20 ten years of prison is long enough for a
21 situation like this. I really do. If you don't
22 learn it in ten years, you'll never learn it.
23 That's all that I have to say, Your Honor.

24 Do you have anything that you want to
25 say?

1 THE COURT: I will be glad to hear
2 from you, Mr. Davis.

3 DEFENDANT: I would like to apologize
4 to the victim and to my family.

5 THE COURT: Thank you, sir.

6 MR. HILTON: Your Honor, he has no
7 record.

8 THE COURT: Have the codefendants all
9 been sentenced?

10 MR. HILTON: They have not, Your
11 Honor.

12 THE COURT: The sentence of the Court
13 on Indictment 07-GS-18-1018 is that the
14 defendant be committed to the State Department
15 of Corrections for a period of fifteen years, to
16 be given credit for time served.

17 The sentence on 07-GS-18-1019 is that
18 the defendant be committed to the State
19 Department of Corrections for a period of
20 fifteen years, concurrent with the previously
21 imposed sentence.

22 Indictment 07-1021, commitment to the
23 State Department of Corrections for a period of
24 one year, to be concurrent.

25 MR. HILTON: Thank you, Your Honor.

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THE COURT: I wish you the very best,

Mr. Davis.

(HEARING CONCLUDED)

1 CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the guilty
plea entered before The Honorable G. Edward
Welmaker on January 24th, 2008;

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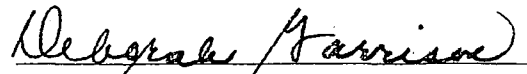
22

23

24

25

I do further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

June 29, 2008

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

Defendant

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

CERTIFIED COPY
2008 APR 16 AM 11:35

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

Defendant

Witness:

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

FILED - RECORDED
2007 OCT -9 AM 9:11
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

DOCKET NO. 2007GS18-1018

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

October 08, 2007 TERM

THE STATE

vs.

Benjamin Davis III

Indictment for

ASSAULT AND BATTERY WITH INTENT
TO KILL

SC Code: 16-3-620
CDR Code: 0014
Class: FEL-C

WITNESSES

Giglio, M.

DCSO

Agency Case #: 07-003987

ARREST WARRANT NUMBER

K269033

Arrested: May 09, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE 10-4-07

Foreperson of Grand Jury
Date: October 04, 2007

VERDICT

Foreperson of Petit Jury
Date:

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

Defendant

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

CERTIFIED COPY
2008 APR 16 AM 11:35

C Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

Defendant

Witness:

C.C.C. PLS. ANDY

RECORDED

2007 JUL 16 AM 10:11

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

DOCKET NO. 2007GS18-1019

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

July 16, 2007 TERM

THE STATE

vs.

Benjamin Davis III

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330(B)

CDR Code: 0026

Class: FEL-C

WITNESSES

Giglio, M.

DCSO

Agency Case #: 07-003987

ARREST WARRANT NUMBER

K269095

Arrested: May 09, 2007

ACTION OF GRAND JURY

TRUE BILL

2007 7/12/07

Foreperson of Grand Jury

Date: July 12, 2007

VERDICT

Foreperson of Petit Jury

Date:

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

Defendant

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

CERTIFIED COPY
2008 APR 16 AM 11:35

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

Defendant

Witness:

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

FILED-RECORDED
2007 SEP -4 PM 1:23
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

DOCKET NO. 2007GS18-1021

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 04, 2007 TERM

THE STATE
vs.

Benjamin Davis III

Indictment for

UNLAWFUL CARRYING OF A
HANDGUN

SC Code: 16-23-20
CDR Code: 0044
Class: MIS-C

WITNESSES

Giglio, M.

DCSO

Agency Case #: 07-003987

ARREST WARRANT NUMBER

K269099

Arrested: May 09, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE 8-30-07

Foreperson of Grand Jury
Date: August 30, 2007 *[Signature]*

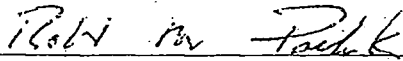
VERDICT

Foreperson of Petit Jury
Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that to the best of my ability this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 26th, 2008.



Robert M. Pachak
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berchester County

Clayton W. Chalker, Circuit Court Judge

THE STATE

RESPONDENT

BENJAMIN DAVIS, III

APPELLANT

ETNA ANDERS BRIEF FOR APPELLANT

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ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

<u>Boykin v. Alabama</u> , 395 U.S. 238, 89 S.Ct. 1709 (1969).....	5
<u>State v. Armstrong</u> , 263 S.C. 594, 211 S.E.2d 889 (1975)	5
<u>State v. Patterson</u> , 278 S.C. 319, 295 S.E.2d 264 (1982).....	5
<u>United States v. Carr</u> , 271 F3d 172 (4 th Cir 2001).....	5

Rules

Rule 11, Federal Rules of Criminal Procedure.....	5
---	---

STATEMENT OF ISSUE ON APPEAL

Whether petitioner's guilty plea complied with constitutional standards?

STATEMENT OF THE CASE

On January 24, 2008, appellant appeared before the Honorable G. Edward Welmaker in Dorchester County and pled guilty to assault and battery with intent to kill, attempted armed robbery, and unlawful carrying of a handgun. Respective sentences of fifteen (15) years, fifteen (15) years, and one (1) year were imposed.

This appeal follows.

ARGUMENT

Appellant's guilty plea failed to comply with constitutional standards.

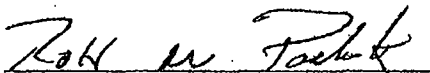
Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), this Court held that the "essence" of Boykin, was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the states. In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), this Court held that for there to be a valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it.

In addition to the above there also must be a sufficient factual basis to support the guilty plea. United States v. Carr, 271 F3d 172 (4th Cir 2001). The plea in appellant's case was only supported by two (2) pages representing the facts. (ROA p. 7, line 14 – p. 9, line 14).

CONCLUSION

Because there was an insufficient factual basis for appellant's guilty plea, it should be vacated.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of December, 2008..

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN DAVIS, III,

APPELLANT

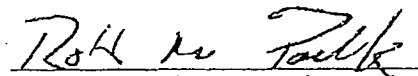
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Benjamin Davis, III states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge G. Edward Welmaker, which was held on January 24, 2008, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed the one arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Benjamin Davis, III.

Respectfully submitted,


 Robert M. Pachak
 Appellate Defender

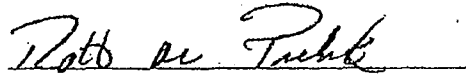
ATTORNEY FOR APPELLANT

This 10th day of December, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 10th, 2008



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

BENJAMIN DAVIS, III,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on Benjamin Davis, III, #326343 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010; this 10th day of December, 2008.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of December, 2008.

Leticia K. Boney (L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Benjamin Davis, III, Appellant.

Appeal From Dorchester County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2009-UP-319
Submitted May 1, 2009 – Filed June 11, 2009

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott; all of Columbia; and David M. Pascoe, Jr., of Dorchester, for Respondent.

PER CURIAM: Benjamin Davis, III, appeals his guilty pleas for assault and battery with intent to kill, attempted armed robbery, and unlawful carrying of a handgun. On appeal, Davis argues his plea did not comply with constitutional standards. After a thorough review of the record and counsel's brief, pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

HEARN, C.J., THOMAS, and KONDUROS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Dorchester)

2018 MAY 20 AM 9:27

Benjamin Davis III #326343)

2010-CP-18-

1377

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

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution 990 wisacky Hwy Bishopville SC 29010
2. Name and location of Court which imposed sentence Dorchester County Court of General Sessions St. George South Carolina
3. Name(s) of co-defendant(s) (if any) Octavius Robinson, Hakeem Rivers, Terrance Bryant, Jonathan Limer
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____

2018 MAY 20 AM 9:17

(c) _____

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

(a) Jan 22, 2007 15 year sentence

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

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. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) N/A

(b) _____

(c) _____

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

(a) ineffective of assistance of guilty plea Counsel

(b) _____

(c) _____

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

(a) Sixth Amendment violation

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

- i. N/A
- 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) ineffective of assistance of guilty plea counsel. "First time filer"
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? No
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

- (a) the name and address of each attorney who represented you:
 - i. Kenneth G. Cooper Attorney at Law
128 South main street, suite 5 Summerville S.C 29483
 - ii. Robert Phueck
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. During guilty plea
 - ii. _____
 - iii. _____

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

Vacate conviction and sentence and Remand for a new trial

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

No

STATE OF SOUTH CAROLINA)
County of Lee)

VERIFICATION

I, Benjamin Davis III, 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.

Benjamin Davis III

SWORN to and subscribed before me this _____ day of _____,

Notary Public (L.S.)

My Commission Expires: _____

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

I, Benjamin Davis, III, 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.

Benjamin Davis, III
Applicant

SWORN or affirmed to and subscribed before me this
17 day of May, 2010.
[Signature]
Notary Public

My Commission Expires: 5-16-11

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

2010-CP-18-1377

Benjamin Davis, III. #326343.)
)
Applicant,)

v.)

RETURN
(Appointment of Counsel Requested)

State of South Carolina,)
)
Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 20, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted for Assault and Battery with Intent to Kill ("ABWIK") (2007-GS-18-1018), Attempted Armed Robbery (2007-GS-18-1019), and Unlawful Carrying of a Handgun (2007-GS-18-1021). Applicant was represented by Kenneth Cooper, Esquire. On January 24, 2008, the Applicant pled guilty before the Honorable G. Edward Welmaker. He was sentenced to fifteen (15) years for ABWIK, to fifteen (15) years for Attempted Armed Robbery, and to one (1) year for Unlawful Carrying of a Handgun, all sentences to be served concurrently.

A notice of appeal was filed and an Anders brief submitted on Applicant's behalf. The appeal was dismissed. State v. Davis, Op. No. 2009-UP-319 (S.C. Ct. App. filed June 11, 2009). The Remittitur was sent June 29, 2009.

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

II.

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

1. Ineffective assistance of counsel.
 - a. "Sixth Amendment Violation."

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 2, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

BENJAMIN DAVIS, III, 326343,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

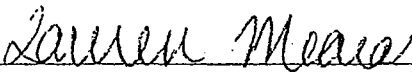
2010-CP-18-1377

AFFIDAVIT OF SERVICE BY MAIL

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

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter, SC 29150

DATED this 2nd day of May, 2011.



 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER.)

BENJAMIN DAVIS, III, 326343)

Applicant)

STATE OF SOUTH CAROLINA)

Respondent,)

IN THE COMMON PLEAS COURT

DOCKET NO.: 2010-CP-18-1377

AMENDED APPLICATION FOR POST
CONVICTION RELIEF

CLERK OF COURT
DORCHESTER COUNTY



2011 MAY 27 PM 3:23

CERTIFIED COPY

The Applicant through undersigned Counsel states that an Application for Post Conviction Relief was filed on July 9, 2010 and wishes to Amend his Application as follows:

GROUND FOR POST CONVICTION RELIEF

Sixth Amendment violation, grounds for conviction was in violation of the Federal and State constitution.

FACTS IN SUPPORT – INEFFECTIVE ASSISTANCE OF COUNSEL FOR GUILTY PLEA

Counsel was ineffective for advising applicant to plead guilty. Applicant feels that if he would have gone to trial he could have requested jury instructions on inconsistent statements, and lesser in offense. He feels he was confused as to the plea of guilty and would request a time correction and/or resentencing.

RESPECTFULLY SUBMITTED ON BEHALF OF
Applicant, Benjamin Davis, III


Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

May 25, 2011

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

FIRST JUDICIAL CIRCUIT

CASE NO. 2010-CP-18-1377

BENJAMIN DAVIS, III

APPLICANT

versus

STATE OF SOUTH CAROLINA,

DEFENDANT

)
) POST CONVICTION
) RELIEF HEARING
) TRANSCRIPT OF RECORD

) DATE:

) AUGUST 30, 2011
)

BEFORE:

HONORABLE EDGAR W. DICKSON, PRESIDING JUDGE

APPEARANCES:

CHARLES T. BROOKS, III, ESQUIRE

ATTORNEY AT LAW

FOR THE APPLICANT

ROB D. CORNEY, ESQUIRE

ASSISTANT ATTORNEY GENERAL

FOR THE STATE

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
BENJAMIN DAVIS				
MR. BROOKS	5			
MR. CORNEY		13		
KENNETH T. COOPER				
MR. BROOKS	19			
MR. CORNEY		22		

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
NONE			

1 DATE:

2 AUGUST 30, 2011

3 SOLICITOR CORNEY: This is Benjamin Davis, it's Case
4 Number 2010-cp-18-1377. Mr. Davis was true bill indicted
5 September, in the September, Two thousand seven, term, it was
6 a Dorchester County Grand Jury, for assault and battery with
7 intent to kill, attempted armed robbery and unlawful carrying
8 of a handgun. He pled guilty, having been indicted, January
9 Twenty-fourth, Two thousand eight, before Judge Welmaker. He
10 got Fifteen years on the assault and battery with intent to
11 kill and the attempted armed robbery, and one year on the
12 unlawful carrying of a handgun, all to run concurrent. And
13 he's represented today by Mr. Charles Brooks.

14 THE COURT: Alright. And Mr. Brooks, you are prepared to
15 go forward today?

16 MR. BROOKS: Sir? I didn't hear you.

17 THE COURT: I'm sorry, are you prepared to go forward?

18 MR. BROOKS: Yes, sir.

19 THE COURT: Alright, sir. Call your first witness.

20 MR. BROOKS: We'd call Mr. Davis to the stand.

21 THE COURT: Alright, Mr. Davis. Mr. Davis, if you can
22 put your left hand on the Bible, I know it's going to be hard
23 to do that, and raise your right hand as best you can. Okay?
24 The Clerk's going to swear you in.

25 CLERK: Could you state your name for the record?

1 MR. DAVIS: Benjamin Davis, the Third.

2 (Whereupon, Benjamin Davis, III,

3 is duly sworn.)

4 THE COURT: Okay. Mr. Davis, if you'd get up in that
5 chair and get comfortable, please, sir.

6 MR. BROOKS: Are you ready, Judge?

7 THE COURT: Yes, sir, I'm ready when you are, Mr. Brooks.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and hard
10 page breaks between testimony are now required by the Court.
11 See next ensuing page for sequential continuation of record.)

BENJAMIN DAVIS - DIRECT BY MR. BROOKS

5

1 BENJAMIN DAVIS - DIRECT EXAMINATION

2 BY MR. BROOKS:

3 Q. Mr. Davis, how old are you?

4 A. Twenty-three.

5 Q. Okay. And how far did you go in school?

6 A. Tenth grade.

7 Q. Alright, I'm going to ask you a couple, a little bit of
8 background questions before we get to the heart of the matter.

9 You had Mr. Cooper as your attorney, is that correct?

10 A. Yes, sir.

11 Q. And you started off with Ms. Marva Hardee-Thomas, and then
12 you ended up with Mr. Cooper, Court appointed, isn't that
13 correct?

14 A. Yes, sir.

15 Q. Alright, now, you brought this application for post
16 conviction relief, and you understand that the only thing the
17 Judge can do for you today is to put you back in the position
18 that you were in before, meaning, you start over. He can't
19 cut your time or modify your sentence or make you more
20 eligible for parole, do you understand that?

21 A. Yes, sir.

22 Q. And do you understand that based on your circumstances you
23 have about nine more years to do, you max out in the South
24 Carolina Department of Corrections, is that correct?

25 A. Yes, sir.

BENJAMIN DAVIS - DIRECT BY MR. BROOKS

6

1 Q. Now, you understand if Judge Dickson sides with us and
2 gives you that new trial, you understand what your potential
3 exposure could be time-wise?

4 A. Yes, sir.

5 Q. And what do you know that to be?

6 A. Forty to Fifty years.

7 Q. Forty to Fifty years. Okay. Now, knowing that and
8 knowing everything that you know about what remedies you can
9 get on PCR, and knowing your case, is it still your desire to
10 go forward and get a new trial?

11 A. Yes, sir.

12 Q. Alright. Now, you ended up pleading guilty to these
13 charges, is that correct?

14 A. Yes, sir.

15 Q. Okay. And what was your sentence?

16 A. Fifteen years.

17 Q. Alright.

18 COURT REPORTER: Fifteen?

19 A. Yes.

20 Q. Now, since you asked for a new trial and you claim, are
21 claiming ineffective assistance of counsel, what do you know
22 now that if you had known then you would have stood firm with
23 going for a jury trial?

24 A. I know now that if I would go forward with a trial and I'd
25 had requested jury instructions for lesser included offenses

BENJAMIN DAVIS - DIRECT BY MR. BROOKS

7

1 for conflicting testimony and statements.

2 Q. Okay. Now, let's take that one at a time. Jury
3 instructions, and lesser included offenses, are you saying
4 that based on your facts you think you may have been found
5 guilty of assault and battery of a high and aggravated nature?

6 A. Yes, sir.

7 Q. And that carries a maximum exposure of Ten years?

8 A. Yes, sir.

9 Q. Alright, now, you know the facts in this case involve you
10 with a gun, is that correct?

11 A. Yes, sir.

12 Q. Okay. Now, also you said something about you didn't get
13 your discovery from your lawyer, is that correct?

14 A. Yes, sir.

15 Q. And you felt you were scared and rushed and coerced into
16 doing this plea, is that correct?

17 A. Yes, sir.

18 Q. Tell the Court why you felt that way?

19 A. Well, I had two appearances with Mr. Cooper, that was two
20 days before I pled, and he spoke to me, and I asked about the
21 ten year plea that was with Marva Hardee that she told me she
22 could get me, but she left, so I asked Mr. Cooper about the
23 ten year plea, and he told me that, you know, that was Marva
24 Hardee and that's not him. And so then I asked him what do I
25 have on me that could hold me in here, but then he hold the

BENJAMIN DAVIS - DIRECT BY MR. BROOKS

8

1 plea, pulled out a motion for discovery and I just now got to
2 the ten months in the county. And there was two things
3 against me, and he said that would get me Forty or Fifty years
4 if I would go to trial. He told me that I would be -- he told
5 me that I would be found guilty if I go to trial. And I was,
6 like, why would you say that, you don't have the weapon, or
7 what can I do? He was, like, well, if I go to trial, those
8 two statements right there could hold me if I go to trial

9 Q. Now, when you said the two statements was he referring to
10 two witnesses?

11 A. Two co-defendants.

12 Q. Two co-defendants?

13 A. Yes, sir.

14 Q. And based on that was he saying that these two co-
15 defendants would testify against you?

16 A. Well, the statements that they wrote and my motion of
17 discovery, he said I was not

18 -- the facts would hit me with some other time.

19 Q. But did you understand that they would potentially testify
20 against you?

21 A. Well, at the time I didn't, you know what I'm saying, I
22 didn't know if they would testify or not.

23 Q. Okay. Do you think they would have testified against you?

24 A. I don't know.

25 Q. If they would have testified against you would that have

BENJAMIN DAVIS - DIRECT BY MR. BROOKS

9

1 hurt you?

2 A. I believe so, yes.

3 Q. And if it had hurt you what do you think would have
4 happened in a jury trial?

5 A. Well, they would have been saying what they said in the
6 statements which was conflicting in itself.

7 Q. In what?

8 A. What they said would have hurt me by these statements and
9 what their testimony was.

10 Q. Do you think if you had, knowing your case, because it's
11 your case, and nobody knows your case better than you, right?

12 A. Yes, sir.

13 Q. Because that's what's got you locked down.

14 A. Uh-huh.

15 Q. Do you think if you had gone to a jury trial do you think
16 a jury would have let you go if you had a different lawyer?

17 A. I believe if I had a different lawyer I would have a
18 better chance and a better way of preparing for the trial, I
19 believe, yes, sir.

20 Q. Alright, so let's talk about it, we're claiming that Mr.
21 Cooper was ineffective. What do you think he didn't do that
22 if you had had Johnny Cochran that that would have made a
23 difference for you, what are you saying he didn't do?

24 THE COURT: I hate to interrupt you, do you think he's
25 old enough to know who Johnny Cochran is?

BENJAMIN DAVIS - DIRECT BY MR. BROOKS

10

1 Q. Do you know who Johnny Cochran was?

2 A. Yes.

3 Q. Okay. Alright.

4 THE COURT: Okay. I just want to make sure. You're
5 showing your age, I didn't think he was showing his. Go
6 ahead.

7 Q. What are you saying that Mr. Cooper didn't do, that if you
8 had had somebody like that ...

9 A. He didn't review nothing with me to go to a trial, and
10 like I said before, especially - - -

11 Q. Alright, well, let's talk about the positive outcome of a
12 trial, I mean, you knew what a positive outcome would be now,
13 right, you'd go home?

14 A. Yeah, go home or either have a lesser included offense, or
15 less time, you know, a lesser sentence.

16 Q. Okay. Now what else do you think, are you saying that Mr.
17 Cooper didn't do if you had had, you know ...

18 A. I believe that if he does what a lawyer is supposed to do
19 so, speak with my co-defendants, and see what they, like a
20 pretrial or something like that, -- I did not have a
21 preliminary hearing.

22 Q. Alright. Now, your co-defendants had lawyers, too, right?

23 A. Yes, sir.

24 Q. Okay. So, you think he should have maybe done a better
25 job of knowing whether or not they were going to actually

1 testify against you?

2 A. Yes, sir.

3 Q. Okay. Did he tell you they were going to testify against
4 you?

5 A. No, sir, he just told me that they probably would, and the
6 first time he, like...

7 Q. Okay, so you felt that he wasn't really prepared and you
8 ain't had time to really jive with him and know how you were
9 going to handle that case, is that right?

10 A. Yes, sir. And that was the first time I really talked to
11 him about my discovery motion at all.

12 Q. Okay. Had you ever been in Court before and done a guilty
13 plea before this?

14 A. No, sir, it was my first offense.

15 Q. Okay. Alright. I think we've covered everything, if
16 there's something else that you want to tell the Judge that I
17 haven't covered that you think is important you can go ahead
18 and tell the Judge.

19 A. Well, I do think it's important -- I had spoken to Ms.
20 Marva Hardee, but I know she was not a plea lawyer, but she
21 did tell me that I was eligible to get a Ten year plea.
22 Like I said before, a Ten year plea and he could have pursued
23 that more.

24 Q. Anything else, Benjamin?

25 A. No, sir.

BENJAMIN DAVIS - DIRECT BY MR. BROOKS

12

1 THE COURT: Mr. Davis, it's my understanding that when
2 you pled there was a cap of Fifteen years on your plea, is
3 that correct?

4 A. Yes, sir.

5 THE COURT: Okay. Alright, sir. But you're telling me
6 that Ms. Hardee-Thomas had told you that there was a Ten year
7 plea available?

8 A. Yes, sir.

9 THE COURT: But then, why was she no longer your
10 attorney?

11 A. I don't know.

12 THE COURT: Okay. Alright. I didn't mean to interrupt,
13 I just wanted to clarify that.

14 MR. BROOKS: That's alright, Judge.

15 Q. Anything else?

16 A. No, sir.

17 MR. BROOKS: Alright, answer any questions the attorney
18 general may have.

19 THE COURT: Alright, Mr. Corney.

20 (NOTE: Blank lines on this page do not indicate any part of
21 record has been omitted. Headers on testimony pages and hard
22 page breaks between testimony are now required by the Court.
23 See next ensuing page for sequential continuation of record.)

BENJAMIN DAVIS - CROSS BY MR. CORNEY

13

1 BENJAMIN DAVIS - CROSS-EXAMINATION

2 BY MR. CORNEY:

3 Q. Mr. Davis, do you recall meeting with your attorney, Mr.
4 Cooper?

5 A. Yes, sir.

6 Q. Okay. What did you discuss during those meetings with him?

7 A. What I discussed, he told me that there's two statements
8 that they're going to hold me during trial and that would give
9 me the maximum, and he told me, don't go to trial, just take
10 this plea, and if I go, like I said ...

11 Q. Okay. And there were, you had two co-defendants in this
12 case?

13 A. I had four.

14 Q. Four co-defendants in this case. Okay. And those co-
15 defendants gave statements to the police that you were the
16 trigger man in this robbery, right?

17 A. Yeah, yes.

18 Q. Are those the statements you're referring to?

19 A. Yes, sir.

20 Q. One of the victims, Ms. Dingle, she knew one of the co-
21 defendants, Jonathan Leonard, right?

22 A. Yes, sir.

23 Q. And she identified him as one of the robbers?

24 A. Yes, sir.

25 Q. And he pointed the finger to you as one of the shooters,

BENJAMIN DAVIS - CROSS BY MR. CORNEY

14

1 the one with the gun in this case, right?

2 A. Yes, sir.

3 Q. And when the Solicitor gave the facts of this case leading
4 to the charges at your plea you agreed with those, right, you
5 said those are the correct facts - - -

6 A. Um, ...

7 Q. --- of how these charges came about?

8 A. Yes, sir, mostly.

9 Q. The Court also asked you if you were satisfied with the
10 services of your attorney and you said you were, right, during
11 your plea hearing?

12 A. Yes, sir.

13 Q. Okay. He asked you if you had any complaints whatsoever
14 about your lawyer, and you said, no, sir, right?

15 A. Yes, sir.

16 Q. So, why didn't you bring any of that to the Court's
17 attention at that time?

18 A. At the time I was...

19 Q. You were aware of the fact that, you know, they say, yes,
20 sir, no, sir, to get your plea?

21 A. Yes, sir.

22 Q. Okay, but this is your plea, right, you're the only one
23 that can say yes, sir, or no, sir, or bring anything to the
24 Court's attention, right?

25 A. Yes, sir, but I was like ignorant of the fact that I

1 didn't -- from my understanding at the time it was a plea
2 bargain and not no trial for me to be speaking, that I can
3 speak further, you know, because my understanding at the time
4 it was a plea bargain and not no time for me to speak.

5 Q. Did Mr. Cooper ever tell you to get up there to say 'yes,
6 sir, yes, sir, and don't say anything else?

7 A. Yes, sir.

8 Q. He did, he instructed you to say that?

9 A. Yes, sir, and I said, yes, sir.

10 Q. And you went up there with you on the line to going and
11 going to prison and just said, yes, sir?

12 A. Yes, sir.

13 Q. Okay. Do you remember the Court during your plea hearing
14 advising you of your Constitutional rights and said that you
15 would waive some of those by your guilty plea?

16 A. Yes, sir.

17 Q. Okay. And you agreed that that's what you wanted to do?

18 A. Yes, sir.

19 Q. Okay. He talked about your right to trial by jury, the
20 right to remain silent, presumption of you being innocent at
21 trial, the right to call witnesses on your behalf, all that,
22 and he said you were going to waive some of those rights if
23 you pled guilty, right?

24 A. Yes, sir.

25 Q. And you said that's what you wanted to do?

BENJAMIN DAVIS - CROSS BY MR. CORNEY

16

1 A. Yes, sir.

2 Q. Okay. And you pled guilty because you are guilty of this
3 crime, right?

4 A. Yes, sir.

5 Q. You are guilty of this crime and you told the Judge that
6 at your plea hearing, too, right?

7 A. Yes, sir.

8 Q. Okay. And you talked about a ten year plea deal, and Mr.
9 Cooper requested that the Judge impose a Ten year sentence
10 under that Fifteen year cap, right?

11 A. Yes, sir.

12 Q. And the Judge declined to do so, is that right, he gave
13 you Fifteen years?

14 A. Yes, sir.

15 Q. Okay. So, Mr. Cooper asked for that Ten years and he said
16 he wouldn't do it, right, the Judge said he wouldn't do it?

17 A. Yeah, I know the thing that happened with Marva Hardee,
18 she told me she would ask for Ten years.

19 Q. Okay. So, you're saying you had several co-defendant
20 statements against you, you are guilty of these crimes, and
21 you're facing a maximum Forty-one years in prison. You got
22 Fifteen years, and you would have proceeded to trial with
23 those facts thinking you would have gotten off on these
24 charges?

25 A. Well, that's why I didn't go to trial.

BENJAMIN DAVIS - CROSS BY MR. CORNEY

17

1 Q. Yeah, so you made the decision to plead, right, under
2 those facts, right?

3 A. Because at the time I -- eventually if I go to trial, --
4 he told me he was not going to trial.

5 Q. So you made the decision to plead?

6 A. At the time my attorney convinced me not to make my
7 motions.

8 Q. Okay. And like you just said, that's why you pled guilty
9 because you were facing a lot of time, had some bad evidence
10 against you, and you were guilty of these crimes, that's why
11 you pled guilty, right?

12 A. Yes, and trusting my lawyer.

13 MR. CORNEY: That's all I have, Your Honor.

14 THE COURT: Anything on redirect?

15 MR. BROOKS: No, no questions, Judge.

16 THE COURT: Alright, Mr. Davis, you can step down. Thank
17 you, sir.

18 MR. BROOKS: I call Mr. Cooper.

19 THE COURT: Okay. Alright, Mr. Cooper, get up there, put
20 your left hand on the Bible and raise your right hand. The
21 Clerk's going to swear you.

22 CLERK: Would you state your name for the record.

23 WITNESS: Kenneth T. Cooper.

24 (Whereupon, Kenneth T. Cooper
25 is duly sworn.)

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CLERK: Thank you.

THE COURT: Get comfortable. Thank you, sir.

Alright, your witness.

MR. BROOKS: Thank you, Your Honor.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

KENNETH T. COOPER - DIRECT BY MR. BROOKS

19

1 KENNETH T. COOPER - DIRECT EXAMINATION

2 BY MR. BROOKS:

3 Q. Mr. Cooper..

4 A. Hi, Mr. Brooks, how are you?

5 Q. I'm alright, how are you today?

6 A. Always a pleasure.

7 Q. Could you give a summary of what the State's case was
8 against Mr. Davis?

9 A. Yeah. I don't remember it too well. As you know, being a
10 part time public defender and being my own attorney I've got
11 about two million cases. What I do remember of it, though,
12 is Mr. Davis proudly admitted that he shot this guy. And
13 every witness that they had, and I think they had more than
14 two statements, I don't have the thing in front of me, but you
15 know, they all pointed to Benjamin Davis. Benjamin Davis
16 shot, Benjamin Davis had the gun, and Benjamin Davis shot.
17 They had a whole parade of folks saying he did this. And Mr.
18 Davis said, well, I did do it, get me the best deal on it.
19 And that's about all I remember.

20 Q. Now, do you remember him talking about a Ten year deal?

21 A. I don't remember him saying that, but he very could have,
22 he very well could have said that. You know, I don't know
23 what happened between him and Marva Hardee, I do know that if
24 he would have been offered a Ten year deal with Marva Hardee,
25 I could have probably gotten a Five year deal, I know that.

KENNETH T. COOPER - DIRECT BY MR. BROOKS

20

1 So, I'm reluctant to believe that.

2 Q. Now, did you tell him the process of how a guilty plea
3 would take place?

4 A. Yes.

5 Q. Did you explain to him what the Judge would ask and what
6 his answers, how his answers needed to be in order for the
7 Judge to take the plea?

8 A. Well, I didn't exactly tell him what his answers needed to
9 be to take the plea. I told him that he had to accept the
10 guilt on this thing if he was asked by the Judge, did you do
11 this? If he got up there and danced around it or didn't
12 really want to come out and say, yes, I am guilty, the Judge
13 would set him down and he would have to have a trial. That's
14 how I approach the clients with that. I didn't tell him,
15 you've got to say yes, you've got to say yes, because it's
16 not my day in Court.

17 Q. Well, were you prepared to go to trial?

18 A. Sure. I was prepared as I could be.

19 Q. And did you explain to him what the possible consequences
20 were if he had gone to trial?

21 A. I did. And I think he's got them down pretty close to it.

22 Q. Did you go through the discovery with him?

23 A. I did.

24 Q. Did you explain to him the lesser included offenses had he
25 gone to trial? What I mean by, assault and battery with

1 intent to kill versus assault and battery of a high and
2 aggravated nature?

3 A. I'm sure that I did. That was my procedure with everyone.

4 MR. BROOKS: I beg the Court's indulgence, Your Honor.

5 THE COURT: Take your time.

6 MR. BROOKS: No other questions.

7 THE COURT: Thank you, sir. Anything on cross?

8 MR. CORNEY: Yes, Your Honor.

9 (NOTE: Blank lines on this page do not indicate any part of
10 record has been omitted. Headers on testimony pages and hard
11 page breaks between testimony are now required by the Court.
12 See next ensuing page for sequential continuation of record.)

KENNETH T. COOPER - CROSS BY MR. CORNEY

22

1 KENNETH T. COOPER - CROSS-EXAMINATION

2 BY MR. CORNEY:

3 Q. Alright, Mr. Cooper, now do you recall meeting with Mr.
4 Davis to talk about this case and the charges he was facing?

5 A. I do.

6 Q. Okay. Do you remember just roughly off the -- I know you
7 said you had a kind of a vague memory of this, how many times
8 you might have met with him?

9 A. I don't remember how many times.

10 Q. Okay. Do you recall any of your discussions during those
11 meetings, if you went over any of the indictments and charges
12 he was facing with him?

13 A. We went over all of the charges and indictments.

14 Q. Okay. And did you go over some of the potential sentences
15 that he was facing?

16 A. I did.

17 Q. Okay. His Constitutional rights, if he were to receive a
18 jury trial?

19 A. Absolutely.

20 Q. And were you able to talk about his version of the facts
21 leading to these charges?

22 A. Yes.

23 Q. Okay. And I think you said a minute ago to Mr. Brooks's
24 question, I just wanted to make sure I heard you right, you
25 said that Mr. Davis was well aware of the sentences he was

1 facing if he went to trial, right?

2 A. If he went to trial, yeah, he knew the maximum.

3 Q. Okay. What were, what were Mr. Davis's expectations of
4 your representation based on your discussions with him?

5 A. I'm guilty, you know, what's the least amount of time I
6 can get.

7 Q. So, he was looking for a plea from the beginning?

8 A. He was.

9 Q. Okay. And I think you mentioned the discovery file a
10 minute ago. There were some co-defendant statements that were
11 part of that discovery?

12 A. There was.

13 Q. And you were able to review those with Mr. Davis?

14 A. I was.

15 Q. Okay. Did he ever receive a copy of any of those, do you
16 remember?

17 A. He got a copy of his discovery from me, and I'm sure he
18 already had one from Marva.

19 Q. Okay. And based on your meetings with him, your
20 investigation into the facts, and your review of the
21 discovery, were you able to develop an opinion of the State's
22 ability to prove his guilt beyond a reasonable doubt at trial?

23 A. Yeah, I mean, I just think it was hands down guilty, hands
24 down. I know he was a young man and making a big decision
25 like that at the time, but he made a large one.

1 Q. And you recall entering into plea negotiations with the
2 State on his behalf?

3 A. Oh, yeah.

4 Q. And the Fifteen year cap sentence was the offer that was
5 made?

6 A. That was the offer that we worked on and worked on and
7 worked on, and that was the final offer.

8 Q. And there was no mention of a Ten year sentence, or a Ten
9 year plea deal?

10 A. Not that I know of.

11 Q. And you thought it was in his best interest to take that
12 plea?

13 A. Absolutely.

14 Q. Okay. Was it ultimately his decision to plead guilty to
15 these charges?

16 A. Absolutely.

17 Q. You didn't threaten him, coerce him in any way?

18 A. No.

19 Q. Do you feel that he was adequately advised and informed to
20 make this, to enter this plea?

21 A. Absolutely.

22 Q. Okay. Would you have proceeded to trial with Mr. Davis if
23 he had insisted on proceeding forward?

24 A. Oh, yeah.

25 Q. And you said you were prepared for trial?

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1 A. Yeah, oh yeah. That's why I got into this business is to
2 do trials, not pleas.

3 Q. Did you ever tell him any kind of answers other than what
4 you just stated before to Mr. Brooks that he should give at
5 the plea hearing?

6 A. I don't recall, but I do explain to them, a lot of lawyers
7 will tell you, you've got to say yes to every question. I
8 don't like doing like that. I tell them that if you're not
9 sure of yourself and this plea today, first of all, let's
10 don't do it. So, when you get up there if you're sure you
11 must tell the Judge, yes, I'm sure. Any kind of hesitation
12 and he'll set you down and then we'll have to go to trial.

13 Q. And just based on your memory of your representation in
14 this did you think that the facts fit with any lesser included
15 offenses that you could have requested at the trial?

16 A. No.

17 MR. CORNEY: That's all I have, Your Honor.

18 THE COURT: Anything on redirect?

19 MR. BROOKS: No questions, Judge.

20 THE COURT: Alright, Mr. Cooper, you may step down.

21 Thank you, sir.

22 Mr. Brooks, who's your next witness?

23 MR. BROOKS: Judge, that's the Applicant's case.

24 THE COURT: Alright, thank you, sir.

25 Alright, Mr. Corney, do you have any witnesses?

1 MR. CORNEY: Nothing further from the State.

2 THE COURT: Alright. Alright, Gentlemen, what I'll do
3 is, I will look over these documents and I'll get back to you
4 with my decision.

5 MR. CORNEY: Thank you, Your Honor.

6 MR. BROOKS: Thank you, Judge.

7 THE COURT: Thank you.

8 (END OF TRANSCRIPT)

CERTIFICATE

1
2 I, the undersigned, Mrs. Harry A. Walker, of Rowesville,
3 South Carolina, Official Court Reporter for the First Judicial
4 Circuit of the State of South Carolina, do hereby certify that
5 the foregoing is a true, accurate, and complete transcript of
6 record of all the proceedings had and evidence introduced in
7 the post conviction relief hearing in the captioned cause,
8 relative to appeal, in the Court of Common Pleas For
9 Dorchester County, South Carolina, on the Thirtieth Day of
10 August, 2011.

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

13
14 DATE: January 11, 2013

15
16 Harry A. Walker

17 (MRS.) HARRY A. WALKER
18

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
)
 Benjamin Davis, # 326343,)
)
 Applicant,)
)
 v.)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

2010-CP-18-1377

ORDER OF DISMISSAL

CERTIFIED COPY
 2012 JAN 13 AM 10:20
 Clerk of Court
 DORCHESTER COUNTY

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 20, 2010. The Respondent made its Return on May 2, 2011. An evidentiary hearing into the matter was convened on Tuesday, August 30, 2011, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Ken Cooper, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Dorchester County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted for Assault and Battery with Intent to Kill ("ABWIK") (2007-GS-18-1018); Attempted Armed Robbery (2007-GS-18-1019), and Unlawful

1/7/12

Carrying of a Handgun (2007-GS-18-1021). Applicant was represented by Kenneth Cooper, Esquire. On January 24, 2008, the Applicant pled guilty before the Honorable G. Edward Welmaker. He was sentenced to fifteen (15) years for ABWIK, to fifteen (15) years for Attempted Armed Robbery, and to one (1) year for Unlawful Carrying of a Handgun, all sentences to be served concurrently.

A notice of appeal was filed and an Anders brief submitted on Applicant's behalf. The appeal was dismissed. State v. Davis, Op. No. 2009-UP-319 (S.C. Ct. App. filed June 11, 2009). The Remittitur was sent June 29, 2009.

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

1. Ineffective assistance of counsel.
 - a. "Sixth Amendment Violation."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to

3/7 

trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Ineffective Assistance of Counsel

All of the claims raised at the PCR hearing come down to claims of ineffective assistance of counsel and therefore will be addressed as such. At the hearing, Applicant testified he only met with counsel twice prior to entering his plea and, because he did not get a chance to review his discovery and was advised by counsel that he would lose at trial, he was scared and rushed into entering a plea. Applicant went on to state he asked counsel to try to get a plea offer for a ten (10) year sentence, but no such offer was ever given to him. Applicant also contends that counsel should have spoken with his co-defendants in preparation for trial to find out whether they planned on testifying against him. Further, Applicant stated he only admitted to the crimes at his plea because counsel told him how to answer the judge's questions. Based on all of this, Applicant contends counsel was ineffective in his representation.

Counsel testified that the state had a very solid case against Applicant, including Applicant's confession to police, several statements that pointed to Applicant as the shooter and victim identifications of Applicant's co-defendants. Based on the evidence against him, counsel said Applicant simply wanted to get the best plea deal possible from the state. Counsel testified

he reviewed the statements with Applicant as well as the discovery file, in addition to having in depth discussions with Applicant about the consequences of proceeding to trial. Counsel stated he remembered the state recommending a fifteen (15) year cap sentence to the judge and remembered requesting the judge impose a ten (10) year sentence as requested by Applicant, but was reluctant to believe that the state ever offered Applicant a plea for ten (10) years. Further, counsel articulated he never told Applicant how to answer the judge's questions at the plea as it was Applicant's day in court, although he did advise Applicant that he would have to accept guilt if asked by the judge during the plea, as counsel could not allow Applicant to lie under oath.

Based on the testimony at the hearing and a thorough review of the record, I find Applicant has failed to prove counsel was ineffective in his representation. Further, I find counsel's testimony to be credible. Counsel reviewed all relevant facts surrounding the charges with Applicant, including the discovery file, Applicant's Constitutional rights, potential sentences he was facing and the consequences of going to trial, after which Applicant made an intelligent and voluntary decision to enter a guilty plea. Nothing set forth at the hearing by Applicant has proven counsel's performance was deficient in any regard based on "reasonableness under professional norms." *Cherry, supra*. There has been no proof presented that a ten (10) year plea offer existed or would have ever been extended by the State and, in fact, counsel requested the plea judge impose a ten (10) year sentence as requested by Applicant. Applicant's uneasiness about his co-defendants testifying against him at trial and counsel's advice concerning his chances at trial did not render his decision to enter this plea involuntary. Further, Applicant failed to present any testimony from his co-defendants to prove prejudice in that regard. ("PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to

5/7 20


establish prejudice from the witness' failure to testify at trial." Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998).) Therefore, Applicant has failed to carry his burden in proving deficiency on counsel's part, or prejudice resulting from that alleged deficiency.

CONCLUSION

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

Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate


6/7 

review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 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 Respondent.

AND IT IS SO ORDERED this 21st day of Dec., 2011.



Edgar W. Dickson
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina.

7/20

ARREST WARRANT
K- 00033

STATE OF SOUTH CAROLINA
 County/ Municipality of
DORCHESTER

THE STATE
against

DAVIS, III, BENJAMIN

Address: [REDACTED] SC 29418-0000

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: Height: 6-0 Weight: 130

DL State: SC DL# 101382580

DOB: [REDACTED] Agency ORI#: 1800

Prosecuting Agency: DCSO

Prosecuting Officer: GIGLIO, DEB. M.

Offense: ASSAULT AND BATTERY WITH

NEENT TO KILL Offense Code: 14

Code/Ordinance Sec: COMMON LAW ABWIK

This Warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

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

Signature of Judge

Date: (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Benjamin Davis III on 5-29-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
 County/ Municipality of
DORCHESTER

AFFIDAVIT

Personally appeared before me the affiant GIGLIO, DEP. M. who being duly sworn deposes and says that defendant DAVIS, III, BENJAMIN did within this county and state on 4/27/2007 violate the criminal laws of the State of South Carolina (or violation of SECTION COMMON LAW OF SC CODE OF LAWS in the following particulars: ASSAULT AND BATTERY WITH INTENT TO KILL)

DESCRIPTION OF OFFENSE: ASSAULT AND BATTERY WITH INTENT TO KILL

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

SEE ATTACHED AFFIDAVIT

ALL OF WHICH IS AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND WILL BE MORE FULLY DESCRIBED IN THE 1976 CODE OF LAW. Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of
DORCHESTER

Affiant's Address: 212 Denning Way
Affiant's Telephone: 843 632-0360

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 4-27-2007 defendant DAVIS, III, BENJAMIN did violate the criminal laws of the State of South Carolina (or ordinance of SECTION COMMON LAW OF SC CODE OF LAWS) as set forth below:

DESCRIPTION OF OFFENSE: VIOLATION SECTION COMMON LAW OF SC CODE OF LAWS ASSAULT AND BATTERY WITH INTENT TO KILL

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

Sworn to and subscribed before me on 5-29-07

Signature of Issuing Judge: [Signature] (L.S.)
Judge's Address: 212 Denning Way, Box 10
Judge's Telephone: 843 632-0360
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

K269033

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED RECORDS

OCA 07003987

JUN 16 PM 3:31

AFFIDAVIT

Personally appeared before me, a magistrate of this County, one DETECTIVE M. GIGLIO who, being duly sworn, deposes and says that:

CLEAR COURT
DORCHESTER COUNTY
Benjamin Davis III

[REDACTED] SC 29418, Black Male, DOB [REDACTED] Hgt 6'00", Wgt 130, Black Hair, Brown Eyes, SCDL # 101382580)

did within this County and State on the 27th OF April, 2007, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

ASSAULT AND BATTERY WITH INTENT TO KILL IN VIOLATION SECTION 16-3-620 SOUTH CAROLINA CODE OF LAWS AS AMENDED FOR 1976

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts: THAT ON OR ABOUT APRIL 27, 2007, AT APPROXIMATELY 11:38 PM, LOCATED AT [REDACTED], IN THE COUNTY AND STATE AFORESAID, THE DEFENDANT, BENJAMIN DAVIS III, DID COMMIT THE OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL IN VIOLATION OF SECTION 16-3-620 OF THE SOUTH CAROLINA CODE OF LAWS AS AMENDED FOR 1976. IN THAT HE DID WILLFULLY, UNLAWFULLY, AND FELONIOUSLY SHOOT THE VICTIM GARCIA JUSTO TEOFIL FOLLOWING AN ATTEMPTED ARMED ROBBERY. FACTS TO PROVE THE SAME ARE ON APRIL 27, 2007 AT APPROXIMATELY 11:38 PM OFFICERS FROM DORCHESTER COUNTY SHERIFF'S OFFICE RESPONDED TO THE REPORT OF SHOOTING. UPON ARRIVAL OFFICERS SECURED THE SCENE AND LOCATED THE VICTIM LAYING IN THE PARKING LOT OF [REDACTED]. ON [REDACTED] OFFICERS RECOVERED TWO 22 CALIBER BULLET CASINGS LAYING ON THE GROUND IN CLOSE PROXIMITY TO WHERE THE VICTIM WAS LOCATED. THE VICTIM SUSTAINED WHAT APPEARED TO BE TWO GUNSHOT WOUNDS. THE VICTIM HAD A GUNSHOT WOUND TO THE LEFT UPPER CHEST AND A GUNSHOT WOUND TO THE LEFT UPPER BACK. THE VICTIM WAS TRANSPORTED TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA BY EMS. DETECTIVES ARRIVED ON SCENE AND BEGAN TO INTERVIEW WITNESSES. ALICE LORINDA DINGLE WITNESSED THE INCIDENT AND WAS ALSO CONFRONTED BY THE DEFENDANT AND CO-DEFENDANTS IN THIS CASE. MS. DINGLE POSITIVELY IDENTIFIED A CO-DEFENDANT IN THIS CASE (JONATHAN LINEN). ON 4-29-07 DETECTIVES VANDORAN AND GIGLIO MET WITH THE CO-DEFENDANT (JONATHAN LINEN). MR. LINEN VOLUNTARILY WAIVED HIS MIRANDA RIGHTS AND PROVIDED OFFICERS WITH VERBAL AND WRITTEN STATEMENTS DESCRIBING THE DEFENDANTS INVOLVEMENT AS WELL AS HIS INVOLVEMENT IN THIS CRIME. MR. LINEN REPORTED THE DEFENDANT HAD IN HIS POSSESSION A BLACK IN COLOR HANDGUN DURING THE CRIME. MR. LINEN REPORTED HE OBSERVED THE DEFENDANT DISCHARGE THE HANDGUN AT THE VICTIM AS HE WAS ATTEMPTING TO FLEE. ALL AGAINST THE LAW, PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA. WITNESSES TO PROVE THE SAME ARE CAPTAIN T. MARSHALL, LT. VANDORAN, DET. GIBBONS, DET. NAPOLI, DET. TUMBLESTON, DET. WILL, ALICE LORINDA DINGLE, AND THE AFFIANT. ALL AGAINST THE LAW, PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA

[Signature]

DET. M. GIGLIO, AFFIANT

Sworn to and subscribed before me this
30 TH day of APRIL 2007

Address: 212 Deming Way
Summerville, SC 29483
(843) 832-0300

Signature of Judge

(L.S.)

Phone:

ARREST WARRANT
K-2007005

STATE OF SOUTH CAROLINA

County/ Municipality of
DORCHESTER

THE STATE
against

DAVIS, III BENJAMIN

Address: [REDACTED] SC 29418-0000

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: [REDACTED] Height: 6-0 Weight: 130

DL State: SC DL# 101382580

DOB: [REDACTED] Agency ORI#: 1856

Prosecuting Agency: DCSO

Prosecuting Officer: GIGLIO, DEE M.

Offense: ROBBERY WHILE ARMED WITH

FAMILY WEAPON Offense Code: 139

Code/Ordinance Sec: 16-11-330 (A)

This Warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

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

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant on 5-9-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
 County/ Municipality of
DORCHESTER

AFFIDAVIT

Personally appeared before me the affiant GIGLIO, DEE M. who

Being duly sworn deposes and says that defendant DAVIS, III, BENJAMIN did within this county and state on 4/27/2007 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of) in the following particulars: VIOLATION SECTION 16-11-330 OF SC CODE OF LAWS ROBBERY WHILE ARMED WITH DEADLY WEAPON

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

SEE ATTACHED AFFIDAVIT

ALL OF WHICH IS AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND WILL BE MORE FULLY DESCRIBED IN THE CODE OF LAW. Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of
DORCHESTER

Affiant's Address: 812 Acorny Dr., Greenville, SC 29615
Affiant's Telephone: (843) 832-0300

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that did violate the criminal laws of the State of South Carolina (or ordinance of) County/ Municipality of as set forth below:

VIOLATION SECTION 16-11-330 OF SC CODE OF LAWS ROBBERY WHILE ARMED WITH DEADLY WEAPON

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

Sworn to and subscribed before me on 5-9-07

Judge's Address: 212 Deming Way, Box 10, Summerville, SC 29483-0000
Signature of Issuing Judge: [Signature] (L.S.)
Judges Telephone: 843-7832-0370
Issuing Court: [] Municipal [] Circuit

ORIGINAL

5269095

FILED-RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

MAY 16 PM 3:31

OCA 07003987
AFFIDAVIT

Personally appeared before me, a magistrate of this County, one DETECTIVE M. GIGLIO who being duly sworn, deposes and says that:

Benjamin Davis III

[REDACTED] SC 29418; Black Male, DOB [REDACTED], Hgt 6'00", Wgt 130, Black Hair, Brown Eyes, SCDL # 101382580)

did within this County and State on the 27th OF April, 2007, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

ATTEMPTED ROBBERY WHILE ARMED WITH A DEADLY WEAPON IN VIOLATION SECTION 16-11-330(B) OF THE SOUTH CAROLINA CODE OF LAWS AS AMENDED FOR 1976

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts: THAT ON OR ABOUT APRIL 27, 2007, AT APPROXIMATELY 11:38 PM, LOCATED AT [REDACTED] IN THE COUNTY AND STATE AFORESAID, THE DEFENDANT, BENJAMIN DAVIS III, DID COMMIT THE OFFENSE OF ATTEMPTED ROBBERY WHILE ARMED WITH A DEADLY PISTOL IN VIOLATION OF SECTION 16-11-330(B) OF THE SOUTH CAROLINA CODE OF LAWS AS AMENDED FOR 1976. IN THAT HE DID WILLFULLY, UNLAWFULLY, AND FELONIOUSLY SHOOT THE VICTIM GARCIA JUSTO TEOFIL FOLLOWING AN ATTEMPTED ARMED ROBBERY. FACTS TO PROVE THE SAME ARE ON APRIL 27, 2007 AT APPROXIMATELY 11:38 PM OFFICERS FROM DORCHESTER COUNTY SHERIFF'S OFFICE RESPONDED TO THE REPORT OF AN ATTEMPTED ROBBERY AND SHOOTING. UPON ARRIVAL OFFICERS SECURED THE SCENE AND LOCATED THE VICTIM LAYING IN THE PARKING LOT OF PEPPERIDGE PLAZA ON [REDACTED]. OFFICERS RECOVERED TWO 22 CALIBER BULLET CASINGS LAYING ON THE GROUND IN CLOSE PROXIMITY TO WHERE THE VICTIM WAS LOCATED. THE VICTIM SUSTAINED WHAT APPEARED TO BE TWO GUNSHOT WOUNDS. THE VICTIM HAD A GUNSHOT WOUND TO THE LEFT UPPER CHEST AND A GUNSHOT WOUND TO THE LEFT UPPER BACK. THE VICTIM WAS TRANSPORTED TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA BY EMS. DETECTIVES ARRIVED ON SCENE AND BEGAN TO INTERVIEW WITNESSES. ALICE LORINDA DINGLE WITNESSED THE INCIDENT AND WAS ALSO CONFRONTED BY THE DEFENDANT AND CO-DEFENDANTS IN THIS CASE. MS. DINGLE POSITIVELY IDENTIFIED A CO-DEFENDANT IN THIS CASE (JONATHAN LINEN). ON 4-29-07 DETECTIVES VANDORAN AND GIGLIO MET WITH THE CO-DEFENDANT (JONATHAN LINEN). MR. LINEN VOLUNTARILY WAIVED HIS MIRANDA RIGHTS AND PROVIDED OFFICERS WITH VERBAL AND WRITTEN STATEMENTS DESCRIBING THE DEFENDANTS INVOLVEMENT AS WELL AS HIS INVOLVEMENT IN THIS CRIME. MR. LINEN REPORTED THE DEFENDANT HAD IN HIS POSSESSION A BLACK IN COLOR HANDGUN DURING THE CRIME. MR. LINEN REPORTED HE OBSERVED THE DEFENDANT DISCHARGE THE HANDGUN AT THE VICTIM AS HE WAS ATTEMPTING TO FLEE. ON MAY 2, 2007 THE AFFIANT MET WITH A SECOND CO-DEFENDANT IN THIS CASE. OCTAVIUS ROBINSON VOLUNTARILY WAIVED HIS MIRANDA RIGHTS AND PROVIDED VERBAL AND WRITTEN STATEMENTS ADMITTING TO HIS INVOLVEMENT AS WELL AS THE DEFENDANTS INVOLVEMENT IN THIS CRIME. ALL AGAINST THE LAW, PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA. WITNESSES TO PROVE THE SAME ARE CAPTAIN T. MARSHALL, LT. VANDORAN, DET. GIBBONS, DET. NAPOLI, DET. TUMBLESTON, DET. WILL, ALICE LORINDA DINGLE, AND THE AFFIANT. ALL AGAINST THE LAW, PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA

[Signature]
DET. M. GIGLIO, AFFIANT

Sworn to and subscribed before me this }
4 day of MAY 2007 }

[Signature] Phone:
Signature of Judge (L.S.)

Address: 212 Deming Way
Summerville SC 29483
(843) 832-0300

ARREST WARRANT

K-200093

STATE OF SOUTH CAROLINA

County/ Municipality of DORCHESTER

THE STATE against

DAVIS, III, BENJAMIN

Address: [redacted] SC 29418-0000

Phone: [redacted] SSN: [redacted]

Sex: M Race: Height: 5-0 Weight: 130

DL State: SC DL#: 101382580

DOB: [redacted] Agency ORI#: 1800

Prosecuting Agency: BNSO

Prosecuting Officer: GIGLIO, DEP. M.

Offense: UNLAWFUL CARRYING OF A PISTOL

TOI: Offense Code: 44

Code/Ordinance Sec: 16-23-20

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

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Benjamin Davis III on 4/27/2007

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
DORCHESTER)

AFFIDAVIT

GIGLIO, DEP. M. DAVIS, III, BENJAMIN

Personally appeared before me the affiant [redacted] who being duly sworn deposes and says that defendant [redacted] did within this county and state on 4/27/2007 violate the criminal laws of the State of South Carolina (or [redacted] County/ [redacted] Municipality of [redacted]) in the following particulars: VIOLATION SECTION 16-23-20 OF SC CODE OF LAWS.

DESCRIPTION OF OFFENSE: UNLAWFUL CARRYING OF A PISTOL

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

SEE ATTACHED AFFIDAVIT

ALL OF WHICH IS AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND WILL BE MORE FULLY DESCRIBED IN THE 1976 CODE OF LAW. Signature of Affiant [redacted]

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
DORCHESTER)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 4/27/2007 defendant Benjamin Davis, III, BENJAMIN did violate the criminal laws of the State of South Carolina (or ordinance of [redacted] County/ [redacted] Municipality of [redacted]) as set forth below:

DESCRIPTION OF OFFENSE: VIOLATION SECTION 16-23-20 OF SC CODE OF LAWS UNLAWFUL CARRYING OF A PISTOL

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

Sworn to and subscribed before me on 4-27-07

Signature of Issuing Judge [redacted] (L.S.)

Judge's Address: 212 Denning Way, Box 10 Summerville SC 29483-0000
Judge's Telephone: (843) 832-0370
Issuing Court: Magistrate Municipal Circuit

FILED-RECORDED
APR 16 10 32 AM '07
DORCHESTER COUNTY
CLERK OF COURT

Affiant's Address: 212 Denning Way Summerville SC 29483
Affiant's Telephone: (843) 832-0300

K26 9099

FILED-RECORDED

MAY 16 PM 3:31

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

OCA 07003987
AFFIDAVIT

CHERYL GRAMM
CLERK OF COURT

Personally appeared before me, a magistrate of this County, one DETECTIVE M. GIGLIO who, being duly sworn, deposes and says that:

Benjamin Davis III

[REDACTED] SC 29418, Black Male, DOB [REDACTED] Hgt 6'00", Wgt 130, Black Hair, Brown Eyes, SCDL # 101382580)

did within this County and State on the 27th OF April, 2007, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

UNLAWFUL POSSESSION OF A PISTOL IN VIOLATION OF SECTION 16-23-20 OF THE SOUTH CAROLINA CODE OF LAWS OF 1976 AS AMENDED

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts: THAT ON OR ABOUT APRIL 27, 2007, AT APPROXIMATELY 11:38 PM, LOCATED AT [REDACTED] [REDACTED], IN THE COUNTY AND STATE AFORESAID, THE DEFENDANT, BENJAMIN DAVIS III, DID COMMIT THE OFFENSE UNLAWFUL POSSESSION OF A PISTOL IN VIOLATION OF SECTION 16-23-20 OF THE SOUTH CAROLINA CODE OF LAWS AS AMENDED FOR 1976. IN THAT HE DID WILLFULLY, UNLAWFULLY, AND FELONIOUSLY HAVE IN HIS POSSESSION AND UNDER HIS CONTROL A 22 CALIBER PISTOL AND SHOOT THE VICTIM GARCIA JUSTO TEOFIL FOLLOWING AN ATTEMPTED ARMED ROBBERY. FACTS TO PROVE THE SAME ARE AT THE TIME OF THE INCIDENT THE DEFENDANT WAS UNDER THE AGE OF TWENTY-ONE. ON APRIL 27, 2007 AT APPROXIMATELY 11:38 PM OFFICERS FROM DORCHESTER COUNTY SHERIFF'S OFFICE RESPONDED TO THE REPORT OF SHOOTING. UPON ARRIVAL OFFICERS SECURED THE SCENE AND LOCATED THE VICTIM LAYING IN THE PARKING LOT OF [REDACTED] ON [REDACTED]. OFFICERS RECOVERED TWO 22 CALIBER BULLET CASINGS LAYING ON THE GROUND IN CLOSE PROXIMITY TO WHERE THE VICTIM WAS LOCATED. THE VICTIM SUSTAINED WHAT APPEARED TO BE TWO GUNSHOT WOUNDS. THE VICTIM HAD A GUNSHOT WOUND TO THE LEFT UPPER CHEST AND A GUNSHOT WOUND TO THE LEFT UPPER BACK. THE VICTIM WAS TRANSPORTED TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA BY EMS. DETECTIVES ARRIVED ON SCENE AND BEGAN TO INTERVIEW WITNESSES. ALICE LORINDA DINGLE WITNESSED THE INCIDENT AND WAS ALSO CONFRONTED BY THE DEFENDANT AND CO-DEFENDANTS IN THIS CASE. MS. DINGLE POSITIVELY IDENTIFIED A CO-DEFENDANT IN THIS CASE (JONATHAN LINEN). ON 4-29-07 DETECTIVES VANDORAN AND GIGLIO MET WITH THE CO-DEFENDANT (JONATHAN LINEN). MR. LINEN VOLUNTARILY WAIVED HIS MIRANDA RIGHTS AND PROVIDED OFFICERS WITH VERBAL AND WRITTEN STATEMENTS DESCRIBING THE DEFENDANTS INVOLVEMENT AS WELL AS HIS INVOLVEMENT IN THIS CRIME. MR. LINEN REPORTED THE DEFENDANT HAD IN HIS POSSESSION A BLACK IN COLOR HANDGUN DURING THE CRIME. MR. LINEN REPORTED HE OBSERVED THE DEFENDANT DISCHARGE THE HANDGUN AT THE VICTIM AS HE WAS ATTEMPTING TO FLEE. ON MAY 2, 2007 THE AFFIANT IDENTIFIED A CO-DEFENDANT IN THIS CASE. THE CO-DEFENDANT VOLUNTARILY WAIVED HIS MIRANDA RIGHTS AND PROVIDED VERBAL AND WRITTEN STATEMENTS REPORTING THE DEFENDANT HAD IN HIS POSSESSION A 22 CALIBER PISTOL AT THE TIME OF THE ATTEMPTED ROBBERY. ALL AGAINST THE LAW, PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA. WITNESSES TO PROVE THE SAME ARE CAPTAIN T. MARSHALL, LT. VANDORAN, DET. GIBBONS, DET. NAPOLI, DET. TUMBLESTON, DET. WILL, ALICE LORINDA DINGLE, AND THE AFFIANT. ALL AGAINST THE LAW, PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA

[Signature]
DET. M. GIGLIO, AFFIANT

Sworn to and subscribed before me this }
4 day of MAY, 2007 }

[Signature] } Phone:
Signature of Judge (L.S.)

Address: 212 Deming Way
Summerville SC 29483
(843) 832-0300

WITNESSES

Giglio, M.

DOCKET NO. 2007GS18-1019

JURY The State of South Carolina

111:23 County of

DORCHESTER

DCSO

Agency Case #: 07-003987

COURT OF GENERAL SESSIONS

July 16, 2007 TERM

ARREST WARRANT NUMBER

K269095

Arrested: May 09, 2007

ACTION OF GRAND JURY

7/12/07

Foreperson of Grand Jury

Date: July 12, 2007

VERDICT

Foreperson of Petit Jury

Date:

94

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

Defendant

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

Defendant

Witness:

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

Benjamin Davis III

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330(B)

CDR Code: 0026

Class: FEL-C

CLERK OF COURT
DORCHESTER COUNTY
JUL 16 AM 11

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2007GS18-1019

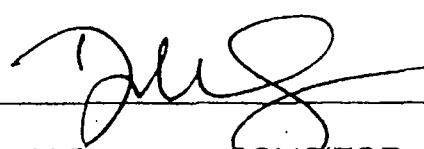
- At a Court of General Sessions, convened on July 16, 2007 the Grand Jurors of
Dorchester County present upon their oath:

ATTEMPTED ARMED ROBBERY

SEARCHED
SERIALIZED
INDEXED
JUL 17 2007
CLERK OF COURT
DORCHESTER COUNTY

The defendant, Benjamin Davis III, did in Dorchester County on or about April 27, 2007,
feloniously attempt to take from the person or presence of the victim, Garcia Justo
Teofil, by means of force 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 any object which a person present during the commission of the
robbery reasonably believed to be a deadly weapon, us currency. This offense being a
violation of Section 16-11-330(B) of the South Carolina Code of Laws, as amended.

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



Donald Sorenson, SOLICITOR

WITNESSES

Giglio, M.

100 COPY
01/11/11:23

DOCKET NO. 2007GS18-1018

The State of South Carolina

County of

DORCHESTER

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

Defendant

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

DCSO

Agency Case #: 07-003987

COURT OF GENERAL SESSIONS

September 04, 2007 TERM

Defendant

ARREST WARRANT NUMBER

K269033

Arrested: May 09, 2007

Witness:

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

ACTION OF GRAND JURY

TRUE BILL

Benjamin Davis III

Indictment for

ASSAULT AND BATTERY WITH INTENT
TO KILL

Foreperson of Grand Jury
Date: August 30, 2007

VERDICT

SC Code: 16-3-620

CDR Code: 0014

Class: FEL-C

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2007GS18-1018

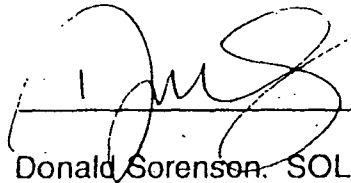
At a Court of General Sessions, convened on September 04, 2007 the Grand Jurors of Dorchester County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

2007-09-04 11:23
ADDG

The defendant, Benjamin Davis III, did in Dorchester County on or about April 27, 2007, with malice aforethought did commit an assault and battery upon the victim, Garcia Teofil, by shooting the victim. This offense being a violation of Section 16-3-620 of the South Carolina Code of Laws, as amended.

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


Donald Sorenson, SOLICITOR

WITNESSES

Giglio, M.

DCSO

Agency Case #: 07-003997

ARREST WARRANT NUMBER

K269096

Arrested: May 09, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE 8-30-07

Foreperson of Grand Jury
Date: August 30, 2007

VERDICT

DOCKET NO. 2007GS18-1020

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 04, 2007 TERM

THE STATE

vs.

Benjamin Davis III

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF CERTAIN
CRIMES

SC Code: 16-23-490
CDR Code: 0549
Class: FEL-F

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

Defendant

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

Defendant

Witness:

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

FILED-RECORDED
2007 SEP -4 PM 1:23
CHERYL GRAYMAN
CLERK OF COURT
DORCHESTER COUNTY

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

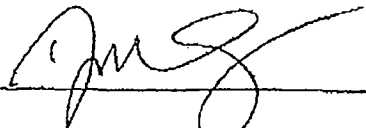
INDICTMENT
2007GS18-1020

At a Court of General Sessions, convened on September 04, 2007 the Grand Jurors of Dorchester County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION OF CERTAIN
CRIMES**

The defendant, Benjamin Davis III, did in Dorchester County on or about April 27, 2007, while committing the violent crime of Attempted Armed Robbery, have in his possession and/or did visibly display a firearm during the commission of the aforementioned crime. All in violation of Section 16-23-490, of the South Carolina Code of Laws, as amended.

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



Donald Sorenson, SOLICITOR

WITNESSES

Giglio, M.

DOCKET NO. 2007GS18-1021

The State of South Carolina

County of

DORCHESTER

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

Defendant

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

Defendant

Witness:

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

DCSO

Agency Case #: 07-003987

ARREST WARRANT NUMBER

K269099

Arrested: May 09, 2007

ACTION OF GRAND JURY

FILED

Benjamin Davis III

Indictment for

UNLAWFUL CARRYING OF A HANDGUN

VERDICT

Foreperson of Grand Jury

Date: August 30, 2007

SC Code: 16-23-20
CDR Code: 0044
Class: MIS-C

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)


INDICTMENT
2007GS18-1021

At a Court of General Sessions, convened on September 04, 2007 the Grand Jurors of Dorchester County present upon their oath:

UNLAWFUL CARRYING OF A HANDGUN

The defendant, Benjamin Davis III, did in Dorchester County on or about April 27, 2007, unlawfully carry about his or her person a firearm, described as follows a 22 caliber pistol. All in violation of Section 16-23-20, of the South Carolina Code of Laws, as amended.

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



Donald Sorenson, SOLICITOR

WITNESSES

Giglio, M.

DOCKET NO. 2007GS18-1018

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

October 08, 2007 TERM

DCSO

Agency Case #: 07-003987

ARREST WARRANT NUMBER

K269033

Arrested: May 09, 2007

ACTION OF GRAND JURY

TRIPPLE

Benjamin Davis III

THE STATE

vs.

Indictment for

ASSAULT AND BATTERY WITH INTENT TO KILL

VERDICT

DATE 10-4-07

Foreperson of Grand Jury

Date: October 04, 2007

[Signature]

Foreperson of Petit Jury

Date:

102

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

Defendant

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

Defendant

Witness:

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

2007 OCT - 5 AM 5:11
RECORDED

SC Code: 16-3-620
CDR Code: 0014
Class: FEL-C

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

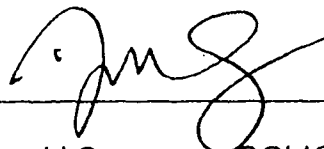
INDICTMENT
 2007GS18-1018

At a Court of General Sessions, convened on October 08, 2007 the Grand Jurors of Dorchester County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

The defendant, Benjamin Davis III, did in Dorchester County on or about April 27, 2007, with malice aforethought did commit an assault and battery upon the victim, Teofil Justo Garcia, by shooting the victim. This offense being a violation of Section 16-3-620 of the South Carolina Code of Laws, as amended.

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



Donald Sorenson, SOLICITOR

WITNESSES

Giglio, M.

COPY
11/11/24

DOCKET NO. 2007GS18-1019

The State of South Carolina

County of

DORCHESTER

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

Defendant

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

DCSO

Agency Case #: 07-003987

COURT OF GENERAL SESSIONS

October 08, 2007 TERM

Defendant

ARREST WARRANT NUMBER

K269095

Arrested: May 09, 2007

Witness:

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

ACTION OF GRAND JURY

FILED

Benjamin Davis III

DATE 10-9-07

Indictment for

ATTEMPTED ARMED ROBBERY

VERDICT

Foreperson of Grand Jur
Date: October 04, 2007

SC Code: 16-11-0330(B)

CDR Code: 0026

Class: FEL-C

Foreperson of Petit Jury

Date:

RECORDED
2007 OCT -9 AM 9:11

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2007GS18-1019

At a Court of General Sessions, convened on October 08, 2007 the Grand Jurors of Dorchester County present upon their oath:

ATTEMPTED ARMED ROBBERY

COPY
OCT 11 11:24
CITY

The defendant, Benjamin Davis III, did in Dorchester County on or about April 27, 2007, feloniously attempt to take from the person or presence of the victim, Teofil Justo Garcia and/or Lorinda Dingle, by means of force 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 any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, us currency. This offense being a violation of Section 16-11-330(B) of the South Carolina Code of Laws, as amended.

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



Donald Sorenson, SOLICITOR

106 Cap of 15 yrs

Up to 20

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER
STATE VS.

INDICTMENT/CASE#:

Benjamin Davis III

2007GS18-1018

AKA:

A/W#: K269033

Race: B Sex: M Age: 19

Date of Offense: 4/27/2007

DOB: [REDACTED] SS#: [REDACTED]

S.C. Code §: 16-3-620

Address: [REDACTED]

CDR Code #: 0014

City, State, Zip [REDACTED]

DL# [REDACTED] SID# [REDACTED]

CASE RESTORED
SENTENCE
 PLEA TRIAL

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

TO: Assault & Battery with Intent to Kill

in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 010114

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC) §17-25-45 w/minor 1st or Lewd Act

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

ATTORNEY:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the 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 CONSECUTIVE to sentence on: _____

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

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

SPECIAL CONDITIONS:

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

PTUP _____ days/hours Public Service Employment

Recipient:	
*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$ 12875

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

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

[Signature]
Clerk of Court/Deputy Clerk

PRESIDING JUDGE

[Signature]

Court Reporter: *[Signature]*

Judge Code: 2

Sentence Date: 1/24/08

Cap of 15 yrs

3-20 yrs

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
 STATE VS.)
Benjamin Davis III)
 AKA: _____)
 Race: **B** Sex: **M** Age: **19**)
 DOB: _____ SS#: _____)
 Address: _____)
 City, State, Zip _____)
 DL# _____ SID# _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: _____
2007GS18-1019
 A/W#: **K269095**
 Date of Offense: **4/27/2007**
 S.C. Code §: **16-11-0330(B)**
 CDR Code #: **0026**
 CASE RESTORED
 SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Attempted Armed Robbery
 in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0101216
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:
 _____ Solicitor
 _____ Defendant
 _____ Attorney for Defendant

WHEREFORE, the Defendant is committed to the 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 CONSECUTIVE to sentence on: 1-24-08
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
 Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
 Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

Recipient:	
*Fine:	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§35.13 (Public Def/Prob)	\$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ <u>37.5</u>
TOTAL	\$ <u>1287.5</u>

 Clerk of Court Deputy Clerk
 Court Reporter: _____

PRESIDING JUDGE _____
 Judge Code: _____
 Sentence Date: 1/24/08

108 concurrent w/ other charges

Up to 1 yr + \$1000

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER
STATE VS.

INDICTMENT/CASE#:

Benjamin Davis III

2007GS18-1021

AW#: K269099

AKA:

Date of Offense: 4/27/2007

Race: B Sex: M Age: 19

S.C. Code §: 16-23-20

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0044

Address:

CASE RESTORED SENTENCE

City, State, Zip

PLEA TRIAL

DL#

SID#

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

TO: Unlawful Carrying of a Handgun

in violation of § 16-23-20 of the S.C. Code of Laws, bearing CDR Code # 0101414

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC) \$17-25-45 w/minor 1st or Lewd Act)

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

ATTEST:

Russell H

Solicitor

Benjamin Davis III

Defendant

[Signature]

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1-24-08

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

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

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

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

Payment Terms:

set by SCDPPPS

Recipient:

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 1000
\$14-1-211(A)(2) (DUI Surcharge)	\$100	
\$56-5-2995 (DUI Assessment)	\$12	
\$35.13 (Public Def/Prob)	\$500	
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 2500
\$33.7, 1B TP (Drug Court Surcharge)	\$100	
\$50-21-114(BUI Breath Test Fee)	\$50	
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% to County (if paid in installments)	\$	\$ 375
TOTAL	\$	\$ 12875

PTUP

_____ days/hours Public Service Employment

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

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

Deal E...

Clerk of Court/Deputy Clerk

Court Reporter:

[Signature]

PRESIDING JUDGE

Judge Code: 2 11 13 17

Sentence Date: 1/24/08